

**REVIEW of the REGULATION
by the
CIVIL AVIATION SAFETY AUTHORITY
of
AQUATIC AIR PTY LTD
trading as
SOUTH PACIFIC SEAPLANES**

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EXECUTIVE SUMMARY

- 1 This inquiry was commissioned by the Civil Aviation Safety Authority ("CASA") following the crash on 26 July 1998 of Cessna 185 VH-HTS operated by Aquatic Air Pty Ltd trading as South Pacific Seaplanes ("SPS"). Tragically, all five people on board were killed.
- 2 The terms of reference for the inquiry required a "full and complete review" of CASA's actions in its regulation of SPS.
- 3 I have interpreted those terms of reference as requiring a consideration of the following questions:
 - were CASA's actions legally correct?
 - were they taken for proper purposes?
 - were they reasonable and understandable in the prevailing circumstances? and
 - where alternative courses of action were open, was the course chosen by CASA the preferable course?
- 4 I have no reason to believe that any relevant document was withheld from me by CASA, that any documents were changed by CASA or any CASA employee before they were provided to me, or that any pressure was applied to me by CASA in relation to the matters on which I should report or the content of this report, despite an anonymous allegation to the contrary which was conveyed to the Minister for Transport and Regional Development.
- 5 Throughout the course of this inquiry I have received the full cooperation of the Director of Aviation Safety ("Director") (the chief executive officer at CASA) and his senior officers, and I believe they have behaved with complete propriety in relation to this inquiry.
- 6 I have conducted my review by examining all available and relevant CASA documents, and by interviews with a number of present CASA officers and one former CASA officer. I was provided with access to all papers that I sought, and no person declined to meet with me despite my lack of any coercive powers.
- 7 Persons interviewed were provided with access to relevant CASA documents at or before interview in order that they might refresh their memory. In some cases, where requested, a prior indication was given of the particular matters I wished to discuss at interview.
- 8 A small number of written submissions was received. Only Mr Burns asked that his submission be attached to this report.

- 9 Those persons of whose actions I had formed a critical view were provided with extracts of the relevant parts of this draft report and afforded an opportunity to make further submissions. The draft report was varied in a number of respects in light of the submissions thereby received. Where there is residual disagreement between myself and a person of whom I am critical, I have sought to identify that in the body of this report.
- 10 There are a number of important qualifications to which this report is subject. The most important of these is that this is an internal inquiry which was neither designed nor competent to make findings on the cause of the accident of 26 July 1998. That is an expert function of the Bureau of Air Safety Investigation ("BASI"). Instead, this inquiry was established to examine the quality of CASA's regulation of SPS. That regulation may have played absolutely no part in the circumstances leading to the accident of 26 July 1998, which may have happened in any event.
- 11 The chronology of CASA's regulation of SPS is detailed in the body of the report. It generally records events over a period of some five years on a day by day basis. At times it records events by the hour and minute.
- 12 Those events are divided into 83 separate regulatory transactions that took place between CASA and SPS. In respect of each transaction, the report records my conclusions as to the quality of CASA's decisions and actions. From time to time, other observations and recommendations that I consider to be relevant are included in the text in the hope that these may be of some assistance to CASA in its future operations.
- 13 In the report I also set out my assessments of the actions of individual CASA officers, of the CASA Board Safety Committee and of the CASA Board, so far as they are relevant to the regulation of SPS. I also note the part played from time to time by successive Ministers for Transport and Regional Development and their offices.
- 14 Of the 83 regulatory transactions analysed in this report, the vast majority were concluded perfectly satisfactorily or, at the least, in a way that I consider warrants no criticism of any substance. In reaching this view I have attempted to adopt a realistic expectation of the standards that should be met by CASA officers in their difficult and demanding tasks.
- 15 I have not sought to criticise officers for not complying with bureaucratic nicety other than where I considered that non-compliance to be material. In this context I have viewed a number of actions as having been reasonable and understandable in the prevailing circumstances, albeit less than perfect.
- 16 However, I consider that the processes followed in concluding a small number of transactions were defective and not preferable and that the decisions which were taken as a result were not the decisions which should preferably have been taken. Each of these transactions are identified in the body of this report. The most significant of them are noted below.
- 17 I have identified no material CASA decisions that were overtly unlawful, and I have identified no CASA action that I consider was taken for improper purpose.
- 18 From its inception, and even prior to the grant of its first Air Operators Certificate ("AOC"), SPS presented CASA with difficult regulatory problems. These involved

frequent and repeated breaches of various regulatory requirements and a failure to honour the numerous undertakings it gave to remedy perceived inadequacies in its methods of operations.

- 19 It had a significant turnover in Chief Pilots, a number of whom made serious allegations against SPS management and its attitude to aviation safety. Over the period covered by this inquiry, CASA received at least 21 separate complaints against SPS operations and it issued 13 Non-compliance Notices and nine Aircraft Survey Reports in respect of matters of varying significance, some of which were serious enough to ground SPS aircraft. Its aircraft were involved in a number of accidents or allegedly near accidents, two of which involved aircraft being submerged with a threat to the pilot's life.
- 20 On 6 April 1997 the then Regional Manager South East Region ("RM SER") issued a notice to SPS requiring it to show cause why its AOC should not be cancelled or suspended. I regard the issue of that notice as fully justified.
- 21 On 12 May 1997, however, the then RM SER decided to take no further action after an informal conference with SPS management. That decision was taken after consultation with, and with apparent support from, the District Flying Operations Manager ("DFOM"), Bankstown. However, it was taken without any meaningful consultation with the Flying Operations Inspector ("FOI") who was assigned to SPS, who had the most intimate knowledge of SPS operations, and who had recommended suspension or cancellation of the AOC. No reasons for this decision were recorded.
- 22 In my view that was neither the preferable process that should have been followed nor the preferable decision that should have been taken in all the circumstances. I consider that the preferable decision that should have been made at this time was, at the least, to suspend the SPS AOC until a new Chief Pilot was appointed, an organisational structure put in place to ensure that the Chief Pilot had full authority to run SPS in a safe manner, the SPS Operations Manual was satisfactorily amended, and other outstanding issues acquitted.
- 23 On 27 March 1998 and following further serious incidents, a notice was issued by the current substantive RM SER requiring SPS' Chief Pilot to show cause why his approval as Chief Pilot should not be cancelled. I regard the issue of that notice as fully justified.
- 24 After receiving a written submission from the Chief Pilot and convening an informal conference attended by the DFOM and the Chief Pilot and meeting later with SPS management, the RM SER was undecided as to whether or not he should cancel the Chief Pilot's approval. Again the FOI who was assigned to SPS, who had the most intimate knowledge of SPS operations and who had recommended suspension or cancellation was not in attendance at the conference and not consulted.
- 25 However, the RM SER did decide on 2 April 1998 to institute a special audit of SPS. In my view that step could have been justified earlier but was at least appropriate and proper at this time.
- 26 The special audit was completed in April/May 1998. It made numerous and serious findings adverse to SPS, and the audit team recommended that SPS' AOC be immediately suspended.

- 27 The RM SER did suspend the SPS AOC on 5 May 1998. That was in my view a proper and justifiable decision. Soon thereafter he also issued a notice to SPS requiring it to show cause why its AOC should not be cancelled. That too was in my view a proper and justifiable decision.
- 28 SPS immediately applied to the Administrative Appeals Tribunal ("AAT") for review of the suspension decision and for a stay of it pending the final hearing. CASA opposed and the AAT refused to grant that stay.
- 29 The RM SER subsequently held an informal conference with SPS, in company with the DFOM, Bankstown and the Acting District Airworthiness Manager ("DAM"), Bankstown North. After that meeting, the RM SER decided that he would not oppose a further application to the AAT for stay of his decision suspending the SPS AOC, provided SPS agreed to a set of six conditions that he then formulated.
- 30 It appears that the DFOM, Bankstown and Acting DAM, Bankstown North supported (or at least did not oppose) that decision by the RM SER. The conditions formulated by the RM SER were, in my view, generally adequate to address the airworthiness issues then current in relation to SPS. However, I do not consider that they were adequate to deal with the flying operations issues that were then outstanding or to prevent a recurrence of those that had frequently arisen in CASA's past regulation of SPS.
- 31 Once again the FOI who was assigned to SPS and who had the most intimate knowledge of SPS operations was not in attendance at the conference and not consulted about the decision subsequently taken. Neither was the leader or the members of the special audit team.
- 32 Once again, in my view, that was neither the preferable process that should have been followed nor the preferable decision that should have been taken in all the circumstances. I consider that, at least, the suspension decision should have remained on foot pending the AAT review. If that is not correct, then I consider that the conditions on which the stay was granted were neither comprehensive nor adequate. A decision should also have been made in relation to cancellation of the AOC. I consider that it would have been justifiable to cancel the AOC and seek to defend that action before the AAT if SPS sought review of it.
- 33 Once the AAT had granted the stay with the consent of SPS and CASA, SPS was legally entitled to and did resume operations. The conditions formulated by the RM SER did not require immediate compliance as I believe they should have done. Instead, SPS was given a period of some three weeks to comply with those conditions.
- 34 At the end of that period, the RM SER did not institute a sufficiently rigorous process of examination to ensure that SPS had in fact complied with each of the conditions that had been set, and SPS' compliance was not adequate in my view.
- 35 Moreover, on 6 July 1998, the RM SER wrote to SPS advising that not only would he take no further action in relation to the possible cancellation of the SPS AOC but also that he had removed the suspension that had been stayed by the AAT.
- 36 I consider that neither of those decisions was the preferable decision that should have been taken and that the process followed in arriving at them was inadequate.

- 37 Having regard to the information provided from time to time to the CASA Board and the CASA Board Safety Committee in relation to SPS, and to successive Ministers for Transport and Regional Development and their staff, I do not believe there was reasonable cause for them to intervene to take action that would have prevented the decisions of which I am critical being taken, or the processes of which I am critical being followed.

GLOSSARY OF TERMS

AAT	Administrative Appeals Tribunal
ALA	Area Landing Area
AOC	Air Operator's Certificate
AOCM	Air Operators Certification Manual
ASSP	Aviation Safety Surveillance Program
ASR	Aircraft Survey Report
AWI	Air Worthiness Inspector
BASI	Bureau of Air Safety Investigation
CAA	Civil Aviation Authority
CAAP	Civil Aviation Advisory Publication
CAIR	Confidential Aviation Incident Report
CAO	Civil Aviation Order
CAR	Civil Aviation Regulation
CASA	Civil Aviation Safety Authority
COA	Certificate of Airworthiness
DAM	District Airworthiness Manager
DFOM	District Flying Operations Manager
FOI	Flying Operations Inspector
HCRPT	High Capacity Regular Public Transport
ICAO	International Civil Aviation Organisation
LCRPT	Low Capacity Regular Public Transport
MTOW	Maximum Take Off Weight
NCN	Non-Compliance Notice
OLC	Office of Legal Counsel
RFOM	Regional Flight Operations Manager

RM SER	Regional Manager South East Region
RT	Regulatory Transaction
SAWI	Senior Airworthiness Inspector
SER	South East Region
SHS	Sydney Harbour Seaplanes
SPS	South Pacific Seaplanes

1 BACKGROUND

- 1.1 On the afternoon of Sunday 26 July 1998 seaplane Cessna 185 VH-HTS operated by Aquatic Air Pty Ltd trading as South Pacific Seaplanes crashed while attempting to land at Berowra Waters north of Sydney. Tragically, all five people on board were killed.
- 1.2 Immediately after the accident, BASI, in accordance with its areas of responsibility and expertise, commenced the necessary technical investigation into the cause of the accident.
- 1.3 Concurrently, the Director suspended the Air Operator's Certificate of SPS, thereby grounding the airline's remaining Maule M7 floatplanes. He also suspended three CASA employees who had been involved in significant decisions taken in relation to SPS.
- 1.4 On 26 July 1998 the Director announced that CASA, in addition to cooperating with the BASI investigation of the cause of the particular accident, would conduct an internal inquiry into its own general regulation of the airline.
- 1.5 That inquiry, conducted by the Assistant Director Aviation Safety Compliance ("**Assistant Director ASC**") with the assistance of a team of three CASA staff, made a preliminary report to the Director which he made public on 5 August 1998.
- 1.6 In releasing that preliminary report, the Director announced that the Assistant Director ASC would conduct a fuller and more detailed inquiry into CASA's regulation of SPS over the preceding three years. The Assistant Director ASC commenced that fuller inquiry, and added to his existing team a fourth officer who had extensive experience as a CASA delegate with responsibility for making decisions of the nature to be examined by the inquiry.
- 1.7 Subsequently some concern was expressed about the desirability of the Assistant Director ASC undertaking this second inquiry. The holder of this office had previously been a member of the CASA Board. Concern was expressed by some observers that there was at least a perception that the Assistant Director ASC might face a conflict of interest given that the inquiry would need to examine the involvement of the Board at a time at which he had been a member of it.
- 1.8 In response to that concern, the Director, acting for and on behalf of CASA, appointed me to undertake the fuller inquiry. This document is the report of that inquiry.

2 TERMS OF REFERENCE

- 2.1 By letter to me dated 12 August 1998, the Director provided the following terms of reference:

“Conduct a full and complete review of the actions of the Civil Aviation Safety Authority in relation to the operations of Aquatic Air Pty Ltd, trading as South Pacific Seaplanes, for the three years ending 31 July 1998”.

- 2.2 By subsequent agreement with the Director, these terms of reference were slightly amended to enable me to look at CASA’s regulation of SPS from its inception rather than for just the preceding three years.

- 2.3 In that letter the Director asked me to ensure that I addressed a number of questions that had arisen in his mind from his understanding of the circumstances of CASA’s regulation of SPS or from the preliminary report. Each of the issues thereby raised are covered in the body of this report.

- 2.4 At the same time, the Director also gave me the following assurances:

You will have full access to all relevant official records of CASA, and you are free to approach and address questions to any Authority officer. I have written to all CASA staff urging them to give your Inquiry their fullest support and cooperation;

You will be assisted by a team of CASA personnel who I have directed to assist you in your task. If at any stage you require assistance from any additional CASA personnel, please do not hesitate to contact myself or CASA’s General Counsel, Peter Ilyk;

You will be assisted by Ms Jacqueline Wharton, solicitor of Mallesons Stephen Jaques, to the extent you deem necessary;

If you deem it necessary or desirable, Peter Ilyk is authorised to approve your seeking additional ad hoc or ongoing assistance from other personnel within Mallesons Stephen Jaques.

- 2.5 I am pleased to report that, consistent with the Director’s undertakings, I have received all the assistance I have sought from CASA and its officers.
- 2.6 In addressing these terms of reference I have taken the view that I am required to assess the quality of CASA’s regulation of SPS, and not just the legality of what was done.
- 2.7 Judicial review of administrative action is confined to the legality of the action challenged. By contrast, merits review of administrative decisions looks to whether or not the decision chosen amongst a range of legally available options was the correct and preferable decision, without being able to conclusively determine its legality. An Ombudsman-type review of administrative action looks more particularly at the processes by which decisions, even if legal, correct and preferable, are arrived at.

- 2.8 Ms Mary O'Brien and her legal advisers put to me that I was confined to assessing the legality of the actions taken by CASA in relation to SPS. They referred to the *Wednesbury* principle but cited no authority in support of the proposition that it was applicable to this inquiry. Clearly I exercise no judicial power in undertaking this review, and it is the exercise of judicial power that is curtailed by that principle.
- 2.9 I thus rejected that submission. Moreover, I am aware of no other relevant limitation which should be inferred from the specific wording of the terms of reference or by application of any other principle of administrative law.
- 2.10 At the same time, of course, I acknowledge that this interpretation of the terms of reference calls for the exercise of judgments with a subjective rather than objective element. I thus set out in Chapter 7 the basis I have adopted for forming those judgments.
- 2.11 Finally, I note that the terms of reference call for a review of the "actions of the Civil Aviation Safety Authority". CASA, of course, cannot act other than through the various individuals who occupy positions within its Board, Executive and staffing structure. It is thus necessary to examine the actions of individuals, but this examination is confined to their actions within their actual and ostensible authority for and on behalf of CASA. It does not extend to their private capacity and activities. As such, it is CASA that is ultimately responsible for the actions taken in its name. Chapter 14 contains an assessment of the overall performance of both individual officers and the CASA Board and CASA Board Safety Committee in their collective regulation of SPS.

3 QUALIFICATIONS ON THIS REPORT

- 3.1 The accident of 26 July 1998 and the preliminary report issued by the Director have each attracted significant media and public attention.
- 3.2 It is important, therefore, that the following qualifications be stated at the outset and firmly borne in mind by those who may seek to analyse and comment upon the content of this report:
- (a) this inquiry is neither designed nor competent to make findings on the cause of the accident - that is a highly technical and expert task that properly resides with BASI. Rather, this inquiry is to examine the quality of CASA's regulation of SPS. That regulation may have played absolutely no part in the circumstances leading to the accident, which may have happened in any event;
 - (b) this inquiry relates to the quality of CASA's regulation of one air operator. It does not provide any legitimate basis to draw generalised conclusions about the quality of CASA's regulation of any of the other operators regulated by CASA, or of its other regulatory functions. To the extent that I may identify any defect in, or less than optimal performance of, CASA's functions in relation to SPS, it cannot be presumed that this is a problem of general application;
 - (c) this inquiry does not represent a general review of the legislation which CASA is required to administer, or of the policy of the Government and the Parliament reflected in that legislation. I recommend in this report that consideration be given to amendment of a number of very limited aspects of that legislation. Those recommendations are based solely on my examination of the regulation of SPS. While they appear to me to be sensible, there may be broader practical and policy considerations that would make such amendments undesirable. That is a matter for decision by CASA, the Department of Transport and Regional Development and ultimately the Minister for Transport and Regional Development;
 - (d) this inquiry is not a general review of the policy which CASA adopts in exercising the discretions conferred upon it by the legislation it administers. For example, CASA must strike a balance in its administration between ensuring safety and facilitating the commercial aviation industry. To some extent, the matters I have had to consider in this review touch upon such issues. In exercising the judgments I have had to make in the course of this review, I have sought to do so by reference to relevant aspects of CASA's promulgated policy to the extent that I have been able to ascertain it;
 - (e) this inquiry is not an audit of the changes that have taken place in CASA's legislation and practices since the report of the *Commission of Inquiry into the Relations between the CAA and Seaview* of 29 September 1996. To some extent I have had cause to touch on some of the same issues that were before that Commission and in respect of which it made recommendations. However, that inter-relationship has been peripheral at best;

- (f) this inquiry is not a review of CASA's organisational structure and its suitability for the performance of CASA functions. It has been necessary for me to consider the organisational inter-relationship between a number of key positions in order to ascertain how responsibility for SPS regulation was attributed to various positions in the CASA structure from time to time. In so doing, I have concluded that one position in the CASA hierarchy was too ambiguously defined and delineated to be effective. That finding is not, however, a basis for making any more generalised assumptions as to the appropriateness of CASA's structure.
- (g) this inquiry is not a review of the decision taken to suspend the three CASA officers following the preliminary report and it does not make any recommendations as to future decisions that might be made in relation to them. Those are matters for the Director to decide in exercise of his statutory powers in relation to CASA officers. The facts and analysis set out in this report may provide an input to the Director's future decision-making, but the nature of the decisions that should be made are outside my terms of reference; and
- (h) finally, this is not a review of the adequacy of CASA resources or of its deployment of them amongst competing areas of priority. On occasions I have concluded that aspects of CASA's regulation were less than I feel they should have been. However, I am unable to say whether CASA could have been expected to consistently avoid the defects that I have identified within the resources available to it.

4 LIMITATIONS OF THE AUTHOR

- 4.1 I place on record a number of matters that may be considered relevant in assessing this report.
- 4.2 I am not now, and have never been, a delegate charged with the exercise of CASA's statutory powers. Therefore, I have never faced the competing priorities and pressures which I have been informed by a number of those I have spoken to during the course of this inquiry are a constant factor in the day to day working life of CASA delegates in busy offices such as the Bankstown District Office and the Sydney Regional Office. As to this, I make two points:
- (a) First, I spent 27 years in the Australian Public Service in a variety of Departments and Agencies, and 22 of those were at Senior Executive or Chief Executive Officer level. In many of those various positions I did bear significant regulatory and management responsibilities of a not dissimilar nature. In making judgments called for by this review, I believe that I am able to perceive and make due allowance for burdens of the nature borne by a CASA delegate.
 - (b) Second, I have had the advantage of input and assistance from a senior CASA officer who has himself had experience as a CASA delegate with responsibility for taking delegated decisions of the nature of those within the terms of reference of this review.
- 4.3 I am a solicitor employed by the firm of Mallesons Stephen Jaques. That firm has in the past provided some legal advice to CASA and was appointed by CASA to its standing panel of legal services providers earlier this year. Since that time I have myself provided legal advice to CASA. To my knowledge, two of the officers whose decisions are amongst those within the terms of reference of this review have queried whether, as a result, I am able to conduct a truly independent review. As to this, I also make two points:
- (a) First, this inquiry was always intended to be internal rather than external. BASI is conducting a separate and external inquiry into the cause of the accident, and any broader systemic issues that might arise. My appointment was made in response to concerns expressed about the suitability of one individual CASA officer to undertake this inquiry, based on his previous membership of the CASA Board. No such concern exists in relation to myself, as I am not and have never been a member of the CASA Board. Thus, CASA considered that I was suitably qualified to undertake the internal review it had originally decided upon.
 - (b) Second, neither Mallesons Stephen Jaques nor I have provided legal advice to CASA in relation to any matter associated with SPS or in relation to the actions of any CASA officer that might in any way be within the terms of reference of this review.
- 4.4 The matters mentioned in the preceding paragraph have in no way hindered me in exercising an independent judgment on each of the matters falling within my terms of reference and the Director of Aviation Safety and his senior officers with whom I have dealt in connection with this inquiry have conducted themselves with complete propriety in that regard.

5 PROCESS FOLLOWED BY THE REVIEW

- 5.1 This review was established administratively. It had no statutory authority or sanction. Accordingly, it had no coercive power and was unable to compel the production of documents, the attendance of witnesses, or the answering of questions.
- 5.2 I have not, however, found this lack of power to be an inhibition.
- 5.3 I have been provided with ready access to all documents I have sought from CASA officers. While I express in the body of the report some doubt about whether I have seen every relevant document, this is not to suggest that any CASA officer has sought to withhold documents from me. Rather, it is to suggest only that I suspect that CASA filing systems may not allow the identification and location of every relevant document. In this regard, CASA would be little different to many other Government departments and agencies with which I have dealt (and in some cases for which I have myself been responsible) over the years.
- 5.4 No CASA officer has declined to meet with me.
- 5.5 In the conduct of this inquiry I have met only with serving CASA officers, with one exception. I have not felt it necessary or appropriate to seek to interview or communicate with former officers of the Authority who may have had some involvement in the matter, other than the former RM SER, Mr Barry Diamond. [I mention that I chose not to seek an interview with Mr Diamond's predecessor, Mr Scotty Fairbairn, because each of the particular SPS-related incidents which arose during his tenure as RM SER were dealt with without reference to him. The one significantly serious issue that arose during that period, leading to the issue of a show cause notice to the SPS Chief Pilot, was still on foot at the time he left that position and there had been no call for him to take action in relation to it.]
- 5.6 Other than Mr Diamond, I have not sought to interview persons outside CASA, and in particular those associated with SPS. My terms of reference require me to make findings about the quality of CASA regulation of SPS, rather than about the quality of SPS operations. I have thus acted on the basis that it is appropriate to judge the quality of CASA's regulatory actions by reference to its understanding from time to time of SPS activity. That understanding may or may not have been accurate, but it would be unreasonable in my view to form judgments about CASA's actions by reference to material of which it was unaware. I note, however, that this has not precluded me from considering whether or not CASA's understanding of the facts from time to time was apparently so limited that it should have made further inquiry of SPS or others.
- 5.7 Generally CASA officers with whom I met were, in my opinion, open and frank with me in their responses to my questions of fact. One or two were, on occasion, reticent to respond to questions which called for an expression of opinion. I do not draw any adverse inference from this caution on their part.

- 5.8 CASA officers with whom I met were provided in advance with a copy of the procedural statement set out at Attachment A to this report, and appointments were arranged for mutually convenient times. With two exceptions, interviews proceeded on the basis outlined in that statement. The exceptions were as follows:
- (a) One interviewee attended in the company of another officer with whom I was scheduled to meet later the same day. While the procedural statement indicated that an interviewee could be accompanied by a person of their choice, I expressed a preference to see these two persons separately to avoid any suggestion that the evidence of either was influenced by that of the other. Each agreed to that request, and neither asked for an adjournment to allow them to arrange for another accompanying person.
 - (b) Two interviews were not tape recorded. In one instance that was at the request of the interviewee, to which I acceded. On the other occasions the professional recording equipment provided by CASA malfunctioned on that day. Ad hoc arrangements were made to use other far less sophisticated equipment but unfortunately that also failed to record.
- 5.9 Early in the inquiry it became apparent that there were multiple CASA files of relevance and that gaining an accurate understanding of the totality of CASA regulation of SPS was going to be extremely difficult whilever it was necessary to correlate those various files. Accordingly, relevant files were copied and the copies then assembled into global chronological file. This allowed me to track CASA's interactions with and about SPS on a daily basis.
- 5.10 Moreover, once a unique identifier attributed to each document in this file was entered into a suitable database, I was able to readily identify and call up each document relevant to a particular interviewee - whether as signatory or as addressee, or because they were referred to therein.
- 5.11 It was on the basis of the documents so identified that interviews proceeded. Each interviewee was shown relevant documents and thereby allowed to refresh their memory before answering questions I sought to ask of them.
- 5.12 In respect of two CASA officers, Mr Burns and Ms O'Brien, copies of all documents identified as pertinent to them were provided some days before the scheduled interview, and an indication provided of which documents I regarded as most relevant to my terms of reference and of the nature of the questions I wished to ask arising from them.
- 5.13 As earlier mentioned, a team of four CASA officers was assigned to the fuller inquiry initially to be undertaken by the Assistant Director ASC. They were each asked at the time of their original assignment to indicate whether there was any reason why they felt they could not bring an unbiased view to their task, or might be perceived as being unable to do so.

- 5.14 One of the team disclosed a previous incident concerning one of the officers whose decisions were to be subject to review in the course of the inquiry. That incident apparently was a cause of some aggravation to the team member at the time. However, he indicated that the matter was well in the past and he no longer harboured any resentment. It was decided that there was, on balance, no reason why that person could not continue as a team member, having regard to the technical role envisaged for him.
- 5.15 Another team member declared that he knew and held in high regard, professionally and as friends, certain of the officers whose decisions were to be subject to review, but equally said that he believed he could bring an open mind to his task. Again, it was decided that there was, on balance, no reason why that person could not continue as a team member, having regard to the technical role envisaged for him.
- 5.16 These matters were raised with me shortly after my appointment. By that time, the various team members had already been assigned various technical tasks, and considerable effort had already been expended by them. I decided that neither should be removed from the team, but that certain safeguards should be put in place:
- (a) I resolved that the identity of each team member should be disclosed to each proposed interviewee, to give them an opportunity to object if they wished;
 - (b) I resolved that only I and my colleague from Mallesons Stephen Jaques would attend interviews;
 - (c) I decided to limit the tasks assigned to team members who were CASA officers to technical issues not calling for the expression of personal judgments about individuals;
 - (d) I confined discussion in my meetings with the team to factual and technical issues and avoided the expression of personal opinions about those whose decisions were under review; and
 - (e) I reaffirmed my resolve to ensure that I was personally satisfied that the judgments I might be called onto make during the course of the review were correct and justified by reference to source material.
- 5.17 As it transpired, only one objection was taken to the participation of any of the CASA team members. That objection was made by the officer involved in the incident referred to above. I explained the above points to the officer, and agreed that any material that was provided to me by the team member in question that touched upon the officer would be provided to him for comment before any reliance was placed upon it.
- 5.18 I informed all CASA officers that I interviewed that I would provide them with a copy of any passage of my draft report which I perceived to be critical of them, and allow them an opportunity for comment or debate. I have followed that undertaking and, where there has remained any disagreement between myself and an interviewee at the end of that process, I have attempted to reflect the nature of that disagreement in the text of this report.
- 5.19 I offered to make individual submissions Attachments to this report. Only Mr Burns asked that I do this and his submission to me is at Attachment H.

- 5.20 When the Director first commissioned the fuller inquiry by the Assistant Director, Aviation Safety Compliance, he asked that the Assistant Director's report be concluded within four weeks - that is, by 31 August 1998. When I was asked to undertake that fuller inquiry, the Director and I agreed that any need for a later target completion date should be discussed between us when I had had an adequate opportunity to assess the magnitude of the underlying task.
- 5.21 I later advised him that I regarded 9 to 11 September 1998 as a reasonable target date. At that stage, I was hopeful that I would be able to conclude all interviews and analysis according to the timetable I had tentatively developed.
- 5.22 As it transpired, that estimation proved to be overly optimistic for a number of reasons. The Director agreed that I should take whatever time I regarded as necessary to ensure that my report was as complete as possible, and that affected officers were provided with adequate time to make representations to the inquiry and to respond to relevant passages of the Inquiry Report. Within these bounds, this report has been prepared as quickly as I felt able. In this context I note that there were some minor factual issues that I did not pursue to finality in the interests of an earlier conclusion to the review. I regard none of those as material to the conclusions I have eventually drawn.

6 STATUS OF THE PRELIMINARY REPORT

- 6.1 I have taken the view that my terms of reference do not call on me to pass judgment on the procedures followed, or the conclusions reached, by the preliminary review conducted by the Assistant Director, Aviation Safety Compliance. I had read that report briefly when it was publicly released and prior to my appointment to this inquiry, and then only briefly and because it was a matter of some public comment.
- 6.2 I have thus refrained from considering the preliminary report in any detail. Indeed, in the course of this review, I refrained from further reading the preliminary report until I had largely completed my inquiries and analysis. At that time I read the preliminary report only to ensure that there was no issue canvassed by it that was not dealt with in my own report.
- 6.3 I mention this issue not to raise any adverse implication in relation to that report or its author, whom I have not met or sought to meet. Rather, I wish to indicate only that I have attempted as far as I am able to produce a report that reflects only my own views, unaffected by those of others. The views expressed in this report are indeed my own. Whether they are valid is for others to decide.

7 BASIS ADOPTED FOR FORMING JUDGMENTS EXPRESSED IN THIS REPORT

- 7.1 As noted in Chapter 2, I regard it as inherent in the terms of reference for this inquiry that this report cannot be confined to questions of law. In my view I am not asked to advise simply whether any particular decision made by CASA was legally correct; rather, I am required to make a far broader assessment of the quality of CASA decision-making in respect of SPS.
- 7.2 It is thus important that I seek to explain the basis I have adopted for forming the often subjective judgments that I express in the course of this report.
- (a) First, any particular decision or action may be lawful or unlawful.
 - (i) It may be made within power and in accordance with proper procedure.
 - (ii) Requirements of the substantive statutory law may have been complied with; and more general procedural rules such as those related to natural justice may have been met.
 - (iii) In these senses, it may be judged to be legally correct or legally incorrect.
 - (b) Second, even where a decision was legally correct, it may not have been made with propriety.
 - (i) For example, power may have been exercised for an improper purpose, with a casual disregard for the truth, or recklessly.
 - (ii) I hasten to add that I have found no basis on which to suggest that any decision considered in this review was made without propriety in any of these senses.
 - (c) Third, even where a decision was not legally correct, its making may well have been understandable and reasonable in the prevailing circumstances.
 - (i) CASA delegates, like most public officials, are generally not legally trained and do not have unlimited access to legal advice. Even if they did, recourse to it would probably be impractical in the pragmatic world in which they must operate. They cannot reasonably be expected to invariably reach the correct decision.
 - (ii) They will also, at times, be required to take decisions without a complete understanding of all relevant facts or the time for further investigation.
 - (iii) Again, they may face competing priorities. At any particular time other tasks might reasonably be assessed as requiring greater attention than one that unexpectedly falls for later review in an inquiry such as this.
 - (iv) Finally organisational policy and philosophy may predispose to the exercise of discretions in one way rather than another.

- (d) Fourth, even where legally correct, made with propriety, understandable and reasonable, a decision may be validly thought not to be the preferable decision in all the circumstances.
 - (i) The concept of “correct or preferable decision” is one well known to administrative law.
 - (ii) It is a test that may be properly used to differentiate between a number of correct decisions legally open to a decision-maker.

7.3 In the conduct of this review, I have accordingly sought to assess the various decisions that were taken in the course of CASA regulation of SPS by reference to the following criteria:

- (a) was it legally correct?
- (b) was it taken for proper purpose?
- (c) was it reasonable and understandable in the prevailing circumstances?
- (d) was it the preferable alternative?

7.4 I have also considered the process by which those decisions were reached. In assessing such processes as either appropriate or defective, I have had regard to commonly accepted notions of natural justice and to what I understand to be good sense and sound management practice.

7.5 To the extent that these criteria call for the exercise of subjective judgment on my part, I have sought to make due allowance for the fact that I am looking at past events with the considerable benefit of hindsight. I have also sought to have regard to what I understand to be the reasonable expectations that I might be asked of a bureaucrat in the contemporary public service.

7.6 Finally, of course, my ability to exercise subjective judgment by reference to these criteria has been greatly affected by the preparedness (or otherwise) of those involved to discuss their actions and reasoning openly with me, and by the existence or absence of contemporaneous documentation which might refresh and validate their memory.

8 ACKNOWLEDGEMENTS

8.1 I take this opportunity to express my appreciation to those whose assistance and cooperation has made the completion of this report possible within the time available.

8.2 They include:

- (a) all the various CASA officers who made themselves available for interview by me;
- (b) the CASA officers who were assigned to assist me - Mr Clinton McKenzie, Mr John Leaversuch, Mr Arthur Jeeves, Mr Allan Joyce and Mr Steve Tizzard;
- (c) the many other CASA staff who cooperated with administrative arrangements and the provision of documents and information;
- (d) Ms Monica Junger and Mr Konrad Breu of Mallesons Stephen Jaques who worked much overtime to copy, reassemble and collate CASA files; and
- (e) my Mallesons Stephen Jaques colleague, Ms Jacqueline Wharton, who worked tirelessly to assist me in the conduct of interviews and the analysis of CASA documentation underlying this report.

8.3 However, the views expressed in this report are my own, and I must bear full responsibility for any inadequacy in them.

9 THE LEGISLATIVE CONTEXT

- 9.1 The *Civil Aviation Act 1988* (“**the Act**”) establishes CASA and is the principal Act under which it operates. Section 98 of the Act allows the Governor-General to make Regulations under the Act, and there are many detailed *Civil Aviation Regulations* (“**CARs**”) that have been made in exercise of that power. In addition, section 98(4A) of the Act authorises CASA to make *Civil Aviation Orders* (“**CAOs**”) in respect of a range of matters, provided that such CAOs are not inconsistent with the Act or the CARs.
- 9.2 It is this detailed network of primary and secondary legislation that governs the matters canvassed in this report. In addition, of course, CASA has issued a number of manuals to guide its staff in the exercise of their powers under that legislation.
- 9.3 This chapter notes some of the key provisions of the legislation to which reference is made in the body of the report.
- 9.4 Unless exempt, section 20AA(1) requires that a person cannot fly an aircraft in Australian territory unless that aircraft is registered under the CARs. An Australian aircraft must have a current certificate of airworthiness unless otherwise authorised by the CARs (section 20AA(3)). Similarly, an Australian aircraft cannot commence a flight unless there is in force a maintenance release which covers the duration of the flight, unless otherwise authorised by the CARs (section 20AA(4)). A breach of either of sections 22AA(3) or 20AA(4) is an offence carrying a penalty of two years imprisonment.
- 9.5 By section 27 of the Act, except as authorised by an Air Operators’ Certificate (“**AOC**”), an Australian registered aircraft cannot operate in Australian territory for such commercial purposes as are prescribed. These purposes are prescribed in CAR 206 and include charter purposes.
- 9.6 In applying for an AOC, the applicant must lodge various documents including a copy of the current flight manual for every type of aircraft to which the application relates and, if required by the CAOs, the current version of its Operations Manual (section 27AB). It is notable that, while the applicant must lodge its Operations Manual, there is no provision of the Act that expressly requires CASA to approve the terms of an Operations Manual. However, the content of that Manual will be relevant to it attaining the necessary state of satisfaction as to various prerequisites to the grant of an AOC (for example, section 28(1)(b)(vi) which requires that an operator have suitable procedures and practices to control its organisation and ensure safe operations).
- 9.7 By section 28, CASA must issue an AOC if and only if:
- (a) CASA is satisfied that the applicant has complied, or is capable of complying with, the provisions of the Act, CARs and CAOs that relate to safety;
 - (b) CASA is satisfied of specified matters including that the applicant’s organisation is suitable to ensure that AOC operations can be conducted safely, that the organisation’s chain of command is appropriate to ensure safe operations, that key personnel have appropriate experience in air operations, that facilities are sufficient to enable safe operations, and that the organisation has suitable procedures and practices to ensure safe operations.

- 9.8 An AOC is issued for a period stated in the instrument. At the conclusion of that period, the AOC is not renewed; instead, a new AOC is issued for a further period. Thus, at this time, CASA must again reach a state of satisfaction that the requirements of section 28 are met. Such an AOC can be issued on application but without the need to lodge the supporting documents required on a first application, unless CASA requires otherwise (section 27AB(4)).
- 9.9 By section 28BA, an AOC is subject to a number of statutorily imposed conditions contained in the Act, the CARs and the CAOs and, additionally, any conditions imposed by CASA under section 28BB. If a condition of an AOC is breached, CASA may cancel or suspend the AOC (section 28BA(3)).
- 9.10 By section 28BB, CASA may impose conditions on an AOC at the time of issue or at any time during the currency of the AOC. By section 28BB(2), CASA must not impose a condition on an AOC except to ensure compliance with the provisions of the Act, CARs and CAOs relating to safety and, similarly, can only cancel or suspend an AOC for the same purpose (section 28BB(2A)).
- 9.11 By section 28BD, an AOC holder must comply with all applicable requirements of the Act, CARs and CAOs. Section 28BE imposes a duty of care and diligence on an AOC holder. Section 28BF requires the holder to maintain at all times an appropriate organisation "with a sufficient number of appropriately qualified personnel and a sound and effective management structure" and provides that the holder must establish such supervisory or training and checking positions as CASA directs.
- 9.12 Section 28BG imposes an obligation on the AOC holder to maintain an operations headquarters and other suitable buildings and, by section 28BH, a reference library of the organisations operational documents and all other materials required by the CARs and CAOs, which must be readily available to all members of the operating crew.
- 9.13 Section 29 of the Act makes it an offence for an owner, operator or pilot of an aircraft to fly in contravention of a provision of Part III of the Act (which contains the provisions referred to above). Operation of an aircraft in a careless or reckless manner so as to endanger the life of another person or the person or property of another is an offence punishable by imprisonment for a period of up to five years. Carrying dangerous goods, other than in accordance with the CARs or a CASA permission, is punishable by imprisonment for up to seven years. Other offences are punishable by imprisonment for up to two years.
- 9.14 CAR 166 imposes some very specific obligations on the pilot in command of an aircraft in landing at or taking off from an aerodrome. Particularly relevant is the requirement in CAR 166(1)(f) that the pilot shall, before landing, descend in a straight line commencing no less than 500 metres from the perimeter of an aerodrome. In the case of seaplane operations, where the aerodrome perimeter is not evidently identifiable and where the terrain may in some cases inhibit compliance with this CAR, this requirement can be problematical.
- 9.15 By CAR 308 CASA may exempt aircraft (and persons associated with such aircraft) from compliance with the CARs.
- 9.16 CAR 169 requires every aircraft manoeuvring near the surface of the water to, as far as possible, keep clear of all vessels and avoid impeding their navigation.

- 9.17 CAR 215(2) provides that an Operations Manual “shall contain such information, procedures and instructions with respect to the flight operations of all types of aircraft operated by the operator as are necessary to ensure the safe conduct of the flight operations (other than information, procedures or instructions that are set out in other documents required to be carried in the aircraft in pursuance of these Regulations).”
- 9.18 CAR 215(3) enables CASA to give a direction requiring an operator to include particular information, procedures or instructions in its Operations Manual.
- 9.19 CAR 215(5) requires an operator to revise its Operations Manual “from time to time where necessary as the result of changes in the operator’s operations, aircraft or equipment, or in the light of experience.”
- 9.20 CAR 215(6) requires the operator to provide copies of its Operations manual to CASA which, by CAR 215(8), must include all amendments made from time to time.
- 9.21 CAR 215(9) requires each member of the operations personnel of an operator to comply with all relevant instructions contained in the Operations Manual.
- 9.22 CAR 217 allows CASA to require that a charter operator of aircraft under 5,700 kg maximum take off weight (“**MTOW**”) provide a “training and checking organisation: to ensure that members of the operator’s operating crews maintain their competency. Such organisation shall include provision for two competency checks of each crew member each calendar year, at intervals of not less than four months” (CAR 217(2)).
- 9.23 CAR 50 requires that a flight crew member, an operator or a registration certificate holder must enter on a maintenance release or other approved document the details of any defect in an aircraft of which they are aware or of any damage that is, in their opinion, major damage.
- 9.24 CAR 5.21 authorises CASA to approve a person who holds a commercial pilot licence to give aeroplane conversion training to commercial pilots, subject to such conditions as are necessary in the interests of the safety of air navigation.
- 9.25 CAO 48 sets out the limitations on flight and duty times that apply to the holder of a pilot licence who engages in charter operations.
- 9.26 CAO 82.1.2.2 requires that a charter operator must have a Chief Pilot. CAO 82.1.2.3(a) allows CASA to require that the operator create additional supervisory positions.
- 9.27 CAO 82.0.5.1 makes it a requirement of a charter operator’s AOC that the operator comply with Appendix 1 to CAO 82.0. That Appendix requires that CASA approve a Chief Pilot’s appointment, sets out the minimum qualifications that a Chief Pilot must meet, sets out the range of a Chief Pilot’s responsibilities, and authorises CASA to cancel or suspend a Chief Pilot’s approval if, in CASA’s opinion, the Chief Pilot’s performance is no longer of an acceptable level.

10 THE ORGANISATIONAL CONTEXT

Some Key CASA Statistics

- 10.1 It is helpful to put the regulation of SPS into a statistical context. As set out in CASA's 1996-97 Annual Report, during that year:
- (a) there were 910 current Air Operator Certificates;
 - (b) there were 9,878 Australian registered aircraft (other than gliders and ultralights), of which 51% were registered in the South East Region;
 - (c) there were 38,375 current pilot licences;
 - (d) CASA had a permanent staff of 622, of whom 159 were Airworthiness Inspectors, 103 were Flying Operations Inspectors, 64 were Senior Officers and 18 were Managers engaged on contract;
 - (e) 39 show cause notices were issued to licence and certificate holders, with two licences or certificates varied, 22 suspended and 11 cancelled; and
 - (f) 58 prosecutions were initiated and 46 concluded, of which 32 resulted in conviction.

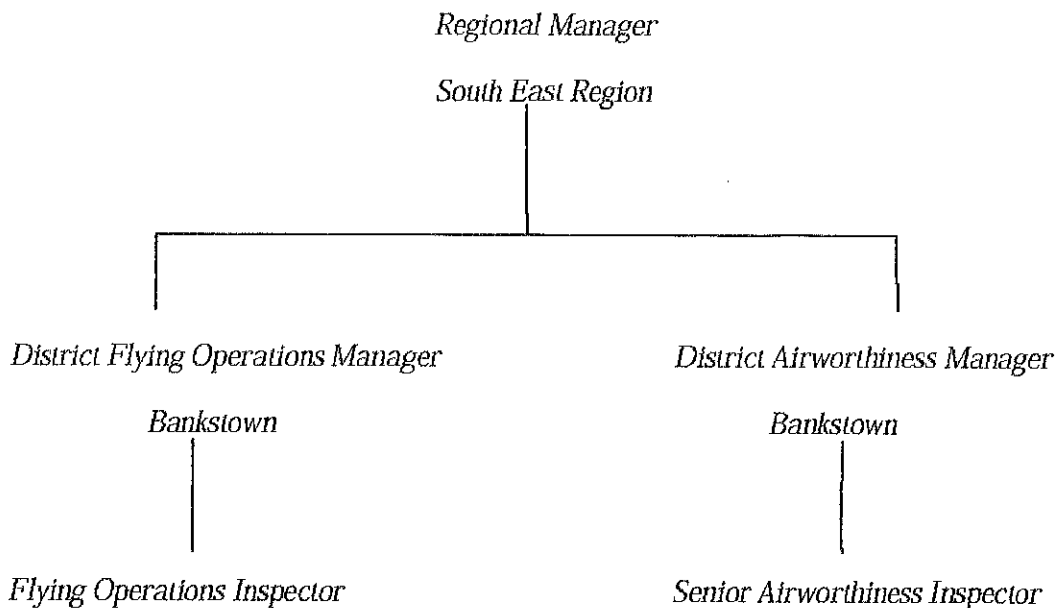
Relevant Organisational Structures

- 10.2 Over the period covered by this report, the regulation of civil aviation was initially the responsibility of the Civil Aviation Authority ("CAA"). The CAA was later disbanded and its functions distributed between two new statutory authorities - AirServices Australia and the Civil Aviation Safety Authority. The relevant aviation safety functions of the former CAA passed to CASA and, generally speaking and consistent with the usual practices of Commonwealth administration, staff followed function.
- 10.3 In seeking to understand the organisational context in which CASA staff (and particularly its senior managers) were required to operate, I sought details of the various organisational structures under which relevant personnel were formed during the period covered by this review. Due to the passage of time, full details were apparently not available for the earlier periods. Nevertheless, I considered that the details that were provided were pertinent and adequate for my purposes.
- 10.4 Attachment B1 is a high level organisation chart for the CAA's Directorate of Aviation Safety Regulation as at 1994. It is relevant to note that the Regional Directors of each of the North East, South East and West Regions reported directly to the Director and a single Deputy Director and did not have any "line" relationship with the various specialist Branches of the Central Office. Notable also is the fact that the RM SER had responsibility for six geographically diverse District Offices, each of which had Airworthiness and Flying Operations functions. This chart does not disclose the organisational relationship of Engineering personnel.

- 10.5 Attachment B2 shows the overall CASA structure in 1995. Again it is noteworthy that the Regional Directors of each of the North East, South East and West Regions reported directly to the Director and a single Deputy Director and did not have any "line" relationship with the various specialist Branches of the Central Office. The RM SER, still retained responsibility for the same six geographically diverse District Offices. As indicated in Attachment B3, the Bankstown District Office structure had apparently split into four different cells, Flying Operations, Airworthiness, Airworthiness Engineering and District Office Support. The heads of each of those cells apparently reported directly to the RM SER rather than to an intervening manager of the Bankstown District Office. The Melbourne District Office was similarly structured, but the Sydney, Moorabbin, Tamworth and Wagga District Offices did not have an Airworthiness Engineering cell, and the Sydney District Office had a Dangerous Goods cell. Moreover, other regions had no Airworthiness Engineering cells and were dependent on those in Bankstown and Melbourne for expertise in this discipline.
- 10.6 As shown in Attachment B4, by 30 June 1996 it seems that one Deputy Director position had been abolished with all Central Office components and Regional Offices reporting to the Director and the remaining Deputy Director. The structure within the Bankstown District Office at around this time (Attachment B5) remained essentially the same, but the RM SER now had an additional District Office reporting directly to him and located at Coffs Harbour.
- 10.7 As indicated at Attachment B6, the top level structure had not changed significantly (as relevant to this review) by 30 June 1997, but an additional FOI position had been added to the staff of the Bankstown District Office (Attachment B7).
- 10.8 By January 1998, however, a major change had occurred in the CASA top structure - at least on paper. As can be seen from Attachment B8, the three Regional Managers were now shown as no longer reporting directly to the Director of Aviation Safety but through a new position of General Manager, Aviation Safety Compliance.
- 10.9 A number of points should be noted in relation to this brief overview of the CASA structure during the period covered by this review:
- (a) the position of Regional Manager of the South East Region had a large number of subordinates reporting directly to him - not just because there were six and later seven District Offices under its control, but because there were multiple direct reports within each of those District Offices;
 - (b) the division of District Office staff into cells by reference to their varying technical disciplines and the absence of an overall manager within the District Office meant that it was only the Regional Manager who was in a position to form a "whole of operator" view in relation to the regulation of any particular AOC holder or other regulated entity;
 - (c) the combination of these two points meant that the position of Regional Manager in the South East Region was extremely onerous, particularly because that Region accounted for the majority of relevant aviation activity;

- (d) the location of Airworthiness Engineering staff in only two District Offices in the South East Region but with a responsibility to provide expert assistance nationally could mean that these staff faced competing demands on their time that could not be readily resolved within the prevailing structure, with the result that Engineering resources were not necessarily deployed in accordance with the operational priorities of any one or each Region. As will appear from the chronology set out later in this report, this factor seems to have been at play in relation to a number of Engineering issues that arose in the course of CASA's regulation of SPS; and
- (e) the creation of the new position of General Manager, Aviation Safety Compliance, if effected as shown on the January 1998 organisation chart would significantly change the role and responsibility of the Regional Managers vis a vis other elements of the CASA structure. However, as will appear from the body of this report, this new position was not created and did not operate in the manner implied by that organisation chart.

10.10 As will appear from the Regulatory Chronology set out later in this report, the key chain of command in relation to the general regulation of SPS, below the level of Director/Deputy Director, was as follows:



Job Descriptions

- 10.11 Accordingly, I also sought "job descriptions" for those positions in the CASA hierarchy which had the greatest direct involvement with the regulation of SPS over the period of this review. While other positions in the CASA hierarchy had an involvement with SPS from time to time, those involvements were passing and generally not related to the day to day regulation of SPS. The one possible exception to this is the position of General Manager, Aviation Safety Compliance which I deal with separately below.
- 10.12 I understand that the job descriptions for these positions have changed in matters of detail or expression over the period. However, I understand that descriptions set out below were broadly apposite throughout and give a fair description of the range of duties and

comparative levels of responsibility between different ranks. In my view, the views required to be formed in the course of this review do not necessitate either a more detailed statement than is set out below, or a detailed analysis of variation over the period.

- 10.13 The *Regional Manager* is a key member of the senior management team who:
- (a) manages and coordinates the flying operations, airworthiness, aerodrome inspection, engineering, enforcement and administration functions of the region;
 - (b) by acting as a pivotal link between Central Office and the Region, ensures consistency and a national standardisation in the application of regulatory policies and procedures in the Region;
 - (c) oversees the regional surveillance plan to ensure industry compliance with regulatory policy and direction and manages prosecution and cancellation action;
 - (d) formulates and manages the regional business, facilities and resources plans; and
 - (e) represents CASA to local industry groups and identities so as to identify and resolve safety related and regulatory issues.
- 10.14 Holders of these positions were generally expected to have:
- (a) an exceptional understanding of the aviation industry and the regulatory framework, and the ability to perform the above duties;
 - (b) exceptional management ability and demonstrated leadership skills and experience in developing and guiding multi-disciplinary teams;
 - (c) highly developed problem solving skills and the ability to effectively resolve conflict and negotiate between various interest groups;
 - (d) a strategic approach to planning and forecasting the operational and administrative focus together with an understanding of the application of quality management practices;
 - (e) a team player approach with an ability to develop and promote linkages between Districts, Regions and Central office specialist areas; and
 - (f) well developed communication and negotiation skills.
- 10.15 The *District Flying Operations Manager* (“DFOM”) at the Bankstown Regional Office is appointed at the Senior Flying Operations Inspector 2 level and under limited direction, is responsible for exercising major delegated responsibilities and managing a section of Flying Operations Inspectors.

- 10.16 The 1990 Structural Efficiency Agreement provided that "Depending on such factors as functional diversity and geographical isolation, a Senior Flying Operations Inspector may supervise the activities of up to 10 Flying Operations Inspectors". In the March 1996 organisation Chart the DFOM Bankstown was shown as supervising nine FOIs. In the June 1997 chart, this number had risen to 11.
- 10.17 A Senior Flying Operations Inspector 2 level would be typically expected to -
- (a) Exercise significant delegated responsibilities under the *Civil Aviation Act*, over and above those exercised at Flying Operations Inspector level;
 - (b) Develop section work plans and monitor their achievement within budget;
 - (c) Ensure that professional standards within the work group are maintained;
 - (d) Act as initial arbiter in the event of conflict arising between the Authority and individual operators;
 - (e) Contribute to policy formulation through provision of regular feedback on field activities to higher levels of management; and
 - (f) A Senior Flying Operations Inspector is expected to possess extensive experience with flying operations policy, practices and procedures and proven managerial ability.
- 10.18 The District Airworthiness Manager ("DAM") has the following primary duties:
- (a) Under broad policy guidance and as a senior member of the District Office management, develop, direct, control and coordinate the activities of the Section and exercise prescribed delegations;
 - (b) Plan, allocate, and manage the activities of subordinate Airworthiness Inspectors engaged in:
 - monitoring industry performance and compliance within the scope of the Aviation Safety Surveillance Program.
 - provision of Regulatory Services to the Aviation Industry and other related tasks.
 - (c) Investigation of major defects, incident reports and associated safety matters;
 - (d) Assess the training needs of staff to ensure that a sufficient cross section of training is maintained to provide expertise to perform the tasks being undertaken;
 - (e) Provide feedback to the Regional Manager, Central Office, and other District Offices, in relation to compliance, enforcement, entry control and regulatory services to achieve regulatory standardisation with industry and to assess current needs, future trends and requirements;

- (f) Ensure that all financial and administrative functions are carried out efficiently and effectively in accordance with corporate, divisional and regional policies and procedures; and
- (g) Provide technical support for compliance action with respect to Administrative Appeals Tribunal (“AAT”) and other legal matters.

10.19 The selection criteria for the DAM position are:

- (a) Mandatory qualifications appropriate for appointment as an Airworthiness Inspector Band C.
- (b) Demonstrated ability to present articulate and logical analysis of airworthiness issues in both oral and written form.
- (c) High level of interpersonal and negotiation skills, and the ability to liaise with and represent CASA at a senior level with industry.
- (d) Proven effective people management and team motivation skills of a high order.
- (e) Demonstrated knowledge of the Civil Aviation Regulations, Orders, ICAO standards and recommended practices relating to Airworthiness, or the ability to quickly gain such knowledge.
- (f) High level of written and oral communications skills.
- (g) Sound knowledge, understanding and ability to apply contemporary financial, and administrative policies, and procedures.
- (h) Demonstrated broad knowledge of and commitment to legislative requirements such as *Freedom of Information* and *Privacy Act*, and contemporary human resource issues such as Equity and Diversity and Occupational Health and Safety.

10.20 A relevant *Flying Operations Inspector* (“FOI”) was expected to perform the following duties:

- (a) Conduct ground and air surveillance of operators and operations in accordance with prescribed schedules to ensure compliance with regulatory requirements.
- (b) Investigate accidents, complaints or other reports and initiate any necessary action in regard to deficiencies or breaches of the legislation.
- (c) Make assessments in relation to applicants for appointment as ‘approved persons’, ‘Chief Flying Instructor’ or ‘Chief Pilot’ and conduct surveillance to ensure continued suitability for appointment.
- (d) Conduct flight tests for the issue of Pilot Licences and rating as required.
- (e) Assess the suitability of applicants for the issue of an Air Operator Certificate.
- (f) Conduct required checks of procedures, facilities and services and provide reports.
- (g) Undertake air and ground training and crew aircraft as required by CASA.

10.21 The selection criteria for the FOI position are as follows:

- (a) A thorough knowledge of CASA policies, standards, regulations, orders and procedures relating to the regulation of flying operations.
- (b) Well developed communication and liaison skills, including an ability to establish and maintain professional working relationships with other CASA staff and industry personnel.
- (c) Ability to adopt a systematic approach to problem solving and undertaken the analysis of interrelated issues in a complex technical environment.
- (d) Demonstrated capacity for making quality professional judgments while working under pressure. The potential to apply sound investigative skills.
- (e) A willingness to commit to corporate objectives regarding the safety regulation function.
- (f) Professional understanding of the theory of flight, aircraft systems, the airways system, operational and facility standards including aircraft performance, at the level of a Light Instructor or Check Pilot.
- (g) Sound knowledge and understanding of crew resource management principles and multi-pilot aeroplane operations including cabin crew duties and responsibilities.
- (h) Sound knowledge and understanding of multi-pilot operations, including cabin crew duties and responsibilities, and Low Capacity RPT operations.
- (i) Keyboard skills with the ability to produce clear and concise technical reports and correspondence.
- (j) Demonstrated knowledge and commitment of contemporary human resource issues including Equity and Diversity, and Occupational Health and Safety.

10.22 The duties of a Senior Airworthiness Inspector ("SAWI") include some or all of the following:

- (a) Plan and carry out regulatory audits, surveillance and monitoring of aviation industry performance in accordance with the Civil Aviation Safety Authority's Aviation Safety Surveillance Program (ASSP) to ensure an acceptable level of airworthiness compliance. Make recommendations and conduct follow up remedial action to correct deficiencies as necessary.
- (b) Approve, issue and renew, as applicable, licences, certificates and other regulatory instruments requiring such action in accordance with the Civil Aviation Regulations and other applicable requirements. Make recommendations to vary such licenses, certificates and other regulatory instruments as necessary.
- (c) Assess requests for approval of systems of maintenance, modifications or repairs, exemptions to regulatory requirements, permits to fly and other regulatory matters.
- (d) Conduct oral examinations.

- (e) Communicate with industry and other regulatory authorities with regard to Australian regulatory requirements.
- (f) Exercise delegations under the Civil Aviation Regulations.
- (g) Participate in training courses applicable to the specialist function of the position and generally for the better functioning of the office.
- (h) Provide technical support and initiate action to secure compliance action with respect to AAT, prosecution and other legal matters and provide specialist assistance to other discipline streams when requested.
- (i) Investigate aircraft and aircraft component defects and airworthiness aspects of aircraft accidents and incidents.
- (j) Conduct investigations into breaches of the *Civil Aviation Act*, Regulations and Orders and prepare detailed reports.
- (k) Perform other airworthiness duties as required.

10.23 The selection criteria for a SAWI areas follows:

- (a) Demonstrated knowledge of the Australian Civil Aviation Airworthiness and ICAO Standards and recommended Practices, or ability to quickly gain the knowledge.
- (b) Demonstrated high level negotiation, interpersonal, oral and written communication skills with ability to deal effectively with a diverse range of people in an equitable manner.
- (c) Proven ability to work as a team member and contribute to multi-disciplinary team efforts.
- (d) Proven ability to make sound technical decisions, coupled with a high order of technical report writing.
- (e) Demonstrated broad knowledge and commitment to contemporary Human Resource issues such as Equity and Diversity and Occupational Health and Safety.
- (f) The applicant has established eligibility at the selection interview by demonstrating a satisfactory level of aptitude pertinent to the role of a regulator.
- (g) Demonstrated high level of investigative skills and proven ability to critically analyse technical data.

The position of General Manager Aviation Safety Compliance

10.24 As noted above, this position first appeared in the January 1998 organisation chart and, according to that chart, stood between the positions of Regional Manager and the Office of the Director. I understand that the position was created in late 1997 and was intended to be a transitional position in an interim structure between that which previously existed and the present structure under which it has been replaced by the position of Assistant Director

Aviation Safety Compliance. It was occupied on an acting basis by Dr Jonathan Aleck from late 1997 until around August 1998.

- 10.25 Because this position, as shown on the organisation chart, had the potential to significantly change the role and responsibility of the RM SER during a critical period in the regulation of SPS, I sought to understand in some detail the nature of the position of General Manager Aviation Safety Compliance. To this end I examined quite voluminous and protracted correspondence passing between Dr Aleck and various others, including the CASA Board and the then current RM SER, Mr Trevor Burns.
- 10.26 By an All Staff Notice dated 28 October 1997 the then Deputy Chairman of CASA sought comments or suggestions by 7 November 1997 from CASA staff on a proposed new Organisation Structure. In so doing he noted that:

... the proposal includes a position of Associate Director, Aviation Safety Compliance, who will be accountable to the Director for entry control, surveillance and enforcement of all operators across Australia. This approach underlines the Government and the Board policy of tightening control of entry, surveillance and enforcement.

- 10.27 In addition to outlining this proposal to centralise in Canberra CASA functions then performed on a devolved basis by the occupants of positions such as the RM SER and the DFOM Bankstown, the Deputy Chairman explained that the current structure of three Regional Offices would be replaced by a network of eight Area Offices.
- 10.28 On 6 November 1997 the Acting Director, Mr Pike, issued a Staff Circular setting out interim management changes. In this Circular he said:

The proposed organisation structure is now out for information and comment. However, the proposal rationale identifies some deficiencies in the current structure which are causing management difficulties on a daily basis, and it is necessary to make some interim management changes to correct this situation.

The proposed new organisation structure identifies the need for an Associate Director, Aviation Safety Compliance, who would be accountable to the Director for entry control, surveillance and enforcement, across Australia. The need for someone to perform this function is urgent. Accordingly I have asked Jonathan Aleck to act as General manager, Compliance, in the interim, while we finalise the development of the new organisation structure. In this new role Jonathan will be accountable to me for the three regions, ASSP, and the functions of the Safety Committee.

- 10.29 On its face, therefore, the Regional Managers and their subordinate staff lost functions to Dr Aleck at that time. Indeed, if this were in fact the case, it would seem that Mr Burns and Ms O'Brien would not have been authorised to take decisions in relation to SPS that they subsequently took and that are considered at length in this report.
- 10.30 However, it was immediately apparent that Dr Aleck was not provided with the physical resources necessary to undertake the role literally attributed to him in the Acting Director's Circular. More importantly, he was not issued with the necessary Delegations under the Act that would have enabled him to undertake that role - that is, to make applicable lawful decisions in relation to entry control, enforcement and surveillance. There were also significant doubts expressed as to whether the workload associated with this position was simply too enormous for one person to undertake and whether the entry and enforcement/compliance functions should be separated.
- 10.31 Accordingly, Dr Aleck prepared a draft Minute to Regional Managers, DFOMs and DAMs which would have advised them that he had consulted the Director and the Safety Committee who had endorsed his proposal for a trial of "modified processes in connection with particular types of operations and selected operators, describing it as part of "a centralised approach to the management of both the entry control and surveillance processes, rationalising the management of these processes generally, and introducing such changes as might enable both processes to be carried out more efficiently and effectively, now and in the future". The draft proposed that the trial should commence at the end of March 1998.
- 10.32 However, the Consultant who had developed the proposed new organisational structure disagreed with the approach taken in the draft prepared by Dr Aleck. The consultant redrafted his minute significantly and offered to discuss it with him. He advised that his redraft had "deliberately not included any proposals to change the modus operandi in the field, as this is a separate issue" which he saw as being addressed in the final rather than the interim reorganisation. Dr Aleck raised serious concerns with the redraft and a process of consultation and amendment followed.
- 10.33 In the net result, it was not until 26 February 1998 that the Regional Managers, DFOMs and DAMs were advised as follows:

You will recall the staff circular of 6 November 1997, in which a number of interim management changes were announced, that were intended to improve management of a number of key functions pending a complete restructure. One of these was Aviation Safety Compliance, which Jonathan Aleck was asked to manage, and is now jointly accountable for with Terry Wilson (HCRPT).

The two general managers, are expected to effectively communicate Government and Board policies to you and (gradually) improve the overall management of the compliance functions. They are also expected to assist you with solving your problems and to represent you to the Director and the Board. They are expected to give management direction to the development and operation of ASSP, to ensure that ASSP gives both management and staff what they need from it. In the interim pending the restructure, Terry and Jonathan will continue to need the assistance of their fellow GMs and yourselves, in order to make any improvements in their respective operations.

Given that the organisation and our manuals are far from perfect, and that it will take some time to fix both, it seems to the Board that we need to act on the thrust of the organisation proposal and centralise control of entry, and enforcement, in particular. In the interim, the two GMs can only exercise their responsibility for entry and enforcement effectively, by being directly in the loop themselves. The Regions and Field Offices will continue to be accountable for the management of the operators and their AOCs (once they are issued), as they are now.

Accordingly, the two GMs should be notified of all applications for new charter and RPT AOCs or significant variations on AOCs (upgrading to RPT). Similarly they should be informed of any proposed enforcement action, for standardisation only - the responsibility for carrying out the action remains with you. The GMs (and the OLC if necessary) will assist you as appropriate.

- 10.34 Notably, Dr Aleck's recommendation for change to the last paragraph of the Circular was rejected. Had it been accepted, it would have read:

Accordingly, you will be expected to provide the two GMs with the information they require about:

- applications for new AOCs and any significant variations to existing AOCs;*
- proposed and pending administrative action and decisions in relation to licences, ratings, endorsements and certificates, and specified approvals, authorisations and permissions; and*
- the initiation and conduct of investigations undertaken with a view to enforcement action.*

Terry and Jonathan will be providing you with further details about the information required and the processes by which you will be expected to pass that information on to them.

- 10.35 Reaction to that Circular raised concerns the intended demarcation between the roles of Dr Aleck and Mr Wilson on the one hand, and the Regional Managers, DFOMs and DAMs on the other hand.
- 10.36 Dr Aleck sought to clarify matters by advising Regional Managers on 3 March 1998 that he wished to receive certain details in relation to new applications for charter or LCRPT AOCs

and, in relation to applications to vary AOCs, to add charter or LCRPT operations. On the following day he also requested that he be provided with copies of the final form of any show cause notice issued to, *inter alia*, an AOC holder or Chief Pilot or of a decision to vary, cancel or suspend, *inter alia*, an AOC or a Chief Pilot approval. Further details that are not of relevance here were sought at later times.

10.37 In addition to putting these arrangements in place, Dr Aleck wrote and consulted widely on a paper entitled "Centralising Entry Control" as a basis for further developing the concepts to be applied under the permanent restructure. In doing so, however, he stressed that the arrangements proposed in the paper were not being implemented at that time.

10.38 On 30 April 1998 CASA staff were informed that the final form of the CASA structure had been approved by the Board and that various positions were to be advertised in the press, including that of what was now titled Assistant Director, Aviation Safety Compliance. The role of that job was described in advertising material to include:

Accountable for compliance of all operators against prescribed standards for entry, surveillance, enforcement, etc.

Lead CASA's 330 decentralised staff in 19 offices in the successful implementation of standards, to achieve an open, consistent and professional enforcement regime.

10.39 However, the new structure had not been put in place and, in particular, the position of Assistant Director ASC with these roles had not been implemented by the time of the decision taken by Mr Burns (formalised by the AAT on 21 May 1998) to agree to a stay of his earlier suspension of SPS operations.

10.40 In light of the above, the following conclusions are appropriate:

- (a) the structural role of the position of General Manager Aviation Safety Compliance implied by the January 1998 organisation chart was not implemented;
- (b) the role, powers and duties of the position of General Manager Aviation Safety Compliance advised to CASA staff by way of the staff circular issued on 6 November 1997 were not implemented in its terms;
- (c) whatever the Circular of 26 February 1998 to Regional Managers, DFOMs and DAMs was intended to mean, it did not place the General Manager Aviation Safety Compliance in a position to control entry, compliance and enforcement action in Regional Offices;
- (d) at best, the General Manager Aviation Safety Compliance:
 - was required to be provided with certain limited information by Regional and District Offices; and
 - had a capacity to seek but apparently not to require additional information, assistance and cooperation;
- (e) the Regional and District Office personnel including the RM SER and the DFOM at Bankstown were not inhibited in exercising their ongoing delegations to take

decisions of the nature of those taken in relation to SPS from late 1997 and which are the subject of detailed consideration in this report; and

- (f) in particular, there was no specific requirement that the RM SER consult with the General Manager Aviation Safety Compliance before he took his decision (formalised by the AAT on 21 May 1998) to agree to a stay of his earlier suspension of SPS operations.

11 THE POLICY CONTEXT

11.1 In addition to considering relevant aspects of the legislation and the structures by which CASA deployed its staff during the period of the review, I considered it appropriate to form some understanding of the broad policy context and corporate philosophy by reference to which CASA expected its staff to undertake their detailed duties.

11.2 CASA produced its first Corporate Plan, pursuant to section 44 of the *Civil Aviation Act 1988*, in September 1995. That Plan was for the period 1995-96 to 1997-98. It set out CASA's Mission Statement in the following terms:

The Civil Aviation Safety Authority will maintain, enhance and promote the safety of civil aviation in the interests of the Australian public:

- *through effective safety regulation; and*
- *by encouraging a greater acceptance by industry of its obligation to maintain high safety standards;*

The Authority will achieve this in consultation with Government, industry and the Australian public and by proper, efficient and effective use of its resources.

11.3 A second Corporate Plan was issued in August 1997, covering the period 1996-97 to 1998-99. It superimposed on that Mission Statement a statement of the CASA Vision in the following terms:

With the aviation community create an air safety environment which engenders public trust and confidence.

11.4 Additionally, that second Corporate Plan set out the following Priorities for CASA:

CASA's role is to work with the aviation community to reduce aviation safety risks on behalf of the Australian public.

- *Our first priority is to protect fare paying passengers.*
- *Our second priority is to ensure that safety rules do not unnecessarily impede efficient operations by the aviation community.*

11.5 Moreover, the second Corporate Plan stated CASA's Core Business in the following terms:

CASA's core business is to regulate the safety of civil aviation for the benefit of the Australian public. Key functional areas include the requirements to:

- *set rules*
- *control entry*
- *secure compliance, and*
- *encourage industry to accept its safety responsibility.*

- 11.6 CASA's Corporate Statement was subsequently revised in March 1998 so that the Mission Statement currently reads:

CASA will maintain, enhance and promote the safety of civil aviation in the interests of the Australian public:

- *through effective safety regulation, enforcement and education*
- *by encouraging a greater acceptance by industry of its obligation to maintain high safety standards; and*
- *by vigorous pursuit of those who choose not to operate in compliance thereby endangering fare-paying passengers and third parties.*

CASA will achieve this in consultation with Government, industry and the Australian public and by proper, efficient and effective use of its resources.

- 11.7 Among other changes, the Priorities stated above were also amended to now read:

CASA's first priority is to protect the fare-paying passengers using public transport operations while encouraging high levels of participation in aviation.

CASA's second priority is to ensure that safety standards do not unnecessarily impede efficient operations by the aviation community.

12 THE REGULATORY CHRONOLOGY

The format of this Chapter

- 12.1 My terms of reference require me to assess the quality of CASA's regulation of SPS over a matter of some years. I have concluded that it would be inadequate to assess the quality of each decision or action taken over that period in isolation from each other decision or action. This is because the regulatory relationship is not comprised simply of a series of unrelated contacts between CASA and SPS. In my view, the quality of each regulatory transaction must be judged in the light of those that have gone before. Pre-existing knowledge and experience will properly underpin and shape the regulatory response to each new event.
- 12.2 Accordingly, in this Chapter I record each **regulatory transaction** occurring between CASA and SPS from the latter's inception. Each such transaction is sequentially numbered, and each paragraph of the text is attributed to the numbered transaction (RT) to which it relates.
- 12.3 I recount the regulatory history largely in chronological order. As CASA's dealings with particular regulatory incidents conclude over the period, I seek to draw **conclusions** about the adequacy and appropriateness of the regulatory response to each incident. In passing, on a few occasions I make **observations** of a more general nature. And on other occasions I make **recommendations** for future action or consideration. These conclusions, observations and recommendations are shown in individual boxes within the text, to differentiate them from the recounting of the regulatory history.
- 12.4 At the outset, I note that, for convenience, I refer throughout this Chapter (and this Report) to "CASA" even though in the early stages the actions reported were those of the Civil Aviation Authority. That Authority was the predecessor of CASA to which functions and personnel relevant to this report largely passed.

Carriers Liability Insurance

- 12.4A In addition to its predominant aviation safety regulator role, CASA has responsibility under the *Civil Aviation (Carriers' Liability) Act 1959*. These include the issuing of certificates which confirm that carriers have the insurance required of them by that Act. In the chronology which follows, I have not made mention of CASA's actions under this Act in relation to SPS. However, I have examined the relevant files and note that the documentation indicates that SPS had necessary policies of insurance in place at the relevant times and that CASA had taken appropriate steps to issue certificates under the Act. Given that there may be claims under such policies following the accident on 26 July 1998, it is not appropriate that I consider this matter further.

File Handling and Paperwork

- 12.5 I have generally not regarded it as necessary or appropriate for me to seek to check the detail of CASA's compliance with its own standards of document creation, file maintenance, file handling and other similar niceties of any bureaucracy. I have referred to such issues in the body of this report only where I consider that to be essential. Instead, my focus has been almost exclusively on the substance rather than the form of CASA's regulation of SPS.

The Chronology of CASA's Regulation of SPS

- 12.6 **Regulatory Transaction 1:** On 26 June 1994 Handel Enterprises Pty Ltd trading as South Pacific Seaplanes lodged with CASA an application for an AOC, seeking authority to use a Maule M7 floatplane registration number VH-AEL for charter operations.
- 12.7 On receipt of that application, SPS was assigned to Mr Mike Nolan, FOI at the Bankstown District Office of CASA. Mr Nolan was thereafter (and remains) the FOI with day-to-day responsibility for the operational regulation of SPS. In this regard, he reported to DFOM at the Bankstown North District Office - at most times relevant to this report this was Ms Mary O'Brien. She in turn reported to the Regional Manager, South Eastern Region - at that time Mr Scotty Fairbairn, later Mr Barry Diamond (from September 1995) and later still Mr Trevor Burns (from July 1997). (RT1)
- 12.8 **Regulatory Transaction 2:** Before the AOC application had been assessed, BASI received and conveyed to CASA on 8 July 1994 the **first complaint against SPS**, which was in the following terms:

I am concerned about a seaplane operation which has commenced providing public services from Palm Beach and other locations. I understand the operator to be "South Pacific Seaplanes".

My concerns relate to my understanding of the experience levels of the operational staff and I believe that CAO 82.0 Table A is not being met.

I also understand that South Pacific Seaplanes are simply operating under the banner of Aeroflite Central Coast as a matter of convenience, as the principals of South Pacific have not the relevant experience etc to apply for an Air Operators Certificate on their own account. A brochure provided makes no mention of the responsible AOC holder being Aeroflite.

In all of the circumstances of the operators, I hold grave concerns as to the level of supervision being provided to line pilots (if indeed any supervision is carried out on a day to day basis) and the qualifications of the supervisors. Observations of the line pilot's handling skills by an experienced pilot have indicated a lack of experience in handling the aircraft in what were on the day very good operating conditions.

- 12.9 Under the Confidential Aviation Incident Report ("CAIR") system used by BASI to advise CASA of complaints received by it, the identity of that complainant was not apparent at this stage. (RT2)
- 12.10 Notwithstanding that section 27 of the Act precluded SPS from operating aircraft in its own right in the absence of an AOC, operations by SPS aircraft under an "AOC of convenience" held by another operator were not unlawful, provided that other operator complied with all relevant provisions of the legislation. (RT2)
- 12.11 When Mr Nolan became aware of the fact that SPS was in fact flying without an AOC, he took action to check that the relevant AOC holder was in fact exercising a proper role in relation to SPS operations. He spoke to the Chief Pilot of Aeroflite, who assured him that SPS operations were being carried out in accordance with the CARs and CAOs, and that the pilots operating the SPS service were correctly licensed and rated. (RT2)

Conclusion re Regulatory Transaction 2:

Mr Nolan's dealing with the potentially unauthorised flying by SPS seems to me to have been appropriate.

Observation:

This use of an AOC of convenience was repeated by SPS at a subsequent time when it was ineligible to fly in its own right, because it did not at that time have a Chief Pilot as required by CAO 82. The circumstances surrounding that use will be dealt with later in the chronology outlined in this chapter.

Recommendation:

I note that the legislation does not, in my view, provide an adequate regulatory regime and guidance to CASA staff for operations under an "AOC of convenience" and I **recommend** that consideration be given to reviewing this issue.

- 12.12 The SPS AOC application nominated Mr Jon Davies as Chief Pilot. (RT1)
- 12.13 On 11 July 1994 Mr Nolan met with Mr Phil Handel, Mr Davies and Mr Steve Hindle. He advised that Mr Davies was not sufficiently experienced to be appointed as Chief Pilot as he did not meet the experience requirements set out in CAO 82.0. At the same time Mr Nolan indicated that CASA would nevertheless consider departing from these guidelines if SPS established a check and training system, appointed Mr Hindle as Senior Pilot responsible for check and training, and both Mr Davies and Mr Hindle underwent flight and oral testing by CASA. (RT1)
- 12.14 In adopting this mechanism to facilitate the grant of an AOC to SPS, despite Mr Davies' lack of experience and expertise, Mr Nolan sought to adapt a methodology prescribed in CAR 217. That Regulation did not apply to charter and aerial operations of the nature for which SPS sought its AOC. Nevertheless, Mr Nolan considered this a reasonable basis on which to allow the company to commence operations, believing that it would provide an equivalent level of safety. (RT1)
- 12.15 Mr Nolan also formed the view that the Operations Manual submitted by SPS was inadequate on a number of important bases and it was agreed that it would be revised to address these. (RT1)
- 12.16 The importance and status of an AOC holder's Operations Manual is a key issue in this review. As will become apparent, the SPS Operations Manual was consistently regarded by Mr Nolan as requiring improvement and he frequently sought amendments to it. (RT1)

- 12.17 **Regulatory Transaction 3:** On 19 July 1994 CASA received a **second complaint against SPS** from a member of the public and concerning operations between Scotland Island and Church Point. This complaint was in very generalised terms and contained little detail which would have enabled CASA to act on it. Mr Nolan discussed this with the acting DFOM, Mr John McQueen (Ms O'Brien being on leave for an extended period) and he suggested that surveillance should be undertaken. Beyond that it appears that the complaint was not followed up further.

Conclusion re Regulatory Transaction 3:

The recorded terms of that complaint were not in my view such as to preclude processing of the AOC application or to warrant other action.

- 12.18 Amendments to the Operations Manual were submitted by SPS on 26 July 1994, Mr Davies was interviewed for his Chief Pilot approval on 3 August 1994, and his test flight conducted on 18 August 1994. Problems were identified with the revised Operations Manual, with training of dock personnel, and with safety and security devices for the public at company premises. Mr Nolan contemplated that an AOC would be issued to SPS for two months only, to allow these issues to be resolved. (RT1)
- 12.19 As it transpired, a number of these issues were resolved before AOC BK431538/1 was issued by Acting DFOM Mr John McQueen for a period of approximately 12 months on 12 September 1994. The AOC as issued was not only for charter operations as sought on the AOC application, but also for "aerial work (other than flying training)". (RT1)
- 12.20 The only particularly relevant condition on the AOC was that:
- Operations under this certificate may only be conducted while the person approved by the Authority as Chief Pilot continues to hold that position.* (RT1)
- 12.21 On 13 September 1994, Mr McQueen also approved Mr Davies as Chief Pilot of SPS. (RT1)

Conclusions re Regulatory Transaction 1:

A number of things should be said about the processing of the AOC application.

First, it would have been desirable if the adequacy of the SPS Operations Manual had been thoroughly assessed at this time. As will become apparent, the adequacy or otherwise of that document was to become a recurrent feature of CASA/SPS relationship in the following years. However, given the state of the legislation in this regard, I do not criticise the decisions made on this issue.

Second, I do not wish to criticise the decision to accept Mr Davies as Chief Pilot despite his relative lack of experience. I am not in any position to contradict the judgment of Mr Nolan and others that these arrangements could provide an equivalent level of safety.

Third, it would in my view have been desirable if the requirement to continue to employ a Senior Pilot had been a condition of the AOC. I note the SPS Operations Manual included reference to the position of Senior Pilot and the need for him to conduct six monthly proficiency checks. This provided some lesser assurance that there would continue to be a Chief Pilot. In any event, as it transpires, nothing turns on this absence of a licence condition.

Recommendation:

As will become apparent, throughout the operational history of SPS it was a common CASA practice to insist that SPS engaged not only a Chief Pilot but also a Senior Pilot. This practice was adopted because SPS's nominees for Chief Pilot were generally regarded as lacking sufficient experience and expertise to fulfil the full range of Chief Pilot duties without additional support and back-up.

It was apparently felt that, particularly in relation to floatplane operations, there were simply not enough adequately trained and experienced people available to meet industry needs and that, without such a mechanism, insufficient operations would be authorised to meet consumer demand.

This issue is fundamental to the balance which must be struck and communicated to CASA staff to allow them to assess and weight the often competing objects of safety assurance and industry facilitation.

Accordingly I **recommend** that the future use (if any) of this mechanism be reviewed and that a clear and unequivocal policy in this regard be developed and communicated to all FOIs and other relevant staff. This may warrant some legislative change.

Recommendation:

In my view, the Operations Manual is so fundamentally linked to the safe operations of an AOC holder that the legislation should clearly specify the extent to which CASA must be satisfied as to its adequacy and comprehensiveness before the grant of an AOC, and on an ongoing basis.

As noted in Chapter 9, an AOC is not renewed but a new AOC is issued on expiry of its predecessor, provided that CASA is satisfied on each occasion in accordance with section 28 (1)(b)(vi) of the Act that "the organisation has suitable procedures and practices to control the organisation and ensure that the AOC operations can be conducted or carried out safely".

CAR 215(5) recognises that an Operations Manual is not a static document which, once written, is immutable. It requires that the operator revise its Operations Manual from time to time and particularly in light of experience.

But what this case does highlight is the quandary facing CASA delegates when they perceive a need for improvement in an operator's Operations Manual. Should they ensure that such improvement is made before a new AOC is issued? Should they issue a further AOC on the strength of an undertaking that amendments will be made? Or should they simply leave it to the operator to honour its obligation under CAR 215(5)?

It may be impractical to expect that CASA could exercise oversight over airline operations to an extent that it would allow it to be constantly satisfied that each Operations Manual was adequate. That is a matter on which I can offer no opinion.

However, I do **recommend** that consideration be given to amendment of the present legislative requirements which seem to me to be inadequate and to leave CASA delegates in an undesirable state of ambiguity.

- 12.22 Also on 13 September 1994, Mr Nolan asked Mr Davies to provide the SPS ALA Register which was referred to in the SPS Operations Manual. There is no record on the files of any response to that request, but Mr Nolan informed me that he suspects that this would have been delivered by hand and included with the SPS Operations Manual. It was apparently not uncommon for documents to be delivered direct to an FOI and not noted on file. (RT1)
- 12.23 As will become apparent, the content of this ALA Register became a significant feature of the CASA/SPS relationship for the whole period to date. It is important at this stage to comment on the legal status and operational significance of an ALA Register. (RT1)
- 12.24 CAO 82.1 provides that, for the purposes of section 27 of the Act, a charter AOC is subject to conditions contained in that Order. These include, by para 2.4 and Appendix 1 subpara 2.5(e), the requirement to maintain a catalogue of authorised landing and alighting areas where operations are frequently conducted:

showing, in diagrammatic form, location by co-ordinates or in reference to prominent geographic features or nearest navigation aid, direction of runways,

length and width of runways, nature of surfaces, elevation above sea level, hazards in the area, and the name, and method, of contacting the owner or controlling authority.

- 12.25 **Regulatory Transaction 4:** From 13 September 1994 there is no further recorded interaction between CASA and SPS until 7 February 1995 when Mr Davies sought approval to endorse other pilots to operate floatplanes. In so doing he demonstrated a lack of awareness about his capacity as Chief Pilot - he believed that he was able to endorse other SPS pilots and only needed approval to endorse non-SPS pilots. Mr Nolan later pointed this misunderstanding out to Mr Davies, and requested a training syllabus to allow the application to be assessed.
- 12.26 **Regulatory Transaction 5:** As it happened, a **third complaint against SPS** operations was made to CASA on this same date. Unlike the second complaint from a member of the public, this was made by Mr Rob Britten, Chief Pilot of Sydney Harbour Seaplanes. As later became apparent, this was the second of a number of complaints to be made over the years by Mr Rob Britten against SPS.
- 12.27 It is important to recognise that Sydney Harbour Seaplanes was, for the relevant period of this report, a competitor of SPS. I am informed that it is not unknown in the aviation industry for one competitor to lodge complaints against another operator with an apparent view to gaining some form of competitive advantage. This is not to suggest that Mr Britten's complaint was so motivated; rather, it is relevant in assessing the nature of CASA's response to that complaint and to the others that Mr Britten was to make over the period ahead. (RT5)
- 12.28 Mr Britten's complaint commenced by noting that "I have previously written concerning the inexperience of the operator in float flying and overall". This would seem to suggest that he was the initiator of the first complaint referred to above, which was relayed to CASA by BASI. (RT5)
- 12.29 On this occasion, the substance of his complaint was in the following terms:

On Friday 3rd February an aircraft of Sydney Harbour Seaplanes landed at Berowra Waters at approximately the same time as VH AEL piloted by 'Dean'. On taxiing for departure Gary Cummings (the SHS pilot) suggested to the South Pacific pilot that the conditions were quite gusty and required some caution. A take off direction was discussed and 'Dean' indicated he would probably depart to the south (the wind at the time was a light southerly). Gary indicated he would depart to the north due to powerlines, terrain etc. Ultimately both aircraft departed to the north. During the course of this conversation 'Dean' indicated that this was his first flight into the area with paying passengers.

Later the same day (about 3.50pm local) I arrived overhead the Berowra Waters landing area at a height of about 2000'. I had approached at this level to allow a careful assessment of the conditions. On the positioning flight from Rose Bay it was apparent that the wind (as forecast) was a strong gusty north westerly. Such conditions make the Berowra Waters landing area a place to be approached with great caution; as wind enters the landing area from either end, resulting in fairly dramatic wind shear conditions. From an extended assessment overhead, I elected not to fly an approach, as I assessed the conditions as too dangerous. During the overflight, I noticed VH AEL was nearby Berowra Waters restaurant, apparently awaiting a pickup. I advised my base that I was returning, and being aware of the earlier conversation, asked them to contact the restaurant, to suggest that I would speak to the pilot of VH AEL before he departed the restaurant.

Ultimately this message was not conveyed, and upon my return to Rose Bay I determined that VH AEL had just taxied away from the restaurant. I sought to contact the Chief Pilot for South Pacific, John Davies, his office told me he was on a day off. When I expressed my concerns to the person answering the call, she suggested if I wanted to find out if the aircraft had returned safely I should ring the pilot on a mobile phone carried by him. I did this, spoke to the pilot, who said it had been a bit marginal and that he would not be going back.

My specific points are these:

- An apparently inexperienced pilot operated VH AEL into an area which, among experienced float pilots, is one requiring a good local knowledge, and great caution in strong winds. The Sydney TAF issued at 3.30 local indicated a forecast of wind 300o 15 gusting 25Kts. The Chief Pilot was apparently unavailable to supervise this operation (I understand days off, however believe that a Chief Pilot should be very selective as to how he introduces an inexperienced pilot into operational flying).
- A takeoff into the south at Berowra takes an aircraft past homes along the foreshore, over a powerline, toward higher terrain and into a blind valley. From the brief conversation between 'Dean' and Gary Cummings, I do not know if he had assessed these factors in his 1.00pm departure decision.
- The conditions at 3.50pm were extremely marginal. Air was entering the landing area from both ends, resulting a very confused block of air at the mid point. I assessed a wind from the south at the start of a take-off run (to the north) as 15Kts southerly, changing to 15Kts northerly at the two right angle bends out of the area. This is a 30Kt windshear. In these wind conditions significant 'dumping' takes place at critical points of the climb out area.

- *When I rang South Pacific's office at Cronulla to enquire if the aircraft had arrived at Palm Beach safely, it was suggested that I ring the pilot. I am unsure as to what Sarwatch arrangements were in place for this operation, if any.*
- *In my conversation with 'Dean' I asked that he have John Davies contact me. I have previously made offers to brief South Pacific's Chief Pilot on the Hawkesbury landing areas. These offers have been ignored. At the time of writing I have not heard from John Davies.*

This letter is written in the context of my responsibility as Chief Pilot of Sydney Harbour Seaplanes to report any matter wherein I believe significant safety concerns are raised. (RT5)

- 12.30 There is no record on file of any CASA response to this complaint. On its face, this appears to be a significant omission. However, Mr Nolan advised me that, while he had no direct recollection of doing so, he believes that he would have discussed the matter with SPS and with Mr Britten because, like SPS, Sydney Harbour Seaplanes was also an operator for whom he had FOI responsibility. (RT5)

Conclusion re Regulatory Transaction 5:

I have no reason to doubt Mr Nolan's view that he most probably pursued this complaint with both SPS and Mr Britten. Clearly, however, it would have been desirable if any resultant contact with Mr Britten and SPS had been noted on the file.

On balance, however, I do not wish to criticise Mr Nolan for his handling of the complaint, other than for this lapse in file-recording. The essence of this complaint was about an operational matter concerning a new company in respect of which Mr Nolan was already pursuing the content of its ALA Register with a view to securing the inclusion of better information for the guidance of company pilots.

Observation:

It is appropriate to mention at this point that the CASA files I have had cause to examine in the course of this review are less than perfect. Not every relevant event is documented; not every relevant document created is filed; and some documents are contained on only one of a number of relevant files. Moreover, the movement of registered files within the organisation is not always properly recorded. Despite the attempts that have been made on my behalf, I am still not convinced that I have seen every relevant CASA document.

As will later become apparent, it is clear that key transactions in the CASA/SPS relationship are not adequately recorded - presumably because the decisions taken were favourable to SPS and it was thought there was no likelihood of having to justify the decisions in question before the AAT. This apparent short-sighted view has made it more difficult for those decisions to be retrospectively shown to be justified in a review of this nature. Additionally, of course, the failure to record any conditions on which such favourable decisions were based makes it effectively impossible to ensure that those conditions are enforced and complied with.

These various factors have each made the conduct of this review more difficult than it might otherwise have been.

Having said that, however, my own public sector experience in a range of Commonwealth Departments and authorities indicates to me that CASA's performance in this regard is not unrepresentative.

Indeed, in one respect, CASA seems to be better in its filing practices than I have observed in many other organisations. My observation is that copies of electronic mail messages are often placed on file, and this has been vital to the conduct of the review. It is apparent that, in this case, much substantive work was done by e-mail. Had copies of these message not been on file, it is unlikely that relevant officers would have been able to recall relevant matters.

Recommendations:

In light of the above observation, I **recommend** that CASA re-examine its guidelines and procedures for document initiation, file creation, storage and movement, and that it stress with its staff the importance of compliance with them.

In this regard I note that CASA's internal manuals state that substantive business should not be transacted by e-mail. That seems to me to be an unrealistic and impractical dictate given the capacity and frequency of use of modern IT systems. I **recommend** that it be reviewed and revised.

12.31 Mr Davies provided CASA with a training syllabus in support of his application for float endorsement approval on 23 February 1995. Mr Nolan discussed this with Mr Davies on

3 March 1995, when he indicated that he would be away from the office until 3 April 1995 and unable to deal with the matter before then. Mr Davies wrote to the DFOM on 22 March 1995 complaining about this delay. In so doing, he appeared to indicate that SPS was in fact endorsing other pilots without approval and that "endorsing is a major part of our company's revenue". (RT4)

- 12.32 CASA's assessment of the application for approval focussed on two issues - whether Mr Hindle was otherwise available to do endorsements without the need for Mr Davies to be approved, and whether the syllabus was adequate. (RT4)
- 12.33 On 4 April 1995 Mr Nolan advised Mr Davies that the submitted syllabus, having simply been copied from an American textbook, was inadequate and in conflict with Maule M7 operations. On the same date Mr Nolan formally assessed Mr Davies' application and failed him. He noted the file to the effect that the syllabus was to be reviewed, that SPS had no briefing room and no teaching aids and that Mr Davies' "ground instructional ability" was unsatisfactory. He advised Mr Davies to re-book when he felt himself ready to be reassessed. (RT4)
- 12.34 **Regulatory Transaction 6:** On the same date, Mr Nolan spoke to Mr Davies about a **fourth complaint against SPS** that had been made to DFOM Ms M O'Brien by the Commodore of the Royal Motor Yacht Club. This complaint was to the effect that an SPS seaplane had operated within 10m of the end of the Cronulla Marina and taken off about 30m from the Marina. Mr Nolan noted the file that Mr Davies would "review his operating procedures as and if required to operate with safety".

Conclusion re Regulatory Transaction 6:

In all the circumstances this appears to be an adequate response to this complaint.

Previous complaints were different or imprecise in their nature. I do not consider that, at this stage, SPS operations had exhibited an established course of conduct that would have made it inappropriate for Mr Nolan to rely upon Mr Davis' undertaking to review his operating procedures and amend them if necessary.

- 12.35 On 5 April 1995 Mr Davies advised Mr Nolan that he had completed all necessary amendments and inclusions to SPS paperwork and manuals and confirmed an appointment to reassess his approval for float endorsements. (RT4)
- 12.36 On 18 April 1995 Mr Nolan reassessed Mr Davies and found his "long brief" to be satisfactory. However, the necessary test flight was cancelled because of elevator damage to the aircraft that was not endorsed on the Maintenance Release. (RT4)
- 12.37 It is important to note here the status and importance of a Maintenance Release. CAR 50
- 12.38 **Regulatory Transaction 7:** On 19 April 1995 Mr Nolan issued the **first Non-Compliance Notice to SPS**, based on the failure of Mr Davies to enter details of damage to the trailing edge of the right elevator on VH-AEL (NCN 80352).

- 12.39 On the same date DAM Mr Robert Vale advised Mr Nolan of the results of his investigations of the underlying incident in relation to the elevator. It appears that Mr Davies had removed the elevator and taken it to the SPS maintenance organisation for repair. He was not entitled to do so, but claimed that he had acted on the maintenance organisation's advice in so doing. It seems however that that advice was given after rather than before the removal of the part. Mr Vale noted that the organisation's employee who had given the bad advice to Mr Davies had been counselled. Mr Vale recommended that Mr Davies "at the very least ... be asked to satisfy the Authority that he has an adequate knowledge of the Act and Regulations for the position he holds". (RT7)
- 12.40 Mr Handel was also spoken to by Mr Vale, and it was apparent that he knew of the damage. Despite Mr Handel's assertion that Mr Davies was a very keen professional who always did things by the book, Mr Vale suspected that Mr Davies "does not know the book adequately and that he may have been under some pressure to get the aircraft back into service". (RT7)

Observation:

This is the first intimation on file that Mr Handel's commercial motivation may have unduly influenced SPS staff in the performance of their duties. As will later become apparent, this later became a more frequently expressed view.

- 12.41 On 20 April 1995 Mr Handel endorsed the Non-compliance Notice as follows:
- Ascertained that the defect has now been entered on Maintenance Release.
John Davies has been counselled by me after my interview with Ray Oehme.
John is now well aware that any damage to a control surface is considered major.*
(RT7)
- 12.42 On 21 April 1995 Mr Nolan sent a memo to Acting DFOM Howard McGillivray recommending that he write to Mr Davies to require him to attend for an interview to determine if he had a satisfactory knowledge of the Civil Aviation rules and his responsibilities as Chief Pilot. (RT7)
- 12.43 On 24 April 1995 Mr Davies wrote to Mr Nolan offering his version of the events related to the elevator repair, accepting the advice that the defect was major and as such that it was required to be entered on the Maintenance Release, and apologising for the occurrence. (RT7)
- 12.44 On 25 April 1995 Mr McGillivray e-mailed Mr Nolan stating "As the saga unfolds, South Pacific Seaplanes continues to provide regulatory concerns" and asking Mr Nolan to investigate and provide a report on "exactly which regulatory breaches and non compliances were committed by whom". (RT7)
- 12.45 On the following day, Mr Nolan noted on file that he had sent all documents to the Investigator, South East Region, Mr Mike Shannon for investigation. Mr Shannon has no record of receiving that referral, and there is no evidence of follow-up by Mr Nolan.

Observation:

Having regard to the events which transpired in the near future, as set out below, I do not see any need to make any criticism about this apparent system failure.

- 12.46 On 28 April 1995 Mr Nolan advised Mr McGillivray of the CAR and Act provisions which he believed had been breached by SPS but that he could not ascertain the exact facts without interviewing named maintenance personnel. He also recommended that Mr Davies be counselled. (RT7)
- 12.47 On 2 May 1995 Mr Davies wrote to seek expedition of his application for float endorsement approval. At Mr McGillivray's direction Mr Nolan advised him that the matter would not be progressed until the elevator matter was resolved. (RT4)
- 12.48 On 3 May 1995 Mr McGillivray agreed with Mr Nolan's recommendation that Mr Davies be counselled. A formal letter instructing Mr Davies to attend for counselling was sent on 5 May 1995 and an agenda was prepared for the counselling session. (RT7)
- 12.49 The counselling session took place on 12 May 1995, undertaken by Mr Nolan and SAWI Mr Ray Oehme. (RT7)
- 12.50 On 23 May 1995 Mr Davies again wrote seeking progress on his float endorsement approval, complaining that it and the elevator matter were unrelated and that his application should not be deferred while the elevator matter was resolved. (RT4)
- 12.51 On 27 May 1995 Mr Nolan wrote to Mr Davies to advise that Mr Davies' acknowledgement of his breach and his assurance that there would be no similar future breaches had brought the matter to a satisfactory conclusion. (RT7)
- 12.52 On 30 May 1995 Mr Nolan endorsed the Non-compliance Notice as follows: "The attitude of Mr Davies was very positive and no further action is required". (RT7)

Conclusion re Regulatory Transaction 7:

There appears to me to be no reason to suggest that this process was inappropriate and that the Non-compliance Notice was not thereby satisfactorily acquitted.

Observation:

This was the first occasion on which there had been any reason to be concerned about the program for maintenance of the SPS aircraft.

- 12.53 **Regulatory Transaction 8:** On 23 June 1995 Mr Nolan and Mr Len Spanton observed aircraft VH-AEL operating in Rose Bay and Mr Spanton recorded a file note in the following terms:

At 11:30hrs EST approx 23 June 1995 aircraft VH-AEL, a Maule Floatplane, was observed from Sydney Harbour Seaplane pontoon making an approach from the north along the eastern shoreline of Rose Bay at approximately 300ft it turned right on to a final leg. At this time a motor vessel crossed the intended alighting path requiring the A/C to initiate a go-round at approximately 100ft the A/C remained at this altitude and passed out of my view behind VH-AQA, moored at the pontoon, it came back into view flying on a westerly heading across Rose Bay, carried out a "tear drop" approach and alighted to the east.

- 12.54 Mr Nolan faxed Mr Davies on the same date seeking a report on what amounted to this **fifth complaint against SPS**. Mr Davies replied denying that the operation had taken place and asserted that the complaint could have only come "from what is becoming an obvious and usual source: Sydney Harbour Seaplanes" and making a number of allegations against that company. (RT8)
- 12.55 On 29 June 1995 Mr Nolan replied to Mr Davies, advising that his assumptions as to the source of the allegation were incorrect as the manoeuvre had been observed by Mr Nolan and another CASA officer. He thus asked Mr Davies to attend at a meeting at CASA the following week. (RT8)
- 12.56 Mr Davies responded on 31 June 1995 that he would not be available for that meeting for two weeks and offered an explanation for the manoeuvre observed by Mr Nolan and Mr Spanton. Again he denied the substance of what the CASA officers believe they saw. (RT8)
- 12.57 On 1 July 1995 Mr Sanjeev Grover, Acting DFOM, responded to Mr Nolan's recommendation that the complaints made by Mr Davies against Sydney Harbour Seaplanes be investigated by asking Mr Nolan to conduct a preliminary investigation. Mr Nolan replied on 3 June 1995 that he was not skilled at conducting investigations and was concerned that inexpert action by him might jeopardise the use of any evidence. After meeting with Mr Grover on that day, he apparently contacted Sydney Harbour Seaplanes and made some preliminary inquiries during which Sydney Harbour Seaplanes refuted the allegations by Mr Davies. (RT8)
- 12.58 The plan as at 4 July 1995 was to ask Mr Davies to substantiate his allegations and, if he could do so, to refer the matter to Mr Shannon for investigation. However, Mr Davies subsequently advised that SPS did not wish to persist with its allegations against Sydney Harbour Seaplanes. (RT8)

Observation:

In my view the allegations against Sydney Harbour Seaplanes were dealt with appropriately.

- 12.59 Mr Davies was interviewed about the Rose Bay manoeuvre on 5 July 1995 and, despite his denials, Mr Nolan concluded that Mr Davies' manoeuvre had been unsafe as contrary to the Operations Manual with which CAR 215(9) required compliance. (RT8)

- 12.60 **Regulatory Transaction 9:** On 6 July 1995 Mr Davies wrote to Mr Grover following that meeting, acknowledging the inadequacy of the SPS Operations Manual in its application to some SPS take-off and landing areas, and stating that “an exemption to CAR 166 would allow us to operate within CAR 169 ‘Prevention of collisions at sea’”. Again Mr Davies denied that the Rose Bay manoeuvre had occurred as alleged by Mr Nolan and Mr Spanton.
- 12.61 On 31 July 1995 Mr Davies wrote to Mr Grover complaining that neither his application for a CAR 166 exemption nor his application for float endorsement approval had been approved. (RT4 and RT9).
- 12.62 On the same day, however, Mr Grover wrote to Mr Davies to issue the **first “show cause” notice** issued in relation to SPS operations. This provided Mr Davies with the opportunity to show cause why his Chief Pilot’s approval should not be cancelled. It was based on the Rose Bay manoeuvre but also noted that this had taken place only a little more than a month after the formal counselling for the elevator incident described above. (RT8)
- 12.63 On 1 August 1995 Mr Nolan sent the first memo in what proved to be an extended process, largely internal to CASA but at times involving SPS, about the absence of performance data in the SPS Operations Manual to govern the distances required for take-off and landing by a Maule M-7 floatplane. He asked District Engineering Manager Mr Ian Kearsley whether it was a CAR requirement that the Operations Manual contain such performance data.

Observation:

I do not intend to recount all of this process here, because it does not involve any direct interface with SPS. I will later make reference to this matter of performance data only where there is such a clear interface with SPS.

In summary, however, the key salient facts are as follows:

- it was believed for a period that the CARs did not require such data, because they allowed the use of a foreign Flight Manual and that for the Maule the Manual simply stated that "it is the Pilot's responsibility to ensure that adequate distances are available for safe take-off and alighting operations";
- Mr Nolan insisted that SPS specify a minimum distance in their Operations Manual and they inserted 500m;
- Mr Nolan then pursued inquiries within CASA to ascertain the acceptability of this distance;
- he was advised that it was difficult to specify such distances for floatplanes given the inherent variability of the surfaces on which they operated;
- he nevertheless located a Flight Manual that did provide precise performance data for a Beaver floatplane and queried why such could not be determined for a Maule;
- he later found another Flight Manual for a Cessna floatplane that included specific technical performance data;
- eventually it was decided that the original view of the law was wrong and that performance data should be required;
- options for obtaining, or requiring SPS to obtain, the appropriate data were therefore developed and conveyed to Mr Davies;
- Mr Davies wrote back complaining at what he saw as an unreasonable and inconsistent request;
- before that issue could be resolved, however, Mr Davies managed to find a Flight Manual for a Maule M7 on floats that in fact had the data included;
- accordingly, on 25 September 1996 he undertook to include that data in the SPS Flight Manuals and Operations Manual.

In my view the underlying issue in this saga was very significant in terms of air safety, given what I perceive as the fundamental importance of providing guidance to pilots in an Operations Manual as to the space required in which to safely land an aircraft.

However, given the belief that the law did not require such material, I am reluctant to criticise any of the officers involved even though the process from 1 August 1995 to 25 September 1996 was extremely extended.

The significant point is that, once a different view of the law was arrived at, the matter was dealt with expeditiously by CASA officers.

The question of whether or not SPS in fact honoured its undertaking to include the performance data in its Operations Manual will be taken up in the chronological account set out in this chapter for the period after 25 September 1996, when that undertaking was given.

The only other point I would make at this time is to commend Mr Nolan for his persistence in seeking resolution of this issue as resolutely as he did. Ms O'Brien informs me that she persistently provided reminders to Mr Nolan to bring the matter to a conclusion. While these are not recorded on file, I accept her advice in that regard and similarly commend her.

- 12.64 On 1 August 1995, Mr Nolan also replied to Mr Davies' letter of 6 July 1995 reminding him of his obligations to comply with relevant CARs and advising the detail that would be required to allow an application for exemption from CAR 166. (RT9)
- 12.65 On 2 August 1995 Mr Davies wrote to Mr Grover providing Operations Manual amendments which he said were adequate to meet the requirements notified by Mr Nolan the previous day. (RT9)
- 12.66 This application for a CAR 166 exemption was then processed, with involvement from the Office of Legal Counsel in Canberra (RT9). Mr Nolan advised Mr Davies that this process was in hand but that the application for float endorsement approval could not be processed until the show cause matter was resolved. (RT4 and RT8)
- 12.67 On 7 August 1995 Mr John Pike, Deputy Director, Canberra, issued an instrument under CAR 308 to exempt both SPS and Sydney Harbour Seaplanes from the obligation to comply with CAR 166. That instrument was in the following terms:

I, JOHN EDWIN INNES PIKE, a delegate of CASA, under regulation 308 of the Civil Aviation Regulations (the Regulations), exempt the pilot in command of a floatplane operated by either of the following companies:

- (a) *Aquatic Air Pty Ltd, trading as South Pacific Seaplanes;*
- (b) *Sydney Harbour Seaplanes Pty Ltd;*

from compliance with the provisions of paragraphs 166(1)(d), (f) and (g) of the Regulations while the pilot is in, on, or otherwise associated with the operation of, the floatplane on condition that:

- (c) when taking-off or landing, the floatplane turns in a direction that will enable the floatplane to make a water landing in the event of engine failure; and
- (d) despite paragraph (c), the pilot complies with the directions (if any) given by Air Traffic Control; and
- (e) the company's operations manual sets out details of the procedures necessary to give effect to paragraphs (c) and (d). (RT9)

Conclusion re Regulatory Transaction 9:

In my view there is no basis for criticism of the steps taken to process the application for the CAR 166 exemption.

- 12.68 **Regulatory Transaction 10:** On the same day, 7 August 1995, Mr Davies made the first of what became a number of written complaints against Mr Nolan. He wrote to RM SER Mr Scotty Fairbairn in the following terms:

We, from our inception feel we have been obstructed by our appointed FOI, Mr Mike Nolan and have suffered numerous delays without explanation, even until the most recent example of him taking nearly five weeks to respond to an urgent fax explaining an error brought to our attention in our Operations Manual, and advising of Manual changes, and applying for required exemptions.

The attached "show cause" letter refers to two reasons for the "Proposed Cancellation of Chief Pilot's Approval". The most recent being the incident requiring the exemption to CAR 188, prior to that a problem over maintenance.

I feel, and am sure that the facts will substantiate, the fact that I acted promptly and correctly in both circumstances in upholding my duty as Chief Pilot.

- 12.69 Mr Fairbairn advised the following day that he was prepared to meet with Mr Davies after he had formally responded to the show cause letter he had received. (RT10)
- 12.70 **Regulatory Transaction 11:** The initial SPS AOC (BK 431538/1) was for the period 12 September 1994 to 31 August 1995 and thus about to expire. An application for renewal was thus lodged by Mr and Mrs Handel on 11 August 1995. This application also sought to change the name of issue from Handel Enterprises Pty Ltd trading as South Pacific Seaplanes to Aquatic Air Pty Ltd trading as South Pacific Seaplanes.
- 12.71 Mr Nolan advised Mr Grover on 15 August 1995 of his response to the complaints made against him by Mr Davies in the letter to Mr Fairbairn. Mr Grover indicated a desire to discuss this but in the meantime he asked Mr Nolan to remind SPS that the time for a response to the show cause letter was running out and that they could not conduct commercial operations without a Chief Pilot. (RT8 and RT10)

12.72 Mr Davies replied to the show cause letter on 17 August 1995. He again disputed the CASA view of the facts in relation to the elevator incident and the Rose Bay manoeuvre. And he again criticised Mr Nolan. He enclosed a series of references which attested to his professional competence. (RT8)

12.73 On 22 August 1995 Mr Nolan provided Mr Grover with his reaction to Mr Davies' show cause response. His summary conclusion, after quoting from previous file documents, was as follows:

I am disappointed that Mr Davies has not admitted to the facts as presented and has chosen to discredit me as his means of defence.

I stand by 100%, the details placed on file by me in this matter and hand the matter over to you, for a decision as to Mr Davies suitability to remain Chief Pilot. (RT8)

12.74 Mr Davies was advised on 22 August 1995 that a routine operational inspection would be conducted of SPS on 12 September 1995. (RT11)

12.75 It appears that meeting was held in relation to the show cause letter on 28 August 1995. There is no file record of that meeting and Ms O'Brien informs me that she has no recollection of it. It appears that it was attended at least by Mr Davies and Ms O'Brien, and that Mr Nolan was not present. Mr Nolan's recollection is that he recommended that he should attend the meeting because of his intimate and detailed knowledge of SPS operations, but this was not accepted. There is no record of what was said at that meeting. (RT8)

12.76 The day of this meeting was Ms O'Brien's first day at work after a period of leave. She says that she took advice from the Acting DFOM and from the RM SER who had dealt with the matter in her absence. Three days later, on 31 August 1995, Ms O'Brien wrote to Mr Davies advising that:

I refer to the "Notice of Proposed Cancellation of Chief Pilot's Approval - Show Cause" dated 31 July 1995.

Due consideration has been given to the facts and circumstances surrounding the Show Cause and your response.

I have decided not to take any Regulatory action against your Chief Pilot Approval.

I wish to draw your attention to the Civil Aviation Act 1988, Third Edition, July 1995, Part III - Regulation of Civil Aviation, 28BD, Compliance with Civil Aviation Law:

"The holder of an AOC must comply with all requirements of this Act, the regulations and the Civil Aviation Orders that apply to the holder". (RT8)

12.77 There is no record of the reasons for the decision not to take further action against Mr Davies. Mr Nolan says that he was never provided with any reasoned or detailed explanation of the decision or its underlying reasoning, despite his position as the FOI assigned to SPS. (RT8)

Conclusions re Regulatory Transaction 8:

My ability to assess the appropriateness of this decision by Ms O'Brien in relation to the show cause letter issued to Mr Davies is clearly impeded by the lack of any record of the meeting held with Mr Davies, or of Ms O'Brien's reasons for a favourable assessment of his suitability to remain as Chief Pilot. In my view, the absence of such documentation is a serious omission.

It seems to me to be clear that there were legitimate grounds for concern sufficient to warrant the issuance of the show cause letter. It equally seems to me that the file disclosed adequate grounds to sustain an alternative decision to suspend or cancel Mr Davies' Chief Pilot approval. The incident to which the show cause letter related had been observed by two experienced CASA officers and, despite their personal observations, Mr Davies persisted in his assertion that the incident had not occurred in the way they reported.

In my view, the decision by Ms O'Brien is not evidently wrong, unlawful, unreasonable, or ill-motivated. However, I cannot be satisfied that it was clearly the preferable decision in all the circumstances. The information is simply not available for that purpose. Ms O'Brien says that this view on my part is internally inconsistent. I do not accept that.

Observation:

As will become apparent, the absence of documentation in relation to clearly significant decisions is a common feature of the files in this matter. One would ordinarily expect senior and experienced officers to place at least some explanatory document on file, albeit basic.

Ms O'Brien says that there was no requirement for her to record or provide reasons "as a matter of policy or law". That may be so, but the dictates of good and prudent public administration do not all necessarily derive from express statements of law or policy.

Ms O'Brien also says that there was no requirement as a matter of policy or law for her to provide Mr Nolan with a reasoned explanation of her decision. But again I would regard it as an appropriate and proper managerial act for her to have acted to ensure that her subordinate staff were able to understand her actions and adjust their own as necessary to fit with a leadership example from above.

Ms O'Brien next says that the letter of 31 August speaks for itself. I do not accept that. While it provides a statement of the decision taken and refers to the process followed, it does not set out a statement of reasons for the decision conveyed.

Ms O'Brien finally says that my criticism of her on this point shows a misunderstanding of the show cause process which was designed to elicit reasons why something should not happen. But the fact that a decision might be favourable to the person directly affected by it is not adequate cause for not creating such a document.

Observation (Continued)

Ms O'Brien is not alone in her failure in this regard, and others are equally open to criticism on this basis.

Recommendation:

I **recommend** that CASA reinforce to its officers the need to create proper documentation in relation to decisions of such significance.

- 12.78 On the same date, Ms O'Brien issued a new AOC (BK431538/2) to SPS for the period to 31 August 1996. There is nothing on the file documents that I have examined to indicate that the performance of SPS over the period covered by its first AOC had been reviewed and assessed as warranting the issue of this renewed AOC. (RT11)

Conclusion re Regulatory Transaction 11:

Given the conclusion reached by Ms O'Brien in relation to Mr Davies' suitability to remain as Chief Pilot, and the manner in which the previous regulatory transactions had been disposed of, the decision to issue a second AOC is not surprising. While there had been at this stage 5 complaints made against SPS, one Non-compliance Notice issued to it, and a show cause letter issued to its Chief Pilot, these matters had all been dealt with in a manner that does not allow me to suggest that the issuance of a new AOC was inappropriate.

However, the absence of file documentation in relation to the processing of the AOC application is strange. On other occasions on which the AOC is renewed, there are various check lists on the file to indicate whether Airworthiness, Engineering and Flying Operations personnel support the renewal. It would seem to be more likely than not that this documentation is simply missing from the set of file papers available to me. In these circumstances, I do not believe any adverse inference is warranted.

- 12.79 Also on 31 August 1995, Mr Nolan issued an approval instrument under CAR 5.21 for Mr Davies to conduct conversion training on the Maule M7 Floatplane, notwithstanding his view that Mr Davies' Chief Pilot approval should have been cancelled. He informed me that he did so at the direction of Ms O'Brien. Ms O'Brien denied that she gave Mr Nolan any such direction. In the absence of any conclusive documentation on this point, I accept her advice. Even though he may have mistakenly believed a direction was given, Mr Nolan stressed that he believed he had no reason to resist that direction. He advised me that, in his view, an authorised delegate had dealt with his concerns about Mr Davies and it was appropriate for him to accept the delegate's decision. He says that, once that decision was accepted, he had no further reason to dispute Mr Davies' suitability to be approved for conversion training on floatplanes. (RT4)

Conclusion re Regulatory Transaction 4:

In my view, there is no criticism that can properly be made of Mr Nolan in issuing this certificate even if he believed he was doing so under direction from Ms O'Brien.

While it is an established principle of law that a holder of statutory power should not act on the direction or behest of another, it seems clear that Mr Nolan felt able to refuse, and would have refused, any such direction if he wished to do so.

Given that I accept Ms O'Brien's advice that she did not issue such a direction, there is no criticism to be made of her on this point.

Mr Davies was critical of the fact that Mr Nolan had refrained from dealing with this application for approval while other regulatory matters were on foot. I do not believe that such criticism was warranted. Given the nature of the regulatory issues then under consideration, I consider that it was prudent not to further expand Mr Davies' authorised capacities until those matters were dealt with to finality.

Conclusion re Regulatory Transaction 10:

At this stage, no action had been taken to finally respond to Mr Davies' complaints against Mr Nolan. Ideally, a letter should have been sent to Mr Davies in this regard. Such a letter would reasonably have advised that Mr Nolan's handling of the various matters involving SPS and Mr Davies was appropriate. However, having regard to the changes of personnel at RM SER level and Ms O'Brien's absence on leave during part of this period, I do not think it would be reasonable to criticise any individual for the fact that such a letter was not dispatched.

- 12.80 **Regulatory Transaction 12:** On 12 September 1995 Mr Nolan discussed with Mr Davies a **sixth complaint against SPS** alleging low flying over the house of a local resident of Yowie Bay. Mr Davies denied that the manoeuvre had occurred as alleged by the complainant. Mr Nolan pointed out that Mr Davies' explanation was not technically credible. Mr Nolan discussed the matter with his DFOM on 15 September 1995 and it was agreed that SPS would be asked to include information in its Operations Manual to prevent further occurrences. Mr Davies provided an undertaking to make any necessary amendment to the SPS Operations Manual.

Conclusion re Regulatory Transaction 12:

If this incident had occurred as alleged (and that seems likely), it would probably have been in contravention of CAR 166 and not exempted by the CAR 308 exemption issued by Mr Pike, given that paragraph (e) of that exemption required that the SPS Operations Manual contain details of the way in which such manoeuvres were to be undertaken.

However, given the undertaking given by Mr Davies, this appears to me to be an acceptable resolution to this complaint, provided that the need for amendment to the Operations Manual was followed up. As will appear, this was the case. Nevertheless, despite repeated undertakings, SPS did not respond on a timely basis.

12.81 **Regulatory Transaction 13:** Also on 12 September 1995, the scheduled inspection was conducted at SPS premises. Mr Nolan recorded almost most items as satisfactory but noted 5 matters to be followed up by SPS:

1. *CAR 5.21 training Syllabus - C/P will include objective standards*
2. *New AOC in Ops/Manual*
3. *C/P to study 'Guide' and 'Ops Manual'*
4. *Send sample CAO 48 Extension*
5. *Ops spec for R409 to be submitted.*

12.82 On 15 September 1995 Mr Nolan discussed with Mr Davies aspects of his concerns about the absence from the Operations Manual of what Mr Nolan considered to be adequate information for pilots as to gradients and clearances distances, etc. He noted that Mr Davies "will consider these valid points for inclusion into Ops Manual. Follow up 2 weeks". (RT13)

Conclusion re Regulatory Transaction 13:

In my view there is no substantive basis on which to criticise Mr Nolan in relation to the conduct of this routine surveillance. While it appears that SPS had not amended its Operations Manual as it should have done and as it had undertaken to do, I do not think that failure alone would have justified regulatory action such as the suspension of the SPS AOC at this stage. It is apparent that Mr Nolan resolved to pursue the issue and that seems to me to have been adequate in the circumstances then prevailing.

12.83 **Regulatory Transaction 14:** On 26 September 1995 Mr Davies applied for an exemption to CAR 5.21 to allow him to conduct conversion training for Private Pilots. Mr Nolan discussed this with Mr Davies at some stage, advising him that the exemption sought was not available under the law. Mr Davies wrote to Ms O'Brien on 4 October 1995 to pursue his request. Ms O'Brien subsequently wrote confirming that advice.

Conclusion re Regulatory Transaction 14:

This application was appropriately dealt with on a timely basis.

- 12.84 On 29 September 1995 Mr Nolan followed up with Mr Davies on the matters he had noted on 15 September 1995, asking Mr Davies to expedite the matter to ensure that SPS was in compliance with the terms of its CAR 166 Exemption. Mr Davies provided a response on 2 October 1995 which, in part, disputed the need for the detail sought by Mr Nolan. (RT13)
- 12.85 **Regulatory Transaction 15:** On 3 October 1995 Mr Nolan noted that surveillance had indicated that both SPS and Sydney Harbour Seaplanes were using airspace in Sydney Harbour reserved for helicopters. It appears that this followed on from a **seventh complaint against SPS** (and Sydney Harbour Seaplanes), which apparently came from the Prime Minister's Office.
- 12.86 **Regulatory Transaction 16:** On 4 October 1995 Mr Davies advised that SPS would be adding a second Maule M7 - VH-AGX. He expressed the view that he had sufficient operational experience to remain Chief Pilot of a two aircraft operator and invited Mr Nolan to advise if he held a contrary view. Mr Nolan checked CAO 82.0 and concluded that Mr Davies' experience level was satisfactory.

Conclusion re Regulatory Transaction 16:

This matter was dealt with appropriately.

- 12.87 On 13 October 1995 Mr Nolan advised Mr Davies that he was reviewing the SPS training syllabus and sought technical data for various sequences. (RT13)
- 12.88 **Regulatory Transaction 17:** On 16 October 1995 Mr Nolan sought advice from Mr Davies about an **eighth complaint against SPS** received from a Vacluse resident, concerning alleged low flying on 14 October 1995. This was later amended by Mr Nolan to 13 October 1995. After some interchanges as to detail, Mr Davies advised that he had been the pilot in question and denied that the manoeuvre in question had occurred as alleged by the complainant. Mr Nolan advised me that he spoke to the complainant, who did not want to take the matter further.

Conclusion re Regulatory Transaction 17:

It appears that Mr Nolan regarded Mr Davies' explanation as acceptable and I do not perceive any substantive basis for criticism in this regard.

- 12.89 The next SPS/CASA interaction does not appear to be until 1 November 1995 when a meeting was apparently held at Rose Bay. There is no written record of the purpose or content of this meeting on the file, or of those who attended. The meeting is only documented by a reference in a facsimile sent to Mr Davies on 14 December 1995 by Ms O'Brien. It appears, however, that that meeting was a sequel to the surveillance undertaken by Mr Nolan following the complaint made by the Prime Minister's Office. In the fax Ms O'Brien asked that what were described as "agreed conditions" for operations from Rose Bay and Scenic Flights in Sydney Harbour be incorporated in the SPS Operations Manual "to give effect to paragraphs (c) and (d) of Exemption 2/95 under Regulation 308 against Civil Aviation Regulation 166". It appears that a similarly worded fax was sent to Sydney Harbour Seaplanes at the same time. Mr Davies later faxed back amendments to the SPS Operations Manual on 19 December 1995. (RT15)

Conclusion re Regulatory Transaction 15:

The handling of this matter appears to me to have been appropriate in its own right, and fully consistent with the concerns held by Mr Nolan, and apparently shared by Ms O'Brien, that the SPS Operations Manual did not contain adequate guidance for SPS pilots on operations at the various venues at which the company alighted and took off.

- 12.90 **Regulatory Transaction 18:** On 14 December 1995 a **ninth complaint against SPS** was received from Mr Britten of Sydney Harbour Seaplanes. This was his third complaint against SPS. He alleged that SPS aircraft VH-AGX touched down at Rose Bay on 12 December 1995 "adjacent to the public wharf with an estimated 50-75m of water remaining to the stone foreshore wall".

- 12.91 Mr Nolan met with Mr Davies and Mr Handel on the same day and it was agreed that Mr Davies would provide a report within one week. That report was in fact provided on 19 December 1995. The concluding paragraph in Mr Davies' letter stated that:

I accept Brett's explanation of the event and we both agree that although there was no compromise in safety this time, that a landing further out is preferable when aiming into a corner. All Company Pilots have been instructed to land in a position allowing a go-around or overshoot under all circumstances. (RT18)

- 12.92 On 20 December 1995 Mr Britten wrote to Mr Nolan detailing his complaint about this incident. The concluding paragraphs of his letter were as follows:

I reiterate my previously stated concerns to you. I do not believe that operations of South Pacific Seaplanes are adequately supervised, and in particular that the Chief Pilot is not adequately experienced to carry out float endorsements.

Contrary to previous communications where I have expressed my concern about South Pacific Seaplanes, I would prefer that a copy of this letter NOT be provided to South Pacific.

I would be happy to discuss my concerns with you at any time. (RT18)

Conclusion re Regulatory Transaction 18:

Having regard to the undertakings given by Mr Davies and the pilot's acceptance of error, I accept that it was not necessary for Mr Nolan to take any further action in relation to this complaint.

- 12.93 **Regulatory Transaction 19:** On 21 December 1995 Mr Nolan advised Ms O'Brien that Sydney Harbour Seaplanes had agreed to include in full the Operations Manual amendments sought in the fax of 14 December 1995, but that Mr Davies had not agreed. Mr Nolan's recommendation was as follows:

[Mr Davies] be advised that because of this Authorities (sic) safety concerns re: operations in Rose Bay and the environmental issues associated with Sydney harbour, that without his cooperation, CASA will have to make a recommendation to the Deputy Director, the withdrawal of the CAR 166 exemption on the basis that the company's procedures do not satisfy the requirements of paragraph (e) [of that exemption].

Please discuss as a matter of urgency.

- 12.94 There is no file activity recorded for the balance of December 1995 or throughout January 1996.
- 12.95 On 7 February 1996 surveillance was carried out on the holder of the Certificate of Approval that undertook maintenance on SPS aircraft, and a number of Non-compliance Notices were issued. This action was the beginning of a lengthy series of dealings with that maintenance organisation. While these dealings necessarily affected SPS, they were not directly related to CASA regulation of SPS and I do not intend to deal with them further in this report.
- 12.96 **Regulatory Transaction 20:** On 19 February 1996 AWI Mr Ian Meredith issued the **second Non-compliance Notice** to be received by SPS. It required that the Flight Manual for VH-AEL be reviewed.

Conclusion re Regulatory Transaction 20:

This related to a minor matter of pagination and I have not, in the time available, followed up to see if the Non-compliance Notice was acquitted. However, I presume that it was.

- 12.97 **Regulatory Transaction 21:** On 19 February 1996 a BASI officer received a telephone call registering a **tenth complaint against SPS**, alleging a landing which was aborted at Cronulla on 18 February due to marine traffic and involving an aircraft passing within 5 metres of a yacht during its "go-round". On the following day Mr Nolan discussed this with complaint with Mr Davies. Mr Davies was recorded as being confident that SPS was operating safely. Mr Nolan resolved to seek a witness statement as a basis to discuss the matter further with Mr Davies. He wrote to the 19 February complainant but his letter was returned "unknown at this address". On 27 February 1996 he rang BASI to check that he had the correct address for the complainant and, on being told that he did, he attempted to ring the complainant. He left a message on an answering machine, but the call was not returned.

Conclusion re Regulatory Transaction 21:

In the circumstances, Mr Nolan's handling of this complaint was appropriate and I do not believe he could reasonably have been expected to do more.

- 12.98 At his 20 February meeting with Mr Davies, Mr Nolan also discussed his broader concerns about SPS operations in Gunnamatta Bay. He made reference to low flying manoeuvres over Cronulla in January 1996 and on 4 February 1996 (each of which had been observed by Mr Nolan himself, along with FOI Ms Hilsberg), together with a "couple of complaints" and reports of incidents from the water police. Again Mr Davies professed himself satisfied that SPS was operating safely in the area. Mr Nolan resolved to discuss these issues with the Acting DFOM, Mr Sanjeev Grover, which he later did. (RT19)
- 12.99 **Regulatory Transaction 22:** On 21 February 1996 an **eleventh complaint against SPS** was made to CASA, alleging operations at Gunnamatta Bay prior to 6am. This complaint concerned the associated noise and its effects at that hour. SPS was confined to daylight operations. Mr Nolan subsequently discussed this complaint with Mr Davies but concluded that the light at that time of the year was adequate for the operation to be lawful. He did however alert Mr Davies to the possibility that such operations could lead to action by other regulatory authorities on environmental grounds.

Conclusion re Regulatory Transaction 22:

In my view this complaint was dealt with appropriately.

- 12.100 **Regulatory Transaction 23:** On 26 February 1996 scheduled surveillance was carried out at SPS premises. It was noted that the ALA Register sheet for Gunnamatta Bay was not in the Register. Mr Nolan discussed Gunnamatta Bay operations generally and the missing sheet in particular with Mr Davies and Mr Handel. He noted that the ALA Register did not contain scale, dimensions of the Bay, obstacles in it, or where the ALA was located within the Bay. This was a continuation of the lengthy series of dealings between Mr Nolan and SPS during which Mr Nolan was constantly seeking to improve the detail in the SPS Operations Manual in order to provide SPS pilots with more information to enable them to operate safely within the Bay. It was agreed that Mr Davies would advise progress on amending the ALA Register by mid-March.
- 12.101 **Regulatory Transaction 24:** On 27 February SAWI Mr L Spanton carried out an unannounced aircraft survey and ramp check on VH-AEL and issued the **first Aircraft Survey Report** (75828 - Code B) involving SPS aircraft. This noted two inadequacies - an illegible compass correction card, and fuel gauge calibration placards not in place. This Notice was subsequently acquitted by SPS on 14 March 1996.

Conclusion re Regulatory Transaction 24:

This matter appears to have been properly handled.

- 12.102 **Regulatory Transaction 25:** On 28 February 1996, despite Ms O'Brien's earlier advice that such was not legally available, Mr Davies wrote to Mr John Pike, Deputy Director (Operations) at CASA Canberra seeking approval to conduct conversion training on floatplanes for Private Pilots.

Conclusion re Regulatory Transaction 25:

I have been unable to locate any reply from Mr Pike. Given that the matter was apparently not pursued by SPS, I assume that Mr Pike reiterated Ms O'Brien's previous advice. I thus perceive no basis for criticism in this regard, beyond the apparent failure to copy that reply to the relevant file.

- 12.103 On the same day Mr Davies wrote to Mr Nolan enclosing a scaled map of Gunnamatta Bay and some details of an ALA within the Bay. He advised that "I have no hesitation in declaring that operations into and out of Gunnamatta Bay are within the parameters of our Ops Manual, our exemption under CAR 166 and CAAP 92-1(1)". (RT23)
- 12.104 On 4 March 1996 Mr Nolan noted the file to the effect that he had discussed his concerns about the safety of SPS operations at Gunnamatta Bay with Acting DFOM Mr Grover and that a direction would be issued under CAR 215.3(a) to ensure that all operations were above water when below 1000' during take-off and landing at ALAs within populous areas. He noted that a letter to SPS was to be prepared and sent to the Office of Legal counsel in Canberra for comment. (RT19 and RT23)

- 12.105 On 19 March 1996 Mr Davies provided some amendments to the SPS Operations Manual to Mr Nolan. (RT21)
- 12.106 **Regulatory Transaction 26:** On 25 March 1996 Mr Nolan faxed Mr Davies an Air Safety Incident Report on VH-AGX and sought an explanation. This **twelfth complaint against SPS** operations alleged that the aircraft had become airborne in the Sydney Control Zone without an airways clearance. It stated that the aircraft had "contacted Sydney Departures on 129.7 without any prior coordination. The controller was busy and instructed AGX to contact Sydney Terminal on 135.1. When the aircraft called 135.1 he advised that he was at 500' and intended entering Victor One." A subsequent report from the pilot to Mr Davies was obtained explaining the events and concluding that "I do understand the importance of airways clearance in control airspace, however my actions on this occasion may have been hasty and more efforts will be made in future".

Conclusion re Regulatory Transaction 26:

There is no record on the file of any apparent follow up in relation to this. In discussions with Mr Nolan he informed me that he had regarded the SPS response to this complaint as adequate. The pilot had acknowledged his error and given an undertaking not to offend again. Mr Nolan says that such events are common occurrences and he was mindful that the pilot had apparently been induced into error by the advice he had been given on a previous occasion by Air Traffic Control.

In the circumstances, I accept that this was an adequate response by Mr Nolan to this incident.

- 12.107 On 26 March 1996 Mr Nolan provided draft CAR 215 Direction papers to Mr Grover and recommended that legal opinion be obtained from the Office of Legal Counsel in Canberra. That advice was received on 11 April 1996 and, on 17 April 1996, Mr Grover wrote formally to Mr Davies issuing a direction under CAR 215 in the following terms:

With respect to the operations at Gunnamatta Bay, Rose Bay and any Aeroplane Landing Ground (ALA WATER) that is surrounded totally or in part, by populous areas, when operating at an altitude of less than 1000ft above ground level for the purpose or in the course of taking-off or landing, the aircraft must remain over water, and must maintain a distance of not less than 100 metres from the shoreline and any vessels moored at permanent moorings in the ALA area.
(RT19 and RT23)

Conclusion re Regulatory Transactions 19 and 21:

In my view the issue of a CAR 215 direction was clearly appropriate, albeit that it may have been done earlier. It is relevant to note that by this stage SPS had made a number of undertakings to make relevant amendments to its Operations Manual but had complied with few of these, either at all or satisfactorily.

An alternative course of action would have been to initiate proceedings against SPS for breach of CAR 166, evidenced by its failure to include adequate material in its Operations Manual as required by condition (e) of the CAR 308 direction issued by Mr Pike.

The choice between these two alternative courses of action really calls for an exercise of judgment, and I do not consider there is any appropriate criticism to be made of the choice that was in fact made.

12.108 **Regulatory Transaction 27:** On 18 April 1996 Mr Davies wrote to Mr Pike asking that the issue of the direction be reconsidered, describing it as stupid and requesting that it be revoked. That letter was apparently passed by Mr Pike to RM SER Barry Diamond, and then forwarded to Mr Grover on 22 April 1996 with a request for background briefing and discussion.

12.109 **Regulatory Transaction 28:** On 22 April 1996 a **thirteenth complaint against SPS** operations was lodged, alleging that VH-AGX had landed on Brisbane Water at a time of very low visibility when the water was very busy with boats. Mr Nolan rang the complainant on 24 April 1996 to ask that a detailed written report be provided, and rang SPS to ask that he be provided with a copy of their Brisbane Water ALA from the company's Operations Manual. The complainant's detailed report was received on 1 May 1996. Mr Nolan discussed the complaint with Mr Davies after receiving a copy of the ALA, and was told that in the pilot's opinion the operation was safe. SPS disputed certain of the complainant's factual assertions.

Conclusion re Regulatory Transaction 28:

Mr Nolan informed me that he believed there was nothing more he could do in relation to this complaint. Brisbane Water was not a "registered aerodrome" and thus it was the pilot's responsibility to be satisfied that it was safe to land. There was a dispute as to the facts of the incident, and no corroborating evidence to resolve that dispute.

I accept that this was a reasonable assessment by Mr Nolan.

12.110 **Regulatory Transaction 29:** Also on 22 April 1996, a meeting of Sydney Ferries and the Waterways Authority was briefed by a Waterways officer on current Rose Bay seaplane licence conditions and requirements. It was reported that there had been a recent incident in which a seaplane had overflown a rivercat at close range. The meeting decided "that future increased seaplane activity and previous reported incidents warranted a review of the present arrangements" but that "before any further action was taken, however, the reporting rivercat master's statement and that of the pilot of the seaplane involved would be examined as part of a normal investigation" and that "any apparent breach of civil aviation regulations would be reported to CASA".

12.111 The minutes of this meeting were passed to Mr Nolan. CASA officers had no knowledge of the incident referred to and so Mr Nolan resolved on 23 April 1996 to obtain a copy of the rivercat captain's report from Waterways. (RT29)

Conclusion re Regulatory Transaction 29:

There is no record of the rivercat captain's report that I have been able to find on file. However, Mr Nolan recalls that he discussed this incident with both SPS and Sydney Harbour Seaplanes and that neither company knew anything of the incident. This is confirmed by an undated file notation.

In these circumstances I accept that Mr Nolan's response to this incident was adequate and appropriate.

12.112 On 29 April 1996 Mr Nolan advised Mr Grover that the CAR 215 direction about which Mr Davies had complained to Mr Pike had been issued requiring SPS to add suitable material to its Operations Manual so that it could comply with the CAR 308 exemption from CAR 166 granted by Mr Pike. (RT27)

12.113 **Regulatory Transaction 30:** On 1 May 1996 Mr Spanton paid an unplanned survey visit on SPS to investigate a **fourteenth complaint against SPS**, following receipt of an anonymous phone call alleging that the pilot of an SPS Maule aircraft was seen refuelling from a "jerry can" which was said to have been filled from a "marine bowser". Mr Spanton noted that Mr Handel stated that refuelling was generally carried out at Palm Beach where the company had a purpose built pontoon but that, on some occasions, they did refuel from "jerries" at Cronulla with aviation fuel from the Palm Beach location. Mr Spanton took a fuel sample and ascertained that it was aviation rather than marine fuel. He noted that the aircraft had no obvious defects and no further action was taken.

Conclusion re Regulatory Transaction 30:

Subject to one qualification, Mr Spanton's response to this complaint was in my view appropriate. The qualification is that there is no indication on the file as to whether or not the containers which were being used were in fact approved containers. However, because I understand "jerry cans" can be approved, I have not pursued this issue and I am prepared to presume that Mr Spanton was satisfied that there was no breach on this point.

12.114 On 6 May 1996 Mr Nolan invited Mr Davies to attend a meeting with Mr Grover, a Waterways officer and himself to discuss floatplane operations and Mr Davies' letter to Mr Pike. (RT27)

12.115 On 8 May 1996 Mr Nolan advised Mr Grover that this meeting had been arranged for 13 May 1996, but noted that Mr Handel had claimed that Mr Pike had told him that the CAR 215 Direction was "null and void" as of the date of a prior conversation between Mr Handel and Mr Pike. He asked whether this was correct, and added an agenda and detailed questions in relation to the matters to be canvassed at the meeting. (RT27)

12.116 At about this time, Mr Nolan was liaising with Waterways, seeking their views on the areas of Gunnamatta Bay in which seaplane operations might be safely held, and obtaining detailed charts and photographs of the area. (RT27)

- 12.117 At the meeting on 13 May 1996, Mr Davies advised that SPS was not operating in accordance with the CAR 215 direction, which they again asserted had been revoked by Mr Pike. (RT27)
- 12.118 On the following day, Mr Nolan faxed to Mr Davies the questions he had previously prepared for the 13 May meeting and said "since you have stated that you are operating 'not in accordance' with the CAR 215 Direction signed by Sanjeev Grover on 17 April 1996, the safety of your operation must make your attention to the questions a matter of some urgency". (RT27)
- 12.119 On 17 May 1996 Mr Nolan attended a Waterways Authority meeting at which seaplane operations in Sydney harbour were discussed. He later advised Mr Grover that the Seaplanes Pilots Association representative at that meeting had advised that he would be speaking to the Chief Pilots of both SPS and Sydney Harbour Seaplanes to convey to them the Waterways' Authority's concerns about such operations. (RT27)
- 12.120 **Regulatory Transaction 31:** It appears that Mr Davies then contacted Mr Pike to complain about Mr Nolan and was advised to direct all SPS correspondence to RM SER Barry Diamond. In any event, on 20 May 1996 Mr Davies wrote to Mr Diamond making serious allegations of bias and impropriety against Mr Nolan because of his attempts to require detailed definition of the ALA for Gunnamatta Bay and his liaison with Waterways in this regard. He asked that Mr Nolan be immediately replaced as SPS' assigned FOI. He also claimed that SPS was not aware of any complaints against SPS' Gunnamatta Bay operations other than those made directly by Mr Nolan. Clearly, of course, this was not correct.
- 12.121 On the same day he faxed Ms O'Brien to advise that "Mr Diamond has requested that we inform you that we do not intend answering any questions or enter into any correspondence with Mr Nolan. We are awaiting Mr Diamond's return to arrange a meeting to rectify the situation. Until that time Mr John Pike has again confirmed that the Directive ... issued by Mr Grover is null & void." (RT27 and RT31)
- 12.122 Ms O'Brien copied Mr Davies' letter to Mr Burns expressing concern that one delegate (Mr Pike) may have interfered with the decision of another delegate (Mr Grover) without discussion with the other delegate. Mr Diamond arranged for this correspondence to be forwarded to Mr Pike seeking clarification of whether or not Mr Pike had in fact sought to revoke the CAR 215 Direction. There is no record I have been able to locate of any response to this request. (RT27)
- 12.123 On 22 May 1996 Mr Davies wrote (inappropriately) to the NSW Minister for Transport complaining about the CAR 215 Direction, saying that it was "totally illogical" and demonstrated "a total lack of understanding" on Mr Nolan's part, and calling for Mr Nolan's removal from CASA. Oddly, Mr Davies stated that the Direction had grounded SPS - despite the fact that they had advised CASA that they were not complying with the Direction and had been informed that it had been revoked. (RT27 and RT31)

- 12.124 On the same day, Ms O'Brien provided Mr Pike with a draft reply to that letter to the NSW Minister which recounted the facts detailed above but ended as follows:

To allow the matter to be re-examined the directive was withdrawn at approx. 12:30 p.m. on 22 May 1996. The Regional Manager, CASA Bankstown, South Pacific Seaplanes and Sydney Harbour Seaplanes ... will meet on 27 May 1996.
(RT27)

- 12.125 Mr Pike acknowledged receipt of the draft reply that same day. I have been unable to ascertain whether a final response was dispatched. (RT27)

Observation:

Despite Mr Handel's assertions, I have been unable to locate any documentary evidence that Mr Pike in fact revoked the CAR 215 Direction, and no officer I have spoken to was able to confirm that he had done so.

I have been similarly unable to ascertain whether the CAR 215 Direction was in fact revoked on 22 May 1996 as asserted in Ms O'Brien's draft letter. Certainly, if it was revoked, no copy of any instrument of revocation was placed on the relevant file. Ms O'Brien informed me that she did not do so as she considered that only the delegate who issued the Direction could have revoked it. Mr Grover, who issued the Direction, has advised me that he did not revoke his own Direction. [Having regard to the terms of section 34AA of the *Acts Interpretation Act 1901 (Cth)* and given that CASA delegations were issued to the "officer for the time being holding, occupying or performing the duties of" specified positions, including her own, I consider that she was in error in holding this view.]

- 12.126 Mr Nolan was shown the correspondence sent by SPS to Mr Langton and making allegations against himself, and annotated it on 23 May 1996 to the effect that he wished to offer no comment. (RT27 and RT31)
- 12.127 On 23 May 1996 Mr Britten of Sydney Harbour Seaplanes wrote to Ms O'Brien to advise that his company had complied with the CAR 215 Direction. He noted that he had a different view to Mr Nolan about the need for the detail in the Direction, but said that "however I understand and respect Mike Nolan's rejection of that argument." (RT27)
- 12.128 On 23, 25 and 26 May 1996 Mr Nolan attempted to contact Mr Davies to arrange the meeting planned for 27 May 1996. Eventually he was told by Mr Handel that Mr Davies would not accept calls from Mr Nolan. (RT27)

- 12.129 Nevertheless the meeting did take place as planned for that date. Mr Diamond met with Mr Grover and Mr Nolan immediately before the meeting. Mr Grover and Mr Nolan briefed Mr Diamond on the reasons underlying the issue of the CAR 215 Direction. Mr Nolan informed me that Mr Diamond said that he was not satisfied that the Direction was needed, and that he would not support Mr Grover and Mr Nolan in their desires to see it reinstated. Mr Diamond informed me that he would have been prepared to support any CAR 215 Direction that was based on objective data and would deliver a demonstrated safety improvement. (RT27)
- 12.130 The meeting was chaired by Mr Diamond and attended by Mr Davies and Mr Handel for SPS, Mr Britten of Sydney Harbour Seaplanes, Mr Grover, and Mr Nolan. Mr Nolan prepared a detailed record of the meeting the following day. Those notes record that Mr Diamond said that both operators were to report through the Bankstown office and would not be able to dictate which FOI they dealt with, but could refer problems to the DFOM and only if necessary then to him. Mr Handel was recorded as saying that "no complaints to CASA from the public had been communicated to them by CASA and that they had not received any complaints from other Authorities". Clearly this was wrong. Mr Diamond advised that, contrary to Mr Nolan's view, he thought the SPS ALA for Gunnamatta Bay was "okay". The recorded resolution from the meeting was that Mr Diamond "stated that the companies need to consider an Operations Manual review to address the operations over major built up areas where aircraft fly over land" and "Bankstown District Office will review the operation over moored vessels after consideration of the procedures given in the revised Operations Manuals". (RT27)
- 12.131 The notes also record that "Mike Nolan raised the matter of discussing the letter dated 20 May 96 from Jon Davies and Phil Handel to RFOM re Floatplane Operations - Sydney Region and the accusations made against FOI M Nolan. RFOM stated that this would be treated as a separate matter." (RT31)

Conclusion re Regulatory Transaction 27:

In my view there is an illogicality in Mr Diamond's handling of this matter.

It seems to be apparent that the CASA officers involved in this matter, including Mr Diamond, did not regard the SPS Operations Manual as adequately dealing with matters related to SPS operations. While the report of the 27 May 1996 meeting records Mr Diamond as being of the view that the ALA for Gunnamatta Bay was "okay", at the same time he required SPS and CASA officers to reconsider the Operations Manual in relation to related matters.

The inclusion of appropriate material in the Operations Manual was a pre-condition of the CAR 308 exemption. If the Operations Manual was not satisfactory, the CAR 308 exemption from CAR 166 was not operative and SPS operations would have consistently been in breach of CAR 166.

Alternatively, if the Operations Manual was satisfactory, there would seem to have been no need to require a review of the Manual on these points.

In my opinion, it was necessary for Mr Diamond to have reached a clear and unambiguous view as to what needed to be inserted in the Operations Manual.

Only then could a decision to revoke the CAR 215 Direction and allow SPS operations to proceed have been fully justified.

If Mr Diamond regarded the wording mandated by Mr Grover as unsatisfactory or inappropriate, then I consider that a process should have been put in place to replace that wording with another formulation satisfactory to CASA.

Having regard to SPS' previous history on this issue, I do not believe it was realistic to expect SPS to itself formulate a suitable Operations Manual amendment on a timely basis.

For his part, Mr Diamond informed me that, as he was not the FOI handling this matter or the DFOM at Bankstown, it was not for him to decide what should have been included in the SPS Operations Manual. However, in my view he could only reject the views of Mr Grover and Mr Nolan by effectively deciding that the SPS Operations Manual was adequate without the material that had been inserted by the CAR 215 Direction - that is, by doing exactly what he now claims it was not his job to do, and by failing to exercise CASA's lawful power under CAR 215.

Mr Diamond also informed me that Mr Nolan's report of the meeting was "was selective in ensuring that he was seen in the best possible light. I remember being slightly amused at the way he had written up the meeting".

In this regard I note the Mr Diamond took no steps to correct any misrepresentation or omission at the time. In any event, even if the report was selective, it is clear that Mr Diamond took action to resolve the illogicality to which I refer.

I mention in passing that, in the absence of any direct evidence that the CAR 215 Direction was in fact properly and lawfully revoked, the precise legal status of SPS operations from this time remains a matter of some conjecture.

12.132 Following the meeting, Mr Handel wrote to Mr Diamond in the following terms:

Thank you for your attention to our problems last Monday.

I would like to formally request the appointment of another FOI to our organisation as further dealings with Mike Nolan would seem impossible from our standpoint.

We have made accusations against Mike and feel they can be substantiated and if necessary we are prepared to do so. These accusations include bias, obstruction, lying, incompetence or bad judgment and an undermining attitude toward seaplaning in the public arena.

Mike is aware of these accusations and I am sure he, the same as Jon and myself, would be extremely uncomfortable if forced to continue our association.

While I am prepared to prove the point, I do not wish to be vindictive in this matter and hope that you have enough background and facts to make the decision on a re-appointment without the necessity of any further unpleasantness. (RT31)

- 12.133 **Regulatory Transaction 32:** On 5 June 1996 Mr Davies wrote to Ms O'Brien referring to revised changes to Sydney Harbour airspace that were to become operative on 20 June 1996, and seeking a variation to them for SPS. On 25 June 1996 he wrote again, noting that he had not received a reply and adding "please advise if your office does not intend responding to this request or if I should re-direct our request to the Regional Manager, Barry Diamond". Later that day, the Flying Operations Assistant at Bankstown replied to Mr Davies indicating that his request should have been directed to AirServices Australia and had been passed on to them.

Conclusion re Regulatory Transaction 32:

I see no cause for complaint in the handling of this matter, despite the delay in responding to Mr Davies. It is pertinent to note however that he appeared to be unaware of the division of operation responsibilities between CASA and AirServices Australia.

- 12.134 **Regulatory Transaction 33:** On 10 July 1996 Mr Davies wrote to Ms O'Brien expressing concern about aspects of airspace regulation in Sydney which he considered were a source of confusion to many operators in the area.

- 12.135 On the same day Mr Davies wrote to Ms O'Brien in the following terms:

On another matter, as you are no doubt aware we have formally requested a replacement FOI to our company.

Our request was directed to Mr Barry Diamond and we have received a reply from him advising us that he had referred the matter to you for your comment.

We also advised that we will not deal with, enter into correspondence with or discuss any matter or concern with Mr Nolan.

This leaves us in a position where, until a replacement FOI is nominated our normal communication link with CASA is somewhat severed.

I assume that we can direct any concern or request to yourself in the meantime and look forward to being advised of our new FOI. (RT31)

- 12.136 **Regulatory Transaction 34:** On 15 July 1996 Mr Handel made application for renewal of the SPS AOC which was due to expire at the end of August.

- 12.137 **Regulatory Transaction 35:** On 12 August 1996 Mr Nolan provided Ms O'Brien with a draft letter to Mr Davies to follow up on the undertaking, given at the 27 May meeting with Mr Diamond, to review the SPS Operations Manual in its application to operations over major built up areas.

12.138 On 13 August 1996 Ms O'Brien sent an amended version of that letter to Mr Davies. This letter required that amendments to the Operations Manual be provided by 26 August 1996. It also referred to his letter of 10 July and sought comment on whether or not things had improved now that pilots had had some time to get used to the changes that had generated Mr Davies' concern. There is no record of a response from Mr Davies or any follow up by Ms O'Brien. (RT 33 and RT35)

Conclusion re Regulatory Transaction 33:

Despite the delay between Mr Davies' expression of a concern about safety on 10 July 1996 and Ms O'Brien's response on 13 August 1996, the fact that Mr Davies never responded to her letter or otherwise raised the issue leads me to the conclusion that no criticism is warranted in this regard.

12.139 On 13 August 1996 Mr Handel wrote to Mr Diamond in the following terms:

I received a call from Mike Nolan yesterday which I met with surprise.

My chief Pilot Jon has since advised me of your conversation with him and that the decision has been made that a new FOI will not be appointed to our company. I must register my strong objection to this.

Our allegations of dishonesty, obstruction and incompetence still stand as written evidence from Mr John Pike that Mike lied about the issue of CAR100 exemptions effectively covering our competitor and attempting to convict us in case in point.

Mike has consistently demonstrated poor judgment and a lack of understanding of float ops in his misinterpretations of regulations and cumbersome and unnecessary interference in our companies operations.

He has a reputation that precedes him in this respect and I am not aware of any floatplane pilots or operators in Sydney who have any confidence in him. This feeling is also strongly supported by the Seaplane Pilots Association which you may wish to confirm.

We have refused to deal with Mr Nolan in any capacity and we have no reason to believe that we can work with him now.

If Mike is forced on us we will consider seeking a restraining order as we believe Aquatic Airways Pty Ltd was forced to do so some years ago.

I hope this will not be necessary however we obviously feel strongly about this issue and once again appeal to your good judgment. (RT31)

Conclusion re Regulatory Transaction 35:

The issue of this letter to follow up the undertakings given by SPS at the meeting of 27 May 1996 was clearly appropriate. As will later appear, there is no record of a direct SPS response to this letter which squarely addresses all the issues raised. While amendments to the Operations Manual were lodged by SPS from time to time, they did not meet what Mr Nolan considered to be required. He persistently sought to secure further amendments. As will later appear, at the date of this report the SPS Operations Manual is still regarded as seriously deficient on these issues.

Despite this, I do not consider that there is any criticism warranted of individual CASA officer.

12.140 On 16 August 1996 Mr Nolan e-mailed Mr Diamond (cc Ms O'Brien) as follows:

Please advise me when you will be responding to the accusations made against me by P Handle and Jon Davies of South Pacific Seaplanes in letters of complaint to you dated 20 May and 13 August 1996 of;

- * *BIAS AGAINST THEIR COMPANY BECAUSE OF AN ASSOCIATION WITH THEIR COMPETITOR,*
- * *OBSTRUCTIONIST ATTITUDE,*
- * *ATTEMPTING TO INFLUENCE THE WATERWAYS AUTHORITY,*
- * *USE OF MY POSITION TO AFFECT THEIR BUSINESS,*
- * *DISHONESTY, OBSTRUCTION AND INCOMPETENCE,*
- * *ACCUSATIONS OF RESTRAINING ORDERS BY ANOTHER COMPANY.*

I'm sure you will agree that these statements are slanderous and cannot be substantiated with factual evidence and that you will understand that I must request official support from CASA, to protect my professional reputation. I must also advise you that I have found the matter very stressful and am concerned that if it is not addressed, that it may affect my health. (RT31)

12.141 On 23 August 1996 the Office of Legal Counsel officer located in SER replied to a request by Mr Diamond for legal advice as to whether or not the allegations made against Mr Nolan were actionable under defamation law. He advised that in his view they were most likely protected by qualified privilege. He noted that Mr Diamond had advised him that he hoped to persuade Mr Davies and Mr Handel that there is no substance to their allegations and that they might be prepared to apologise to Mr Nolan. (RT31)

12.142 It is not clear quite what happened at this stage. (RT31)

- 12.143 Mr Nolan advised me that he met with Mr Diamond and Ms O'Brien at some stage to discuss the SPS allegations against him. He says that the thrust of Mr Diamond's comments to him were critical of his handling of the CASA/SPS relationship and that Ms O'Brien did not defend him in any way. He says that Mr Diamond told him that he had to change the way he went about his job and that he had to adapt his interpersonal relationships in order to find a way to work with SPS. Mr Nolan said that he regarded these comments as offensive. Mr Diamond confirmed to me that such a discussion took place, but said that he found it "incredible" that Mr Nolan had regarded his comments as offensive. For her part, Ms O'Brien informed me that she believed the meeting had been "amicable". (RT31)
- 12.144 Ms O'Brien advised me that she believed she had drafted and sent to Mr Diamond a letter for him to send to SPS advising them that their allegations against Mr Nolan had not been substantiated and that they had to put these matters behind them and resume a proper relationship with CASA and Mr Nolan. Mr Diamond advised me that he thought a letter along those lines may have been drafted for his signature, but he did not recollect signing it because he did not think the draft (which he thought might have been prepared by Mr Nolan) accurately reflected his views and style. Mr Nolan advised me that he certainly did not draft such a letter and that he had only very recently been shown such a draft by Ms O'Brien. (RT31)

Conclusion re Regulatory Transaction 31:

There is certainly no evidence that a reply to the various SPS letters making allegations against Mr Nolan was ever sent, and the probability seems to be that it was not.

The accusations made against Mr Nolan were serious, both for him personally and for the professional standing and integrity of CASA as an organisation.

I believe that Mr Nolan is entitled to feel some resentment that SPS was not directly challenged to substantiate their claims and, in the absence of such substantiation, provided with a formal rebuttal. I hold this view despite Ms O'Brien's comment that Mr Nolan had failed to avail himself of CASA's internal grievance procedure. I do not consider that officers maligned in the course of their duties should have to go to such lengths before they receive management support in the face of serious allegations of impropriety.

Even if this was done orally, it seems clear that it was not reported to Mr Nolan and that a written record of any such oral communication was not placed on file to formally record the disposition of the issue and to negate any presumption that a subsequent reader of the file might draw against Mr Nolan.

This is, in my view, inconsistent with the human resource management and leadership skills which desirably should have been displayed. Ms O'Brien says that such a function was one for Mr Diamond; Mr Diamond notes in contrast that Mr Nolan was under the direction of the DFOM rather than the RM SER. In the circumstances, however, the matter had been elevated to RM SER level, Ms O'Brien had provided a draft letter to the RM SER, and Mr Diamond did not see the matter through to finality.

- 12.145 On 25 August 1996 Mr Davies replied to Ms O'Brien's letter of 13 August 1996 and provided an Operational Memorandum and ALA sketch for Gunnamatta Bay. (RT35)
- 12.146 On 29 August 1996 Ms O'Brien renewed the SPS AOC (BK535224/1) for the period to 31 August 1997. (RT34)

Conclusion re Regulatory Transaction 34:

At this time there were a number of outstanding matters between CASA and SPS, relating to the Operations Manual, the ALA Register, and SPS' compliance with CAR 166. However, there were no Non-compliance Notices or Aircraft Survey Reports outstanding at this stage.

Having regard to the attitude taken by Mr Diamond to these outstanding issues, I do not believe there is any reason to criticise Ms O'Brien for the action she took in issuing the renewed AOC to SPS.

- 12.147 **Regulatory Transaction 36:** On 25 September 1996 Mr Davies undertook to include in the SPS Flight Manuals and Operations Manual the performance data which had finally been located in respect of Maule M7 take-off and landing distances, and to which I have already made summary reference.
- 12.148 On 11 October 1996 Mr Ian Kearsley, District Engineering Manager, wrote to Mr Davies asking him to formally submit the performance data supplement to CASA for inclusion in the SPS Flight Manuals in place of the pre-existing supplement. (RT36)

Conclusion re Regulatory Transaction 36:

As at the date of this report, this transaction is still not concluded. The performance data that was included in the most recently lodged 10th edition of the SPS Operations Manual is still incorrect.

As discussed earlier in this chapter, there was a significant delay in CASA forming a view on whether or not it could insist on the insertion of such material in an Operations Manual. Once it came to the conclusion that it did have that power and once it was able to identify suitable data, it secured an undertaking from SPS on 25 September 1995 that this material would be included. That undertaking was followed up by CASA from time to time, and repeated by SPS from time to time. Despite this, the Manual has never been properly amended.

While this transaction remains outstanding, I do not consider that there is any criticism of any individual officer that is warranted.

Certainly, CASA could have issued further and more frequent reminders to SPS; indeed, it could have threatened suspension action had the Manual not been amended within a stipulated period. But having regard to the sequence of other events that is described below, it is clear that SPS was presenting more pressing problems that required and received higher priority.

In addition, I suspect that part of the reason for this matter not being followed up with SPS more vigorously relates to the split in responsibility between the Flying Operations and Engineering Branches. In Chapter 10 of this report I have suggested that consideration be given to this element of the CASA structure.

- 12.149 **Regulatory Transaction 37:** On 14 October 1996, the Waterways Authority sent Mr Nolan a report on an incident in which a seaplane presumed to be from SPS had operated in close quarters to the STA Rivercat 'Dawn Fraser'. The Rivercat master's report stated that, on 23 June 1996:

When departing Rose Bay wharf for Double Bay a seaplane appeared to close still in flight from my starboard side with an intention of landing. The plane was on a converging course from my starboard quarter and closing both in the air and on the water. It appeared to land about 75m away and caused me concern as it closed. I altered course to starboard and to port allowing it to pass behind my vessel.

- 12.150 On 24 October 1996 Mr Nolan noted on the file that he had advised the Chief Pilots of both SPS and Sydney Harbour Seaplanes of the Waterway Authority's concerns about such matters, and that he had informed the Waterways Authority that call-signs and earlier notification would be required if CASA was to be able to take more definitive action. (RT37)

Conclusion re Regulatory Transaction 37:

In my view, Mr Nolan's response to this incident was adequate and appropriate.

- 12.151 **Regulatory Transaction 38:** On 8 November 1996 Mr Handel rang Mr Greg Madigan, Flying Operations Assistant, to advise that Mr Davies and he had had a falling out and that Mr Davies had left SPS. Mr Madigan advised Mr Handel that, without a Chief Pilot, SPS could no longer operate. Mr Handel said that he still regarded Mr Davies as the Chief Pilot because he was on a contract requiring 30 days' notice. Mr Madigan advised Mr Handel that the terms of the contract were not as relevant to CASA as whether or not SPS still had a functional Chief Pilot. Mr Handel complained about the prospect of having to cease operations on this basis, but Mr Madigan repeated the legal requirement for an operational Chief Pilot.
- 12.152 Unknown to CASA, Mr Davies had written to Mr Handel on 8 November 1996 in the following terms:

I accept your termination of my contract by telephone, advised by yourself last night at approximately 8.00pm.

I object to the enormous breach of trust and confidence that you have displayed and am unable to continue to work with you. Consequently, my role as Chief Pilot is suspended immediately and I have advised both Dean and John that they are not to operate under your AOC until a replacement Chief Pilot is appointed. I will be advising CASA formally today of the same.

You seem to believe that because our contract calls for a months notice, that I must remain Chief Pilot for a month. You fired me and I accepted. This is accepted by me and as contracted you are to honour our contract with one months pay.

If it is of assistance to you I will remain Chief Pilot for 30 days to allow you to appoint a replacement. If you elect to adopt this option, it is on the following basis:

- *As a result of the distrust you have created, you pay pro-rata for work completed this week.*
- *You pay in advance \$500 per week for 4 weeks whereby I will remain Chief Pilot only. I will cease all administrative and marketing activities and will not fly for the company. I will only liaise with company pilots and oversee flying operations on a daily basis to satisfy my obligations as Chief Pilot as required under CAO 82.0.*

If you do not advise of your choice by 1200 today I will assume that you elect not to accept this offer and will advise CASA of your decision. (RT38)

12.153 On 11 November 1996 Ms O'Brien faxed to Mr Handel seeking confirmation that Mr Davies had resigned and reiterating Mr Madigan's advice that, without a Chief Pilot, SPS operations must cease. Mr Handel replied on the same date that the matter had been resolved and that Mr Davies remained as Chief Pilot. (RT38)

12.154 **Regulatory Transaction 39:** On the same day SAWI Mr Len Spanton conducted a routine audit of the log books of VH-AGX. The only irregularity he found was that Mr Davies had certified an item of maintenance when he was apparently not authorised to do so. Mr Spanton wrote to Mr Davies on the same date asking by what authority Mr Davies had made this certification.

Conclusion re Regulatory Transaction 39:

I see no basis for criticism on this transaction although I note that, in the time available to me, I have not contacted Mr Spanton to ascertain whether he followed up to ensure a response to his letter.

12.155 On 18 November 1996, Mr Davies wrote to Mr and Mrs Handel in the following terms:

As discussed today, I have been offered an opportunity to pursue other interests and give 30 days notice to the completion of our contract.

I have enjoyed the two and a half years we have worked together, with all the frustrations, challenges and successes and wish you both well in continuing the growth of South Pacific.

I assure you of my full commitment this last month and will endeavour to put the necessary staff in place prior to my departure on the 18th of December.

Thank you for the experiences! (RT38)

- 12.156 By letter dated 18 November 1996 but apparently not faxed until 20 November 1996, Mr Handel advised Ms O'Brien that Mr Davies would cease duties on 18 December 1996, sought a date for a Chief Pilot interview, and asked whether a pilot without float experience could be appointed. (RT38)
- 12.157 Ms O'Brien replied on 22 November 1996, advising that it was not acceptable to nominate a person with no float experience for the position of Chief Pilot. (RT38)
- 12.158 **Regulatory Transaction 40:** On 27 November 1996 Mr Davies wrote to Ms O'Brien to confirm his resignation from 18 December 1996 and to nominate Mr Henry Gorman as the new Chief Pilot. Mr Madigan also provided a list of the items with which Mr Gorman would have to be familiar in order to be approved as Chief Pilot.
- 12.159 Mr Madigan faxed Mr Handel on 29 November 1996 advising an interview for Mr Gorman on 12 December and seeking a formal nomination by Mr Handel of Mr Gorman. Mr Handel provided that nomination on 2 December 1996. (RT40)
- 12.160 **Regulatory Transaction 41:** On 5 December 1996 a CASA officer received a telephone call from a person who was concerned about seaplane operations at Gunnamatta Bay, alleging in this **fifteenth complaint against SPS** that a plane had flown "much too close to properties". The complainant's name and phone number were passed to Mr Nolan. Mr Nolan subsequently rang the complainant and asked her to provide details of her concern, including the time and date of the alleged incident and any identifying features of the aircraft. The complainant subsequently did not provide any details.

Conclusion re Regulatory Transaction 41:

In the absence of detail that would allow the matter to be pursued further, I accept that Mr Nolan did all that could reasonably be expected of him in response to this complaint.

- 12.161 On 12 December 1996 Mr Stewart Jones, SPS FOI in Mr Nolan's absence on leave, conducted Mr Gorman's Chief Pilot interview. Mr Jones' record of that interview includes the following:

With regard to monitoring of Flight and Duty times, Henry replied "to be honest with you haven't (sic) been through that but will be spending a day in the office on Wednesday with Jon." He was aware that he did require a system of recording flight and duty times but took some time in finding it in the Operations Manual.

It was discussed with Henry that it was evident that he did not have a good understanding of the Companies Operations and legislation compliance requirements, to which Henry agreed. It was agreed that some preparation for the interview was evident but a better understanding of the operations manual and appropriate legislation was required. (RT40)

- 12.162 Later that day Mr Handel forwarded to Mr Jones a resume for Mr David Kuruvita who was apparently to be nominated as Senior Pilot if Mr Gorman was later appointed as Chief Pilot. (RT40)

- 12.163 Mr Jones and Mr Davies discussed the situation in relation to a replacement Chief Pilot on 13 December 1996, and the outstanding requirement for performance data to be included in the SPS Operations Manual (which had been raised with Mr Jones by Ms O'Brien). Mr Davies later faxed Mr Jones in the following terms:

Thanks for your time just now with regard to my resignation as Chief Pilot and our intention to employ Henry Gorman as my replacement.

I understand your disappointment with Henry's lack of knowledge in some areas, however I had spent many hours with him for this reason.

My intention was to do 8-10 hours flying with Henry on Monday and Tuesday into all of our ALA's and to spend a full day thoroughly going over responsibilities and duties on the ground.

I have considered your suggestion of me remaining Chief Pilot over the next two weeks and feel that this would place me in a compromising legal position. For me to be 2000km away from the office and to be responsible for decisions made without my knowledge, would be not in my or the public's interest.

I would be happy to be constantly contactable and available to provide assistance in a Senior Pilots capacity but without the legal obligation of Chief Pilot.

Could you please advise if it would be acceptable to CASA if Henry was made Acting Chief Pilot from Monday, with David Kuruvita as Senior Pilot and myself retained as assistance until say, 4-5 January whereby Henry is up for review by yourself.

With regard to Maule M7 P Charts, I have obtained copies of the Approved Float Supplement for VH JLU which were signed by Mr Ian Kearsley in 1990 and satisfy CASA's requirements of a minimum ALA length. We will arrange to have this information incorporated into our manuals for VH AGX, VH AEL and VH LRZ plus VH BOG which is being launched and placed on the register today. (RT36 and RT40)

- 12.164 On the same date Ms O'Brien faxed Mr Handel in the following terms:

Following Mr Henry Gorman's interview for the position as described above, I hereby advise that Mr Gorman was unsuccessful on this occasion, failing to meet the required standard on the day.

Mr Gorman's knowledge of the operation and the companies Operations Manual was found to be lacking in several areas, company loading policy, fuel policy, requirements of monitoring the company system of flight and duty times, CAO 20.11 proficiency requirements and Dangerous Goods. It was agreed with Mr Gorman that some preparation for the interview was evident but a better understanding of the company Operations Manual and appropriate legislation was required.

Further it was revealed that Mr Gorman only had 100 hours of floatplane experience gained between March 1989 and August 1989 with only 10 hours of recent experience.

The responsibilities of the Chief Pilot go beyond the technical and manipulative skills as a pilot. The Chief Pilot must also demonstrate a high degree of responsibility, maturity and integrity, coupled with the ability to impart certain knowledge, understanding and complying the applicable Civil Aviation Act, Regulations and Orders.

In these circumstances I am unable to approve Mr Gorman as the Chief Pilot for Aquatic Air Pty Ltd t/a South Pacific Seaplanes, however after a suitable period when Mr Gorman has had sufficient time to address the abovementioned areas we would be pleased to conduct another interview. (RT40)

12.165 On 17 December 1996 Mr Davies faxed Ms O'Brien in the following terms:

I wish to advise that I have delayed my resignation as Chief Pilot by one day until 2000 hours on Thursday, 19 December 1996 to allow Henry Gorman sufficient time to attend his Chief Pilot's interview.

I shall remain Chief Pilot for Aquatic Air Pty Ltd until that time, or until further notice as advised. (RT38 and RT40)

12.166 Mr Jones conducted Mr Gorman's second Chief Pilot interview on 19 December 1996 and advised Ms O'Brien as follows:

I did a second interview of Henry Gorman today, 19 December 1996.

We revisited all the deficiencies of the last interview and he was able to answer the question satisfactorily. Other areas were also covered to a satisfactory standard. Henry has completed the dangerous goods training to meet the requirements.

The issue of his flying experience (floatplane) is still to be addressed. Verbally the company is going to nominate David Kuruvita to act in a Senior Pilot capacity. I requested that the company put a proposal to CASA spelling out the responsibilities of the position which would be included in the Operations manual. Further we would need to meet with Henry and David to discuss the arrangement.

I said Phil Handel should discuss the issue with you.

Therefore I recommend that Henry be made the Chief Pilot subject to a satisfactory resolution of the floatplane experience requirements which could be addressed as discussed. (RT40)

Conclusion re Regulatory Transaction 38:

At this stage, CASA was aware that Mr Davies' resignation as Chief Pilot would be effective at the close of operations on 19 December 1996 and that Mr Gorman was not yet qualified to be appointed as Chief Pilot. That is, CASA was aware that SPS would have to cease operations at close of business 19 December 1996 pending approval of a new Chief Pilot. There is nothing on the file to indicate that this necessity was specifically drawn to SPS attention on 19 December 1996.

However, both Mr Madigan and Ms O'Brien had specifically alerted Mr Handel to SPS' inability to operate without a Chief Pilot in their earlier communications with him.

In my view, they were entitled to rely on Mr Handel ceasing operations at close of business on 19 December 1996, and I do not believe there is any reasonable basis for criticism for Ms O'Brien or others not taking further action to remind Mr Handel of his obligations under the law.

12.167 On 20 December 1996, consistent with Mr Jones' note of 19 December 1996, Mr Gorman faxed Ms O'Brien to nominate Mr Kuruvita as Senior Pilot and provided an Operations Manual supplement to set out the duties of the position of Senior Pilot, and a Certificate of Competency for himself signed by Mr Davies. (RT40)

12.168 On 23 December 1996, Ms O'Brien approved Mr Gorman as SPS Chief Pilot. (RT40)

Conclusion re Regulatory Transaction 40:

This appointment of Mr Gorman as Chief Pilot, with Mr Kuruvita as Senior Pilot, warrants the same comment as was made previously in relation to Mr Davies' own appointment as Chief Pilot.

That is, the expedient of appointing an inexperienced (or only minimally experienced) person as Chief Pilot with another person as Senior Pilot (and without any requirement for the continued employment of a suitably qualified person in that second role being made a condition of either the SPS AOC or Mr Gorman's approval as Chief Pilot) appears to me to be not unlawful or clearly wrong but equally seems to be a practice that warrants reconsideration by CASA with a view to providing a clear statement of policy to its officers.

While there had clearly been problems during Mr Davies' period as Chief Pilot, I do not consider that the nature of those problems was such that CASA for that reason alone should not have used the Chief Pilot/Senior Pilot expedient in its future dealings with SPS.

12.169 On 24 December 1996, unknown to CASA, Mr Davies wrote to Mr Handel in the following terms:

Henry Gorman advised me that you operated on Friday the 20th and assumed that I was still Chief Pilot. You know very well that this was not the case and Mary O'Brien will also be made aware.

Your company operated illegally and compromised the security of each of the pilots flying and in involving me, exposed me to unnecessary possible risk.

I object to your giving no regard to the Regulations, your employees and to the risk you exposed the travelling public to in voiding any insurance in the case of an accident.

I understand that there have been several instances where pilots have lost control of the aircraft over the last few days, indicating that there has been a severe lowering of standards since my departure. (RT38)

- 12.170 **Regulatory Transaction 42:** On 26 December 1996 SPS aircraft VH-LRZ capsized while taxiing at Rose bay in strong and gusty conditions. It is not clear when CASA became aware of this incident, but it certainly knew of it by 2 January 1997 at the latest. On that date the **sixteenth complaint against SPS** was made when the Commodore of the Royal Motor Yacht Club of NSW wrote to Ms O'Brien to provide a detailed report on the incident. On the same day, Ms O'Brien wrote to the Commodore thanking him for his letter and asking whether he would be agreeable to his letter being copied to SPS for comment.

Observation:

There is no record of the Commodore replying to this letter, or of Ms O'Brien following up with him. Nor is there any record of the Commodore's letter actually being provided to SPS as foreshadowed.

Nevertheless, I do not believe there is any significant basis for criticism on this score. It is clear from subsequent records that the incident was investigated, and there is no reason to presume that SPS's explanation of it was not assessed by reference to the assertions contained in the Commodore's report.

- 12.171 On 6 January 1997 Mr Gorman faxed a letter addressed to Ms O'Brien to FOI Mr Eric Demarco, to which was attached an unsigned statement by the SPS pilot, John Galwey, who had been in command of VH-LRZ at the time of the Boxing Day incident. It appears that his explanation was as follows: he had been taxiing for take-off from Rose Bay when he had decided that the conditions had become unsafe; while returning back to the SPS base his mobile phone rang; when he leant forward to pick it up, he knocked the throttle and depressed it; as the aircraft was between gusts it started to turn to the left; before he could take corrective action, another gust hit the aircraft and caused it to roll tail first and become submerged. (RT42)
- 12.172 Mr Gorman advised Ms O'Brien that the pilot had been suspended from operations following the accident and had been interviewed by himself and Mr Kuruvita. He added that, following a check flight by Mr Kuruvita, the pilot might resume duties on a part-time basis under supervision. He also advised that all pilots had been briefed not to use mobile

phones on board, other than in an emergency and that directions on mobile phone use were already in the Operations Manual. (RT42)

- 12.173 On 8 January 1997 Mr Nolan advised Mr Kearsley that the performance data requested by Mr Kearsley on 11 October 1996 had still not been received and asked him to follow up with SPS. (RT36)
- 12.174 On 9 January 1997 the Bureau of Meteorology sent Mr Demarco a detailed report on the weather information in the Rose Bay area on 26 December 1996. (RT42)
- 12.175 On 10 January 1997 Mr Demarco visited SPS and discussed the Boxing Day accident with Mr Kuruvita and Mr Gorman. He noted on the file that he thought the pilot's explanation was "feasible", but that he didn't think "he should have been there (Rose Bay) at that time and his decision making was optimistic and didn't display enough caution at the time, given the weather conditions".

Observation:

It has been suggested by some of those to whom I have spoken that Mr Galwey's explanation of the circumstances surrounding the capsizing of VH-LRZ was incredible for technical reasons related to the probable behaviour of a floatplane in the circumstances he described. At the same time, others have not regarded the explanation as so unlikely as to be incredible.

Having regard to my lack of technical qualification, I draw no conclusion on this point.

- 12.176 **Regulatory Transaction 43:** At that meeting on 10 January 1997 Mr Demarco issued the **third and fourth Non-compliance Notices** to SPS.
- 12.177 The first of these (103775) was for "not maintaining a current record of flight crew duty times to ensure compliance with CAO 48.1". On 24 January 1997 Mr Gorman advised as above and that time sheets "will be checked for compliance and if not received the pilot will be rostered off." On the same day, Mr Demarco noted on the file that he considered this corrective action to be satisfactory. (RT43)
- 12.178 The second NCN (103776) was to the effect that the pilot had exceeded the limit of 90 hours of duty time in each fortnight, contrary to CAO 48.1. As to this notice, on 24 January 1997 Mr Gorman advised that the pilot had brought his duty and flight time sheets up to date, and that all SPS pilots had been issued a memorandum directing that time sheets were to be completed each evening and submitted to the office at the beginning of a rostered-on period or on Monday in the case of casual pilots. On the same day, Mr Demarco noted on the file that he considered this corrective action to be satisfactory. (RT43)

Conclusion re Regulatory Transaction 42:

In my opinion, the investigation of and response to the Boxing Day accident was adequate, particularly having regard to Mr Demarco's view that Mr Galwey's explanation of the accident was feasible. It seems reasonable to regard this accident as arising from a

combination of pilot error and bad weather, and there is nothing on the file to indicate that the pilot should not have been endorsed to fly floatplanes.

In forming this judgment, I note that Mr Nolan subsequently counselled Mr Gorman on 24 February 1997 in relation to his Chief Pilot responsibilities to ensure that operations were properly approved by him and not left solely to individual pilot assessment of the prevailing weather.

As noted above, no criticism should flow from the fact that Ms O'Brien did not follow up with the Commodore of the Royal Motor Yacht Club of NSW as indicated in her reply to his letter of complaint.

- 12.179 On 23 January 1997 Mr Kearsley sought Ms O'Brien's and Mr Nolan's comment on a draft letter to Mr Gorman seeking the previously requested performance data. This letter was apparently sent about 28 January 1997 and on the file copy Mr Nolan noted that a copy was given to Mr Gorman by hand on 24 February 1997. (RT36)
- 12.180 **Regulatory Transaction 44:** On 1 February 1997 Mr Kuruvita faxed Ms O'Brien to seek approval for him to endorse other pilots on float alighting gear. On the following day, Mr Nolan wrote to Mr Gorman seeking confirmation that Mr Kuruvita was still engaged as Senior Pilot and performing the duties set out in the Operations Manual. Mr Nolan corresponded with the Office of Legal Counsel to ascertain whether SPS would require an AOC that extended to flying training in order to undertake the type of conversion training they were contemplating. Mr Gorman confirmed on 3 February 1997 that Mr Kuruvita was still employed as Chief Pilot and still undertaking the Operations Manual duties. On 13 February 1997 Ms O'Brien noted on file that she had spoken to Mr Kuruvita and that he was to send further information including a syllabus and training data, but was not in a hurry.

Conclusion re Regulatory Transaction 44:

There is no record of this application being dealt with to finality in its own right. As is apparent, the agreement between CASA and SPS at this stage was that the application would not proceed until Mr Kuruvita had come back with further information.

As will later appear, a later application was lodged and dealt with and thus I believe there is no basis for criticism in relation to the handling of this particular application.

12.181 **Regulatory Transaction 45:** Mr Davies appears to have written to "CAIR - BASI" on 4 January 1997 making a number of allegations against SPS. On 11 January 1997 he also appears to have approached BASI again, noting that no reply had been received to his 4 January letter and adding a further allegation. There is some doubt as to the precise timing of these events, as the second document appears to bear a date of 10 or 16 December 1996 in what seems to be Mr Davies' handwriting, but it also bears a mechanical BASI date stamp of 9 January 1997.

12.182 Whatever the correct dates, it seems that these materials, constituting the **seventeenth complaint against SPS** were not received by CASA until 18 February 1997 when BASI forwarded a CAIR report. There is no reason apparent on CASA files for the apparent delay between receipt of Mr Davies' correspondence by BASI and its provision of the CAIR report to CASA, and this forms no part of my terms of reference. (RT45)

12.183 The substance of Mr Davies' complaints were as follows:

I must stress that this report is not as a result of any bad feelings or "sour grapes" as is often the case, but purely as result of many incidents over the last months which I strongly objected to. ...

The following information is provided from first hand knowledge and at the request of three existing pilots employed by South Pacific Seaplanes who do not wish to lose their jobs. Also by Maule Aircraft (Australia) who have requested that I bring to the attention some matters that may directly affect Maule Seaplane sales should further incidents occur.

- 1 *VH AEL, VH AGX and VH LRZ all have been certified with an increased gross of 2750 lbs and have the correct Flight Manuals, undercarriage and floats but do not have the correct attach lugs (where the undercarriage struts attach to the airframe). This was brought to my attention by Maule Aircraft and I subsequently brought this to the attention of the operator Mr Phil Handel on several occasions. I stressed the importance of rectifying this to avoid an undercarriage failure and subsequently voiding of insurance, together with all the other matters of negligence in allowing such a situation. He chose on all occasions to ignore the problem.*
- 2 *Two of the three aircraft were not properly fitted with serviceable fire extinguishers even up to the day I left the company, December 18 1996.*
- 3 *VH LRZ's ASI is not correct and has not been recalibrated for floats, hence the indicated speeds are 10-20 kts higher than the float speeds, including Vne and stall speeds. Again my request to have this rectified was met with complacency.*
- 4 *VH LRZ's fuel calibration and compass deviation cards are missing, and while this is only a small matter, his reluctance to fix it again aggravated my position.*
- 5 *The current level of experience of the Chief Pilot, Mr Henry Gorman and that of the line pilots is minimal and dangerous. While I also started on floats with little experience, I adopted a very conservative attitude which*

avoided any incident or accident in my time. The current Chief Pilot is demonstrating on a daily basis, a severe lack of control over the operation and together with the pressure of the operator to make money, his judgment has proved wrong in several instances. There have been at least two occasions where an aircraft lost control on landing in Rose Bay over the last two weeks, to the point where one company pilot called me to express his concerns and state that it's only a matter of time until something happens.

The next day, the pilot who called me sank an aircraft in Rose Bay (VH LRZ) by trying to turn the aircraft in a 35 knot northerly wind. His explanation that he bumped the throttle does not hold true. I was on the Harbour that day and seeing the strong northerlies knew (or hoped) that no ops would occur until I saw a Maule fly over. I also knew that it would not be long before an incident was to happen. I advised some friends of this and within the day, it happened. The Chief Pilot's inexperience allowed operations in conditions that were far in excess of that suitable for a Maule floatplane and in doing so allowed a 22 year old pilot to exercise his youthfulness in not knowing when to call it a day. Fortunately he had just dropped off three passengers and no one was drowned.

I feel so strongly about the breaches of regs and safety that is occurring with the company that I called Ms Mary O'Brien (District Flying Ops Manager - BK) to advise her of the imminent dangers. Since then, I am not aware of any surveillance having been conducted and fear that it may be too late.

One pilot has been fired, one has resigned after only four weeks and the Chief Pilot has also expressed his concerns in not being able to control operations with the pressures and actions of Phil Handel.

I hope that suitable action is taken to rectify the above problems, without causing financial disadvantage and more importantly, before lives are lost.

and in the covering note he also stated that:

Additionally, to this report, South Pacific Seaplanes operated without a Chief Pilot 19/12/96-22/12/96. (RT45)

12.184 Those complaints were summarised by BASI as follows:

This report is not as a result of any bad feelings or "sour grapes", but purely a result of many incidents which I strongly object to.

- 1 *VH-AEL, VH-AGX and VH-LRZ all have been certified with an increased gross of 2750 lbs and have the correct Flight Manuals, gear and floats but do not have the correct attach lugs (where the gear struts attach to the airframe).*
- 2 *Two of the three aircraft were not properly fitted with serviceable fire extinguishers.*

- 3 *VH-LRZ's ASI is not correct and has not been recalibrated for floats, hence the indicated speeds are 10-20 knots higher than the float speeds, including Vne and stall speeds.*
- 4 *VH-LRZ's fuel calibration and compass deviation cards are missing.*
- 5 *The current level of experience of the Chief Pilot and that of the line pilots is minimal and dangerous. The Chief Pilot is demonstrating on a daily basis a severe lack of control over the operation and together with the pressure of the operator to make money, his judgment has proved wrong in several instances. There have been at least two occasions where an aircraft lost control on landing in Rose Bay.*

VH-LRZ sank in Rose Bay while the pilot was trying to turn the aircraft in a 35 kt northerly wind. His explanation that he bumped the throttle does not hold true. The Chief Pilot's inexperience allowed operations in conditions that were far in excess of that suitable for a Maule floatplane and in doing so allowed a 22 year old pilot to exercise his youthfulness in not knowing when to call it a day. Fortunately he had just dropped off three passengers and no one was drowned.

The District Flying Operations manager of CASA at Bankstown has been notified of these concerns. I am not aware of any surveillance having been conducted and fear that it may be too late.

Recently, one pilot has been fired, one resigned after only four weeks and the Chief Pilot has also expressed his concern in not being able to control operations with the pressures and actions of Phil Handel.

I hope that suitable action is taken to rectify the above problems without causing financial disadvantage and more importantly, before lives are lost.

CAIR Note

The reporter claims that a serious accident is not far off. According to the reporter, the problems stem from pressure from Mr Handel which prevent the Chief Pilot from having an adequate say in operations. Consequently, inexperienced pilots are operating in conditions beyond their capabilities. The reporter claimed that all the aircraft have damaged leading edges from hitting walls, that stall warning sensors have been flattened against the leading edges and that navigation and strobe lights are broken. The reporter quoted another incident in which the pilot bumped a wharf, panicked and applied full power.

The reporter also claimed that each aircraft is overweight by 150 kgs and that Maule is concerned about the wrong gear attachment lugs and the operation in general. (RT45)

- 12.185 As will be apparent, the CAIR advice from BASI to CASA did not include the assertion that SPS had operated without a Chief Pilot in December 1996. It is not apparent why this is the case. In any event, the salient point for present purposes is that it seems that CASA was not aware of this allegation at this time and thus could not have been expected to pursue the issue at this time. As will later appear, CASA became aware of the allegation at a later stage and did pursue the matter at that time. (RT45)
- 12.186 The CAIR report was forwarded to Mr Diamond with a request that he prepare a response for Mr Pike's signature. Mr Diamond in turn forwarded the report to Ms O'Brien. Ms O'Brien advised Mr Diamond on 19 February 1997 that Mr Nolan would be visiting SPS the following day to investigate Mr Davies' claims and that Mr Spanton was investigating the airworthiness aspects. (RT45)
- 12.187 Mr Spanton rang Mr Handel on 19 February 1997 and asked for the Log Books for the 3 SPS aircraft (VH-AGX, VH-AEL and VH-LRZ) which were delivered that day. He inspected VH-AEL at the SPS maintenance organisation later that day, took photographs of various parts and noted that inspection "did not reveal any defects in the areas described in CAIR". The same afternoon he inspected VH-LRZ at another maintenance facility where it was undergoing repairs following the Boxing Day sinking, and found things generally as per specification although understandably not everything could be inspected because of the state of repairs. (RT45)
- 12.188 On 20 February 1997 Mr Spanton visited SPS with Mr Nolan and conducted a Ramp Check on VH-AGX. He noted that "nil defects were noted in the subject areas mentioned in the CAIR". He noted, however, that a number of minor defects were found, some of which were entered in the Maintenance Release, and he issued the **second Aircraft Survey Report** (75839 - code C) against an SPS aircraft. (RT45)
- 12.189 This Aircraft Survey Report was rated as a "Code C" - that is, it stated that the noted item was "in contravention of requirements imposed under Civil Aviation Regulations" and required SPS to "assess and rectify as necessary". It did not require immediate grounding of the aircraft (Code A). Nor was it a formal direction for assessment and rectification under CAR 38(1(1) (Code B). This Aircraft Survey Report cited that the left hand trailing edge of the horizontal stabiliser fabric was adrift. (RT45)
- 12.190 Mr Spanton also noted that a **third Aircraft Survey Report** (75840 - code B) was to be issued "to address several minor defects". This was in fact forwarded to SPS on 24 February 1997. It listed 3 Code B items - right hand aileron bellcrank access panel missing, right hand wing fibreglass tip damage; and both main planes top rear spar "smoking rivets". (RT45)
- 12.191 Mr Spanton also wrote a report on these actions on 21 February 1997 in which he noted that all three aircraft had inappropriate Flight Manual Supplements in relation to performance data and that Mr Kearsley had written to SPS on at least two occasions without response. (RT45 and RT36)
- 12.192 For his part, Mr Nolan issued the **fifth, sixth, seventh and eighth Non-compliance Notices** to be issued to SPS. These recorded that:

- (a) 104081 - VH-AGX was operated on 20 February 1997 from Cronulla to Palm Beach on a passenger charter without an emergency checklist available to the pilot. The aircraft was under the command of the Chief Pilot. It appears that this Non-compliance Notice was never sought to be acquitted by Mr Gorman. However, following action by a subsequent Chief Pilot, Mr David Kuruvita, on 4 July 1997, the Notice was finally acquitted on 11 August 1997 when Mr Nolan noted that emergency checklists were then available in company aircraft and that the corrective action was satisfactory;
- (b) 104084 - VH-AGX has been operated since 8 February 1997 contrary to CAO 20.18 para 10.2 - the flight altitude indicator and directional gyro were not operational because of the failure of the aircraft vacuum pump on 8 February 1997. Neither of these instruments were placarded "unserviceable". Mr Gorman responded on 10 March 1997 that the flight altitude indicator and directional gyro were placarded on 21 February 1997, and that the vacuum pump was replaced on 26 February and all pilots had been briefed that should such an unserviceability occur in any of the instruments they were to be placarded immediately. This Non-compliance Notice was finally acquitted on 13 August 1997 when Mr Nolan noted that all pilots have been briefed that unserviceable instruments are to be placarded. The u/c vacuum pump was replaced on 26/2/97" and that the corrective action was satisfactory;
- (c) 104085 - operation of VH-AGX on 20 February 1997 contrary to CAR - unsecured items were carried in the cabin - ie 2 bags (pilot items/books), can of furniture polish, during passenger flight - pilot in charge H. Gorman. Mr Gorman responded on 10 March 1997 to advise that the loose items were removed and stowed in a waterproof bag in the floats and that the carriage of baggage is discouraged but where carried is to be secured by seatbelts in the rear of the compartment and company pilots had all been briefed on this requirement. This Non-compliance Notice was finally acquitted on 13 August 1997 when Mr Nolan noted that "company pilots have been briefed on the requirement to secure items carried in the cabin with a seatbelt"; and
- (d) 104086 - operations contrary to CAO 20.16.1.Para 7 - the passenger manifest/revenue summary sheets used do not meet the requirements of the CAO 20.16.1.Para 7 and the company Operations Manual A4.1/Appendix 1. Mr Gorman responded to this Non-compliance Notice on 10 March 1997 when he advised that SPS was in the process of reviewing documentation and the passenger manifest and revenue summary sheets would be amended. This Non-compliance Notice was finally acquitted on 13 August 1997 when Mr Nolan noted that "the company documentation (pax manifest) is being reviewed to meet the requirements of CAO 20.16 Para 7 and A4.1 of the Operations Manual". (RT45)

12.193 Mr Nolan added various notations to his Surveillance Control Document, which were later expanded upon in a written report prepared by Mr Peter Cannell, another FOI who accompanied him on his visit to SPS. That report read as follows:

On Monday 24 February 1997 I accompanied Mr Mike Nolan to the offices of South Pacific Seaplanes located at Cronulla to conduct an inspection of certain documents and records. We arrived at the company's office at 1100 and observed the arrival of the Chief Pilot Mr Henry Gorman by Maule Floatplane at about 1115.

I observed the final approach of the aircraft from the North in to Gunnamatta Bay from the company's office noting some manoeuvring before the landing in a 5-10 knot crosswind. The ALA appeared to me to be confined between an elevated built-up area to the north and rows of moored marine craft to the east, shoreline to the west and other marine traffic underway in the immediate vicinity. This explained the requirement for left and right banking of the seaplane during final approach indicative also of obstacles on the landing flight path. I also observed the seaplane taxiing to the mooring point near which the engine was shut down as the craft moved under its own momentum towards a mooring linesman who man-handled a wing and turned the machine towards its final mooring as the pilot scrambled out in shorts and shirt with shoes and socks removed and no life jacket. Whilst I saw no dangerous occurrence, I commented to my colleague on the apparent vulnerability of the seaplane, pilot, and mooring linesman to a number of obvious hazards.

Our meeting with the Chief Pilot South Pacific Seaplanes Mr Henry Gorman, was necessarily conducted in an adjoining snack bar because the South Pacific Seaplane offices were fully extended. The following paragraphs detail the subjects addressed in order.

Waterways Complaint

Based on a complaint (made to Waterways in July 1996 by the Captain of a Rivercat Ferry operating in Sydney Harbour) concerning the operation of an unidentified Seaplane in close proximity to a ferry, Mr Gorman was asked to remind Seaplane pilots to keep their aircraft well clear of itinerant ferries in Sydney Harbour during takeoff and landing.

Performance Charts

Mr Nolan produced a copy of a letter, CASA letter dated 28 January 1997 addressed to South Pacific Seaplanes (Attention Chief Pilot) signed by Mr Ian Kearsley District Engineering Manager Bankstown District Office CASA, requiring the company to apply Performance Charts to all water takeoffs and landings. When asked, Mr Gorman stated that he had not received the letter. Gorman photocopied the letter and stated that he understood the content and undertook to telephone the originator to discuss the matter.

Flight Authorisation

Mr Nolan referred Mr Gorman to a Seaplane Accident at Rose Bay on 26 December 1996 when a Seaplane sank during gusty conditions whilst under way. Mr Nolan stated to Gorman that the South Pacific Seaplanes Operations Manual Article A6.1 states that the Chief Pilot is to authorise all flights. Nolan asked Gorman "Did you authorise that flight?" Gorman replied that he did so from Palm Beach, and that he "used a verbal" (authorisation) contrary to the SPS Operations Manual which states that flight authorisation is to be effected by company documentation. Gorman stated that it is impractical to use a written company document for authorisation. Mr Nolan responded recommending to Gorman that he amend the Operations Manual to reflect the method of flight authorisation and reminded Gorman that the Operations Manual was a binding company document.

Weather

Mr Nolan asked a number of questions of Mr Gorman in respect to weather, relevant to an incident at Rose Bay on 26 December 1996.

Q. Did you study the weather that day?

A. Yes, I had the satellite picture. We heard it (squall line) come through Nowra, it was pretty fierce. He shouldn't have flown that day - it is up to the pilot. I decided on the previous day that it was too bad and a comment was passed to me then by Mrs Hanly (sic) ... that it was unprofessional. She had passengers waiting at Rose Bay ... Xmas presents, but I decided that the weather was too bad and we didn't fly there.

Q. Summarising, - What you do in practice is different to what is stated in your Operations Manual, is that correct?

A. Yes.

Q. Your method of authorisation is wrong. Does your Operations Manual require verbal authorisation or does it state that authorisation of flights is to be given via company documentation?

A. Yes, I can see that.

Mr Nolan then stated "your Ops Manual is yours - You say that! If it is wrong - change it! ... You must abide with it though and every flight must be properly authorised ... Your Ops Manual must cover all of your procedures.

Q. Do you understand that?

A. Yes.

Mr Nolan then stated, "It is fair to say Henry that had lives been lost on Boxing Day, that a court would have blamed you ... over the authorisation discrepancy.

I then read aloud the contents of Appendix 1 to both CAO 82.0 and 82.1 in relation to Chief Pilot responsibilities under the regulations and directions of AOC holders in respect of abidance with regulations and company Operations Manual.

Mr Nolan then questioned Mr Gorman on the procedures he was going to include or correct in the company Ops Manual to ensure that pilots do not exceed the limits of their authorisation and do not operate Seaplanes in unsuitable conditions or beyond the capability of the aircraft. A long discussion eventuated of the actual conditions experienced at Rose Bay on Boxing Day, which it was agreed "were clearly unsuitable". Mr Gorman conceded that Rose Bay was much worse than Berowra Waters, where conditions deteriorated very quickly as well. "He was lucky he dropped his passengers off first ... The Maule is much more vulnerable empty than it is full though ... I'm glad it wasn't me ... It was really gusty, not constant (wind velocity) - but there is nothing in the Flight Manual that says we can't operate in 90 kts of wind or even 50 kts." Mr Nolan replied "That's where we must nail it down, in the Ops Manual and Flight Authorisation." Mr Gorman agreed that company procedures must be amended. Some discussion eventuated in the use of Maule Performance Charts.

Ramp Check

Discussion then centred on a recent Ramp Check and the determination of AUW. Gorman revealed that the company possessed no weighing scales at any of their ports and indicated a reluctance by his Managing Director to incur expense on such items. Reference was made to CAAP (Determination of passenger weights) and Article A4.3 of the company Ops Manual. Mr Nolan stated that it was his belief that the aircraft that was ramp checked was by his calculations 1 kilogram above MAUW and that it may have been more through good luck than sound calculation. In response to one of Mr Nolan's questions Mr Gorman stated that he knew the aircraft (VH-AGX) was close to MAUW on the particular occasion, "We went back and found in the Flight Manual that the basic weight was 833kg ... it gives two weights 843 and 843kg, I'll find it later on ... that gave us an extra 10kg!"

Mr Nolan reminded Mr Gorman - you had life jackets, passengers, 100 litres of fuel and other bits and pieces. I calculated that the AUW was 1 kg over. You should have used scales. Mr Gorman was shown a relevant page of the company Ops Manual. Mr Gorman responded, "I agree Mike, I don't want to have these hassles with CASA, but in this case the Operating Weight was in fact 833kg."

Mr Nolan then asked Gorman:

- Q. Do you agree that the Operations Manual states that scales must be used?
- A. Yes.
- Q. Was the aircraft close to MAUW that day?

A. Yes.

Q. With reference to Ops Manual Article A4.3, what steps will you take to ensure that your aircraft are not operated above MAUW?

A. I will take steps to ensure aircraft do not operate above MAUW.

Q. Without scales at Cronulla, Rose Bay and Palm Beach, then this section of the Ops Manual cannot be complied with, Is this correct?

A. Yes.

Passenger Manifest

Mr Nolan stated that the Passenger Manifest relating to VH-AGX when ramp checked did not comply with the company Ops Manual article A4.1 Mr Gorman agreed.

When challenged in respect to the storage of manifests and load sheets for a 6 month period Mr Gorman stated that these documents were retained and displayed a file containing such documents. Comment was made concerning the upgrading of company forms displayed in the company Operations Manual. Gorman undertook to upgrade the forms.

Non Compliance Notices

Some discussion centred on NCN 104081 Emergency Checklist and on NCN 104084 Unplacarded Instruments.

Discussion

Discussion on other subjects included the applicability of the Helicopter Underwater Escape Training (HUET) for Seaplane operators, life jacket stowage under seats (helicopter passengers wear life jackets over water). (RT45)

12.194 Mr Spanton updated his earlier report on airworthiness issues on 26 February 1997 by adding technical detail on his findings. (RT45)

12.195 Mr Cannell prepared a report on 4 March 1997 consequent upon his earlier report of the visit to SPS on 24 February 1997, in which he canvassed the provisions of the CAOs in relation to the wearing of life jackets on seaplanes. He recommended that CAO 20.11.5.1.8 should be amended:

...to require amphibious aircraft, helicopter, all seaplane and flying boat occupants to don life jackets for all over water operations below 2000 feet including taxiing, takeoff, landing and mooring on water. Attendant personnel should also wear life support equipment and protective clothing. (RT45)

Observation:

There is no indication on file of what consideration may have been given to this recommendation. However, I have not followed up on this as I regard it as outside my terms of reference.

- 12.196 On 13 March 1997 Mr Demarco wrote to Mr Gorman advising that he could not acquit the Non-compliance Notices which had been issued on 10 January 1997 because the flight and duty time sheets which Mr Gorman had provided indicated that one SPS pilot had flown in excess of 100 hours in the last 30 days "in direct contravention of" CAO 48.1.1.15. He added that "this would also imply that your supervision of your company flight and duty time sheets needs serious attention". He noted Mr Gorman's responsibility as Chief Pilot under CAO 82.0. He asked Mr Gorman to advise what action he was taking to rectify the problem and ensure future compliance. (RT43)

Conclusion re Regulatory Transaction 43:

I consider that this action by Mr Demarco was a proper response to the Non-compliance Notices he had issued and that his action in drawing Mr Gorman's attention to his responsibilities was timely and appropriate.

- 12.197 **Regulatory Transaction 46:** Also on 13 March 1997 Mr Nolan issued an **ninth Non-compliance Notice** (104087) which related to:

operations contrary to CAR 235(9) - VH-AGX was operated on 20 February 1997 from Cronulla to Palm Beach on a passenger charter with the aircraft loaded such that the centre of gravity was outside the rear of the envelope. The weights used were supplied by the Chief Pilot ...

- 12.198 Mr Gorman responded on 18 March 1997 to advise that all SPS pilots had been advised to stay within the Maule 7 weight and balance limitations and that the three SPS aircraft were being reconfigured to improve the weight and balance, specifically by moving the battery forward of the firewall, changing the starter motor to a lighter model, and reducing fuel reserves. (RT46)

Conclusion re Regulatory Transaction 46:

Mr Nolan's action in issuing this Non-compliance Notice was proper. The matter to which it related was clearly serious. Had there been no subsequent action following Mr Gorman's response to the Non-compliance Notice, I would have been critical of the lack of further action such as formal counselling. However, as will become apparent, further action was taken as a result of the ongoing investigation of the matters raised in Mr Davies' CAIR report and thus I make no criticism on this point.

12.199 **Regulatory Transaction 47:** Also on 13 March 1997 Mr Terry Wilson, General Manager, Flying Operations Branch, Canberra, sent an e-mail to Mr Diamond (cc Mr Pike) in the following terms:

I received a telephone call this morning from the BASI manager Sydney (Barry Sargeant) concerning an ASIR submitted by Mr Jon Davies, former Chief Pilot (CP) of South Pacific Seaplanes (SPS). Barry Sargeant had telephoned Mr Davies regarding the ASIR and had found out the following.

Mr Davies alleged that after he stepped down as CP of SPS on 19 December 1997, the operator continued to operate without a CP for four days. Mr Davies said that he had written to DFOM Bankstown informing her of his resignation as CP, before he had stepped down.

Mr Davies indicated that when he found out that the SPS was operating without a CP, he had telephoned DFOM Bankstown to inform her of this. According to Davies, DFOM Bankstown told him that SPS had said that Davies had agreed to stay on for a while. Davies told her that that was impossible as he was then in Queensland.

Davies' complaint is that DFOM Bankstown appeared to be reluctant to do anything about the lack of the CP and that she had made a statement to the effect that some "leeway" had to be given at times. He also wants to know ... "what action, if any was taken and if none, why not?"

Barry Sargeant said he referred this to me as he believes that, if true, it indicates that little has been learnt from the lessons of Monarch/Seaview, etc. Moreover he was worried that if it was raised with your office it would be passed to DFOM Bankstown to handle and nothing would happen.

I have discussed this with John Pike. Over to you blue leader!

Observation:

As mentioned above, it seems that this phone call is the first occasion on which CASA became aware of Mr Davies' allegation that SPS had operated without a Chief Pilot following his resignation on 19 December 1996.

Ms O'Brien informed me that she knew of no reason why Mr Davies would allege a lack of preparedness on her part to act against SPS in respect of their alleged operations without a Chief Pilot, and she denied that such was the case.

12.200 **Regulatory Transaction 48:** On 18 March 1997 Mr Nolan issued a **tenth Non-compliance Notice** to SPS (104088). This stated that the operation of VH-AGX on 20 February 1997 was also contrary to CAO 20.11 Para 5.1.5 because "life jackets were not stowed such that they were readily accessible to each occupant and within easy reach of their seats". Mr Gorman responded on the same day to advise that life jackets had now been placed in the back of the pilot's and passengers' seats and were in easy reach of the occupants, and advised that all pilots had been briefed accordingly.

Conclusion re Regulatory Transaction 48:

I make the same comment in relation to this transaction as was made above in relation to the Regulatory Transaction 46 - that is, had there been no further action, I would have thought that mere acceptance of Mr Gorman's advice would have an inadequate response to a clearly serious matter. However, further action later followed in the context of the investigation of the CAIR report.

12.201 Also on 18 March 1997 Mr Gorman faxed Mr Nolan a revision to the SPS Operations Manual in relation to the procedure for Chief Pilot approval of flights, designed to address matters that had been discussed at the previous meeting and set out in Mr Cannell's report quoted above. Mr Nolan made a note that this amendment was inadequate to accommodate his concerns. (RT45)

12.202 On 19 March 1997 Mr Bob Vale, District Airworthiness Manager at Bankstown North, completed a report on the investigations that had been undertaken in response to airworthiness aspects of the CAIR report that had been made by Mr Davies. His conclusions were that:

- (a) the rear float attachment "lugs" were correct, contrary to Mr Davies' assertion;
- (b) all three aircraft had serviceable fire extinguishers, contrary to Mr Davies' assertion that two did not;
- (c) the airspeed indicator on VH-LRZ was not properly calibrated for a floatplane but was not as inaccurate as asserted by Mr Davies;
- (d) Mr Davies' assertion that the fuel calibration and compass deviation cards of VH-LRZ were missing could not be conclusively checked because of the Boxing Day accident; and
- (e) there was no sign of damage to the leading edges of wings consistent with hitting walls as asserted by Mr Davies;
- (f) navigation and strobe lights were not broken on any aircraft as asserted by Mr Davies ;
- (g) stall warning sensor vanes on two aircraft were not flattened against the wing leading edges as asserted by Mr Davies;
- (h) the stall warning sensor vanes on VH-LRZ was flattened against the wing leading edges as asserted by Mr Davies, but it could not be ascertained whether or not this had occurred in the Boxing day accident. (RT45)

12.203 On the same day, Mr Burns sent an e-mail to Ms O'Brien (cc Mr Pike, Mr Wilson and others) in the following terms:

I would be grateful if you would investigate the allegation re South Pacific Seaplanes and comment on the statements attributed to yourself as contained in Terry's EM. If 'South Pacific' did operate without a CP then I suggest the Company should be asked to 'Show Cause' why its AOC should not be varied etc.

Further, you may wish to tie together this matter and the issues raised in the recent CAIR report forwarded to your office.

I have voiced my concerns to both Terry and John regarding the totally unsubstantiated and mischief statements made by Barry Sargeant ie 'if true, it indicates little has been learnt from the lessons of Monarch/Seaview, etc. Moreover he was worried that if it was raised with your office it would be passed to the DFOM Bankstown to handle and nothing would happen'. Comments like this do little for the professional reputation and standing of Barry Sargeant. I asked you to ignore the inference and reaffirm my total support and confidence in your integrity and management style. (RT47)

Observation:

There is no indication on the file to indicate that Ms O'Brien ever responded to Mr Burns' invitation to comment on the aspersions cast against her and attributed to Mr Davies in the report of the phone call received from BASI quoted above.

12.204 Apparently also on 19 March 1997, Mr Nolan wrote an analysis of the events surrounding Mr Davies' resignation and concluded SPS did not have a Chief Pilot for the three days 20-22 December 1996 and that VH-LRZ flew a total of 13 hours during that period. He noted that "amplification needs to be obtained by thorough perusal of all company documents to establish prima facie evidence". (RT47)

12.205 **Regulatory Transaction 49:** Also on 19 March 1997 Mr Davies wrote to Mr Pike, Deputy Director Operations in Canberra, lodging the **eighteenth complaint against SPS** in the following terms:

You may remember me from our discussions and correspondence last year with regard to seaplane regulations and exemptions while I was Chief Pilot for South Pacific Seaplanes, Sydney.

I resigned from South Pacific Seaplanes in December last year as a result of frustrations in being asked, and sometimes forced to accept non-compliance and because my style of operations management was so obviously in contrast to that of the operator.

I now own and operate Air Whitsunday Seaplanes (QLD) but still have a few unresolved concerns with South Pacific which I have reported to Bankstown District Office and CAIR to no avail.

Since my departure from South Pacific Seaplanes three company pilots have called me a total of five times to complain about standards and non-compliance. Fearful of losing their jobs, they were obviously reluctant to voice their concerns locally. Things such as: flying overweight and out of balance, being forced to fly in conditions exceeding the capabilities of the Maule, exceeding flight and duty times every week and the lack of experience and control exercised by the Chief Pilot.

In addition, the Chief Pilot, Henry Gorman has also called me four times to complain of the same things! He has advised me that "he has no control over the operator", is forced to fly overweight and is generally concerned about his ability to cope. I have afforded him as much assistance as I am able but feel that another incident is only weeks away.

The day that South Pacific flipped the Maule in Rose Bay I was on the harbour and witnessed the 35 knt plus northerly winds. Knowing that no ops would be planned in that weather I was most surprised to see that Maule flying overhead. Needless to say that I was not surprised that within three hours of my telling my friends "watch, within hours there's going to be a Maule upside down in Rose Bay", there was.

On hearing the news from Sydney Harbour Seaplanes, I immediately called South Pacific to offer assistance in retrieval and media statements. On asking Jeanette of South Pacific why they were flying in 35knt winds, her reply was "rubbish, it's fine here". (This was on the same day as a Sydney-Harbour Yacht being de-masted South of Wollongong in winds in excess of 50knts!

On calling the Chief Pilot, he advised: "Phil just says Get out there and fly".

On calling the pilot, John Galwey, he said "I told them it was no good, but".

There have since been instances where landings have been so bad that Sydney Harbour Seaplanes have been poised in their safety boat to rescue if need be, an instance of the Maule prop being hit at full power against a dock pole at Palm Beach and more recently, an NCN being issued for flying overweight and out of balance. Again the Chief Pilot called me to ask what to do.

I am most concerned that I have taken the time to report these items and nothing appears to have been done about it. I have followed the correct reporting sequences and have even called Mary O'Brien personally at the request of John Galwey (company pilot) to advise here of the situation. I have made two reports to CAIR who advise "all they can do is pass it on to Bankstown District Office". This from the same gentleman who advises there are over thirty odd complaints about the same office. This doesn't instil confidence.

To date, after one ramp check by Mike Nolan and an NCN for a vac pump being u/s, my other reports of undercarriage failure, illegal undercarriage attach lugs, operating for four days with no Chief Pilot together with other more minor breaches have gone uninvestigated.

On my hearing of South Pacific operating without a Chief Pilot for four days, worse still, that Phil Handel called Mary O'Brien and lied to her advising that I had agreed to be Chief Pilot for that period, I immediately called Mary to be met with "Phil had called me to advise that you had agreed to remain Chief Pilot". I advised Mary that this was not agreed to by me and that my letter to her clearly stated the date and time that I would remain Chief Pilot until. It also stated that I would advise her of any change in that if there was a query, that she should call me directly to avoid such a serious breach.

The exposure to risk had the sinking incident happened during those four days, and had the pilot just picked up three passengers, not dropped them off, was immense and one serious enough for me not to allow it to go unnoticed.

Even the issue of illegal undercarriage structures was reported to me by Maule Aircraft Australia who asked me to make a report to avoid them having to. They know that since one strut has failed on VH-AEL that a full failure is not far off, bad for business and naturally will void all insurance.

I have spoken with AOPA who are very interested in running a story of "Selective Compliance" but I would prefer that the appropriate bodies deal with this first.

I have attached all reports for your information and look forward to knowing that some action will be instigated by yourself as you have done in the past where I have asked for your assistance.

Please be well assured that this letter is as a direct result of my very strong feelings about operators taking advantage of pilots and Chief Pilots and about the safety of my friends flying for South Pacific to whose funerals I do not wish to be called to.

12.206 With this letter he enclosed some of the documentary material he had provided to BASI but which had not been passed to CASA by it, in accordance with its practice of depersonalising CAIR reports. (RT49)

12.207 Mr Pike replied to Mr Davies on 24 March 1997, advising that he would be asking Mr Diamond to convene a full investigation of the matters Mr Davies had raised. Mr Diamond's office asked that this correspondence be brought to Ms O'Brien's attention for a draft response to be prepared by 7 April 1997. (RT49)

12.208 It appears that Mr Davies may have written to Mr Pike again on 24 March 1997 because, on 9 April 1997, Mr Pike wrote to Mr Davies acknowledging such a letter and advising that:

the matters you have raised have been investigated. Appropriate action with respect to the company is now being taken. (RT49)

12.209 However, I have been unable to locate this letter of 24 March 1997 from Mr Davies. (RT49)

12.210 **Regulatory Transaction 50:** On 27 March 1997 it seems that Mr Nolan and Mr Demarco conducted a ramp Check on VH-AGX and later faxed Mr Gorman to ask that he provide copies of passenger manifests and the aircraft running log for all flights on that day. This material was provided by Mr Gorman on 28 March 1997. Mr Nolan's Surveillance Control Document of 27 March indicates that an **eleventh Non-compliance Notice** (104089) was issued, that the aircraft had operated above maximum take-off weight, that the names of passengers were not included on the passenger manifest but only the name of the person who booked the flight, that passenger weights were estimated by the pilot rather than scales, and that life jackets were not easily available to a row 1 passenger because they were stowed under the rear seat. This situation in relation to life jackets is to be contrasted with Mr Gorman's advice of 20 February 1997 in response to the earlier Non-compliance Notice related to this same issue.

12.211 On 3 April 1997 Mr Davies wrote again to Mr Pike, lodging the **nineteenth complaint against SPS** and saying:

I have just received two more calls from Henry Gorman (Chief Pilot - South Pacific) who I had a long conversation with and who shares my concerns.

Henry is poised to resign over the issues raised in my past correspondence to avoid being implicated. He has offered to go to any length to ensure that Phi Handel does not continue to operate.

He has just stated "Phil is not a fit and proper person to hold an AOC" and that "it is a Seaview waiting to happen".

Henry does not wish to compromise his future flying career but has also stated that he "fully supports my actions".

I feel, given the facts and circumstances that immediate and urgent action be taken to suspend South Pacific Seaplanes until an investigation can take place.

Henry asked me what will happen after they (South Pacific) operated for four days with no Chief Pilot. He also stated that "of course, Phil was aware of the risks, but needed the revenue".

I advised Henry that operating without a Chief Pilot was the number one no no and normally calls for immediate suspension of operations. Henry advised that "that probably won't happen as Barry Diamond is a mate of Phil's."

I do not wish to dramatise the situation, but if CASA does not act on these many indications, the press no doubt will. AOPA have already asked if they may run the story. I feel that it is too important an issue to simply beat up some good reading when lives are at stake.

Over to you. (RT49)

12.212 As will be noted, Mr Davies advised in both this and his earlier letter that he was receiving phone calls from Mr Gorman who was reportedly expressing concerns about the continued operations of SPS under Mr Handel's direction. Both Mr Diamond and Mr Nolan separately advised me that at about the same time they were each receiving phone calls from Mr Gorman out of hours at their private homes. As I understand it, in these conversations Mr Gorman discussed at some length his concern that Mr Handel's commercial imperatives and pressures were preventing Mr Gorman from running SPS as he believed it should be run from a safety perspective. Each of Mr Diamond and Mr Nolan advised me that they informed Mr Gorman that, if this was the case, his choice was to either insist that Mr Handel allow him to run SPS with a proper focus on safety, or to resign and thereby cause SPS to be grounded, at least temporarily. I understand that this advice was given by each of them on a number of occasions. (RT49)

Observation:

There is no record of these conversations on any CASA file that I have examined. The fact that these phone calls were made to Mr Diamond and Mr Nolan at their private homes did not mean that they were private conversations. They were clearly work related and should ideally have been documented and placed on file.

Mr Nolan informed me that he did not make a file note of the conversations with him because he considered that there was no new information conveyed in them. He says, however, that he did report the calls to Ms O'Brien.

On balance I do not make any criticism based on the failure to record these conversations on file.

The nature of the advice given to Mr Gorman seems to me to have been correct, at least in the first instance. Had Mr Gorman continued to make these calls and had nothing else transpired, I believe it would have been incumbent at some stage for Mr Nolan to recommend or Mr Diamond of his own motion to take action against either Mr Gorman or SPS or both. In my opinion, it would be unacceptable for a CASA officer to continue to receive phone calls from a Chief Pilot who expressed safety concerns about the operator for whom he worked but who was not himself prepared to act to bring matters to a head.

12.213 On 4 April 1997 Mr Nolan issued an **eleventh Non-compliance Notice** (104092) to SPS, based on his finding that SPS had operated without a Chief Pilot in the period 20-22 December 1996. (RT49)

- 12.214 On the same day Mr Nolan sent Ms O'Brien a detailed report on the surveillance of SPS conducted as a result of Mr Davies' claims. He advised that he had prepared a show cause letter in relation to cancellation or suspension of the SPS AOC in consultation with Mr Demarco and Office of Legal Counsel. He said that officers had agreed on the need to counsel the pilots in command of the flights that had resulted in the issue of the various Non-compliance Notices referred to above. He said that, notwithstanding any possible action against the AOC, he had initiated additional unplanned surveillance of SPS which he detailed. In relation to specific issues raised in the CAIR report he noted that Mr Gorman had stated that Mr Handel did exert a strong commercial pressure on him, but that he had the situation under control and that the only known loss of control of an SPS aircraft, contrary to Mr Davies' assertion, was the Boxing Day incident. (RT45, RT47 and RT49)
- 12.215 **Regulatory Transaction 50:** On 6 April 1997 Mr Diamond wrote to Mr Handel a show cause letter in relation to the suspension or cancellation of the SPS AOC. The stated grounds for this **second show cause letter in relation to SPS** were operating without a Chief Pilot in the period 20-22 December 1996, operating VH-AGX with a load distributed outside the permissible centre of gravity limitations on 20 February 1997, inaccessibility of life jackets on the same aircraft on the same date, failure to list passengers' names on the manifest for the same flight on the same date, failure to comply with the SPS Operations Manual in relation to passenger manifests on that aircraft on that date, and operating the same aircraft in excess of its maximum take-off weight on 27 March 1997.

Conclusion re Regulatory Transactions 45, 47 and 49:

In my opinion the investigation of Mr Davies' claims was thoroughly undertaken and the decision to issue a show cause letter against SPS was clearly justified.

I consider that a show cause letter to the Chief Pilot could equally have been justified, but I do not wish to found any criticism on the fact that this additional action was not taken. I would not have regarded action against the Chief Pilot but not against SPS to have been appropriate, having regard to the comments Mr Gorman was reported as making to Mr Davies, Mr Diamond and Mr Nolan in relation to Mr Handel's influence in the day to day safety standards of SPS.

- 12.216 Mr Handel was given 28 days to show cause why the SPS AOC should not be suspended or cancelled, and was invited to attend an optional Informal Conference if he so wished. (RT50)
- 12.217 **Regulatory Transaction 51:** On 11 April 1997 Ms O'Brien e-mailed Mr Mike Shannon, SER Investigator, saying that he was already investigating allegations about SPS operations and recently identified breaches of regulations and asking him to expand his investigation to include the time that Mr Davies was Chief Pilot. (I note in passing that neither Ms O'Brien, Mr Shannon or the files assist me in ascertaining what it was that Mr Shannon was said to be already investigating at this time - some days later, he investigated a complaint from a Waterways Authority officer, as referred to below, but so far as I can ascertain he had no other matter current in relation to SPS.)
- 12.218 On 15 April 1997, Mr Pike wrote to Mr Davies as follows:

Thank you for your further letter of 3 April concerning the operations of South Pacific Seaplanes.

As I indicated in my previous response, the information you provided led to an investigation and appropriate action has been taken with respect to the company.

You should be aware that there were issues arising from the investigation which related to the time when you were the Chief Pilot of South Pacific Seaplanes and which will require clarification.

Our investigation officers will contact you in due course to discuss these matters.(RT49)

- 12.219 Mr Shannon subsequently wrote to Mr Davies directing him to produce his Personal Pilots Log Book, which Mr Davies later did. However, this investigation did not proceed further than this. (RT50)
- 12.220 Mr Shannon informed me that Mr Diamond countermanded Ms O'Brien's direction for further investigation, saying as he recalled it that he was not prepared to devote resources to following up issues that Mr Davies was not willing to bring to attention when he was Chief Pilot and responsible for SPS compliance with applicable regulatory requirements. (RT51)
- 12.221 Mr Diamond is adamant in his denial that he informed Mr Shannon to cease this investigation. He says that his view was that, if it could have been established that Mr Davies had breached any relevant provision during his period as Chief Pilot, he would have wanted to have initiated relevant action against Mr Davies. (RT51)

Conclusion re Regulatory Transaction 51:

I have been unable to ascertain the true state of affairs in relation to this matter. There is a conflict of evidence as between Mr Shannon and Mr Diamond, and there is no document that allows clarification of the matter. It may simply be that there was a misunderstanding by Mr Shannon in relation to Mr Diamond's opinion as to the desirability of investigating matters that were now some months old. In the circumstances, I have decided that there is no adequate basis on which to criticise either Mr Shannon or Mr Diamond on this point.

Ms O'Brien informed me that she had not heard it suggested that Mr Diamond had countermanded her request to Mr Shannon. In these circumstances, I would therefore have expected her to follow up if she did not receive a report of the investigation she had sought to initiate in due course. I note that there is no indication on the file that Ms O'Brien ever followed up her request to Mr Shannon to ascertain the outcome of the investigation. While she informed me that she did telephone Mr Shannon on at least two occasions and that they discussed the geographic and resource difficulties involved, by her own account she appears to have taken no further step to ascertain what conclusion the investigation had reached.

- 12.222 **Regulatory Transaction 52:** On 17 April 1997 a **twentieth complaint against SPS** operations was received by CASA, from an officer of the Waterways Authority. A meeting was held with the officer, but he was unable to positively identify the aircraft which he

claimed was operating after dark. It was decided that no further action should be taken unless other information came to hand.

Conclusion re Regulatory Transaction 52:

SPS was confined to daylight operations but in the absence of any identification of the aircraft which the Waterways officer had seen, there was no reason to presume that the offending aircraft was operated by SPS. In the circumstances I consider this a reasonable response to this complaint.

12.223 On 22 April 1997 Mr Handel's response to the show cause letter was received by CASA. It largely sought to paint Mr Davies' allegations as evidence of vindictiveness on his part, but it did seek to generally address issues raised in the various Non-compliance Notices and Aircraft Survey Reports that had been issued. (RT50)

12.224 On 23 April 1997 Mr Gorman wrote to Mr Handel in the following terms:

It is with great concern that I write to you regarding the Notice of Proposed Action to Suspend or Cancel the AOC of Aquatic Air Pty Limited (South Pacific Seaplanes). I understand that the option for an Informal conference with CASA has not been accepted. This has only heightened my concern for the future of our operation.

I believe that to communicate and co-operate with CASA regarding the serious facts and circumstances outlined in the notice could only be beneficial to our operation. I reject your "us and them approach" to dealings with CASA, as I have found that my dealings with Mike Nolan, Eric Demarco and others to be helpful in ensuring that our operations comply with the Acts, Regulations and Orders. The operations without a Chief Pilot between the 20th Dec and the 22nd Dec 1996 preceded my official start with South Pacific, however the circumstances surrounding this breach are of ongoing concern to me. I hope that the ambiguity was not deliberately used to continue operating over these two days.

In any case if there was some doubt over John Davies ongoing approval as Chief Pilot this should have been clarified to eliminate any ambiguity. Essentially this breakdown in effective communications between yourself, John Davies and CASA leads me to the area of my greatest concern, and that is, the ineffective management structures which allowed this to occur.

I feel that we have made progress in several areas including MTOW of Aircraft, loading and C of G limitations and duty times, however these changes have had to be enforced rather than willingly done by yourself. As pilots we continue to be placed under pressure derived from your commercial imperative, to carry fuel loads and passenger weights which are not always feasible given the scheduling. The Maule 7 simply does not have the capacity to carry four average PAX with minimum fuel and meet the tight scheduling commitments demanded by Janet. When these demands are not achieved it is the pilots who are constantly harassed rather than the suitability of the aircraft or support facilities being questioned. This cannot continue. I suggest that if this were to continue a tragedy occurring is only a matter of time.

I do not seek to blame any individual for this operational deficiency I only desire that appropriately qualified people conduct scheduling and liaising with pilots to assist in safe and efficient operations. Janet and Belinda clearly need comprehensive retraining to be suitable in this role.

I believe that to address the notice to Suspend or Cancel the AOC action must be taken in real terms, immediately. The tight scheduling and long hours of operations leaves little time for preventative maintenance. The current approach seems to be fix it when it breaks rather than running to a comprehensive integrated maintenance program. Flying with permitted unserviceabilities only adds to the stress loads on the pilots. These are recurring concerns voiced by current and past pilots which seems to have fallen on deaf ears.

At two meetings you have simply scoffed when these issues are raised. We are told that this is the type of operation we provide and that by not turning a blind eye we demonstrate our disregard for the commercial imperatives driving South Pacific Seaplanes.

This approach is simply not acceptable if we are to make a case regarding point 3 in the show cause notice "that the holder of an AOC must at all times maintain an appropriate organisation, with a sufficient number of appropriately qualified personnel and a sound and effective management structure, having regard to the nature of the operations covered by the AOC." I would suggest that to threaten your Chief Pilot with the sack and abruptly hang up on him after he sought operational advice from his predecessor, is hardly sound and effective management.

Similarly the animosity and abuse I received for suspending operations on the day after the Boxing Day accident was absurdly counterproductive. You are right in saying that an "us and them" relationship has developed. The pilots and I have only sought to operate legally, safely and efficiently whilst your financial imperative has worked in complete opposition to these objectives.

*I am genuinely committed to seeing this company meet all of its legal and operational obligations into the future. Despite your obvious dismay at my objections to your directives in the past, I am sure that you recognise the importance of openness, honesty and integrity when dealing with such matters.
(RT50)*

12.225 This document was provided to CASA on 7 May 1997.

12.226 On 28 April 1997 Mr Handel faxed Mr Diamond seeking an Informal Conference. This was arranged for 9 May 1997 and Ms O'Brien was asked by Mr Diamond's office to attend, along with the local Office of Legal Counsel representative. (RT50)

12.227 **Regulatory Transaction 53:** On 6 May 1997 Mr Gorman wrote to Mr Nolan advising that he had given 28 days' notice to SPS and would cease duty as Chief Pilot on 2 June 1997. He enclosed a copy of his letter of resignation which read as follows:

I hereby give the required 28 days notice of termination of my employment as Chief Pilot for Aquatic Air Pty Limited trading as South Pacific Seaplanes.

You are aware of my ongoing concerns involving the operation outlined in my previous operational memorandum, dated 23 April 1997. You have not replied to this letter in writing and you have verbally informed me that you reject all my concerns.

In my efforts to comply with the Acts, Regulations and Orders I have only encountered resistance from the operators of South Pacific.

I have serious and continuing concerns about inadequate aircraft maintenance, aircraft loading, unsafe scheduling demands and the standard of management.

12.228 Mr Nolan faxed Mr Handel to seek confirmation of Mr Gorman's resignation on 7 May 1997. (RT53)

12.229 On 7 May 1997 Mr Gorman faxed Ms O'Brien in the following terms:

I have sent CASA notice of my termination of employment as Chief Pilot for Aquatic Air PTY Limited trading as South Pacific Seaplanes. I have given the company 28 days notice from the 5th of May. I advise CASA that I cease my responsibilities as Chief Pilot under CAO 82 at 1730 EST on the 2nd of June 1997.

I undertake to ensure that I and the company complys (sic) with my responsibilities under CAO 82 in this period. Dispite (sic) my deep reservations expressed in the Operational Memorandum South Pacific Seaplanes will remain compliant with the Regulations Acts and Orders over this period.

Please also find a copy of the operational memorandum referred to in the letter of resignation. (RT53)

12.230 On the same day Mr Nolan e-mailed Mr Diamond (cc Ms O'Brien), quoting from Mr Gorman's letter to Mr Handel and recommending that Mr Diamond take immediate action by suspending the SPS AOC and requiring that Mr Handel address these issues at the Informal Conference scheduled for 9 May 1997. He also recommended that the pilots of the 20 February 1997 and 27 March 1997 flights which had led to the issue of Non-compliance Notices be formally counselled. Finally he provided comment on Mr Handel's response to the show cause letter, seeking to refute as appropriate the various points made by Mr Handel. (RT50 and RT53)

12.231 Later that day he sent a further e-mail to Mr Diamond and Ms O'Brien saying that, after discussion with them, he accepted their logic that to suspend the AOC would not be appropriate as the show cause process was already in place. (RT50 and RT53)

Observation:

Mr Nolan's view that Mr Gorman's reasons for resigning warranted immediate action were, in my opinion, reasonable. At the same time, however, the Informal Conference was scheduled for two days later and I consider that Mr Diamond's and Ms O'Brien's view that it was appropriate to wait for that meeting before taking further action was reasonable.

Accordingly, there is no criticism I would make on this point.

- 12.232 There is no file record of the Informal Conference held on 9 May 1997. Nor is it clear precisely who was in attendance but it seems to have been Mr Handel, Mr Gorman, Mr Diamond, Ms O'Brien and the then Office of Legal Counsel representative in SER. Mr Nolan was not in attendance. He informed me that he had wanted to attend but was told that his presence was not required.

Observation:

Despite Mr Diamond's advice to me that the Office of Legal Counsel representative would have made a record of this meeting, there is no evidence of this on any file I have been able to locate. My understanding from the present Office of Legal Counsel representative in SER is that, while it is usual to keep handwritten notes of Informal Conferences, it is not the usual practice to keep these on file or to have a more formal record typed.

Recommendation:

I **recommend** that the Informal Conference Procedures document issued by the Office of Legal Counsel be specifically amended to require the production of a proper, typed record of matters dealt with at an Informal Conference and a statement of the reasons for decisions taken as a consequence.

- 12.233 On 12 May 1997 SAWI Mr McFarlane wrote a file note concerning the allegations made by Mr Gorman in relation to aircraft maintenance. He had spoken to the SPS maintenance organisation, which was concerned about the cumulative effects of operations in a harsh environment on the SPS aircraft. The maintenance organisation reported that it had voiced its concerns to SPS and had indicated that it would cease maintenance on SPS aircraft. He recommended a joint Flying Operations/Airworthiness surveillance on SPS. (RT53)

Observation

I can find no record that such joint surveillance was undertaken but, as will later appear, that may be due to the fact that, soon after this time, Ms O'Brien reportedly instructed that no non-programmed surveillance should be undertaken in relation to SPS.

Nevertheless, Mr McFarlane did later pursue with the SPS maintenance organisation his concerns about the maintenance program for SPS aircraft.

12.234 On 12 May 1997 Mr Diamond wrote to Mr Handel in the following terms:

In a notice sent to you on 6 April 1997 you were asked to show cause why the Air Operator's Certificate issued to Aquatic Air Pty Limited trading as South Pacific Seaplanes should not be suspended or cancelled on the basis of the facts and circumstances set out in that notice.

You responded to that notice by letter dated 20 April 1997 addressing the matters raised in the notice and on 9 May 1997 you attended an informal conference at the Authority's South East Region Regional Office. At that informal conference the matters which gave rise to the 'show cause' were discussed and I emphasised to you the responsibilities under the Civil Aviation Act 1988 of managers of companies holding Air Operator's Certificates under that Act. In particular I referred you to the requirement in section 28BF of the Act for the holder of an AOC to maintain at all times an appropriate organisation with a sound and effective management structure. I also referred to the requirement in section 28BE of the Act for each director of a company holding an AOC to take all reasonable steps to ensure that every activity covered by the AOC, and everything done in connection with such an activity, is done with a reasonable degree of care and diligence.

As a result of the informal conference I would expect to see an improvement in the performance of your company with regard to its compliance with its obligations under the Civil Aviation Act and Regulations. I would also expect to see improved communications with the Bankstown District Office of the Authority with regard to the safety aspects of your operations. Having regard to the outcome of the informal conference, the Authority will not take any action to suspend or cancel your Air Operator's Certificate at this time.

I would like to thank you for your co-operation in attending the informal conference. (RT50 and RT53)

Conclusion re Regulatory Transactions 50 and 53:

This letter contains no reasons whatsoever for the decision to not proceed with the foreshadowed cancellation or suspension of the SPS AOC, and there is no document on file that provides reasons for that decision. Moreover, the letter contains no assessment of, or criticism for, the matters that had been regarded as sufficient to warrant the issue of the show cause letter. At best the letter simply mentions some matters discussed at the meeting.

Neither Mr Diamond nor Ms O'Brien advised me of any particular undertakings given by SPS at that meeting that might have involved any clear commitment to avoid a repetition of past problems or to address outstanding issues.

Ms O'Brien was unable to enlighten me in any substantive way on what transpired at the meeting.

For his part Mr Diamond informed me that he believed that his action was appropriate and that, in his experience, it was usually sufficient to remind an operator of its obligations under the law in a context such as that of an Informal Conference in order to generate a marked improvement in subsequent behaviour. Mr Diamond also informed me that, in his recollection, he left Mr Handel in no doubt that suspension or cancellation action would be swiftly taken if there was any subsequent default by SPS in the coming period.

As at the date of this Conference, SPS had been the subject of what I understand to be an abnormally high number of complaints (20), Aircraft Survey Reports (3) and Non-compliance Notices (10). Some of these were for serious defaults. Some related to repeated defaults. Certain of these matters remained outstanding.

Significant undertakings to amend the SPS Operations Manual and to attend to other matters had not been honoured. It is relevant to note that Mr Diamond informed me that he found it quite incredible that SPS had ever been granted its first AOC given the absence of performance data and similar material from its Operations Manual. Despite this, it is apparent that he did not use this occasion to insist that SPS amend its Operations Manual in any way.

There were serious allegations which had been made about the management of the company and which had not been properly investigated - for example, by interviewing Mr Gorman or other company pilots. These allegations were made by the former Chief Pilot and the current Chief Pilot. While Mr Davies' allegations might be discounted to some extent having regard to the apparently acrimonious personal circumstances between he and Mr Handel at the time of Mr Davies' resignation, Mr Gorman's complaints could not be so lightly dismissed.

The CASA officer who had the greatest familiarity with the operations of SPS (Mr Nolan) was not present at the Informal Conference. His views as to the suitability of Mr Gorman and SPS to continue to operate were well known to Mr Diamond and should also have been well known to Ms O'Brien who was present at the Conference. Moreover, his views were not sought by Mr Diamond after the Conference to test the reliance which Mr Diamond proposed to place on whatever might have been said by Mr Handel at the Conference or in relation to the decision he proposed to make.

Moreover it was known that Mr Gorman's resignation would not become effective for some weeks and yet it was also known that Mr Gorman believed that he could not operate SPS without undue interference by Mr Handel in relation to safety related matters.

While accepting that Mr Diamond's approach might work in some circumstances, in my view it was completely inappropriate in the present circumstances.

In my opinion, the preferable decision that should have been made at this time was, at the least, to suspend the SPS AOC until a new Chief Pilot was appointed, an organisational structure put in place to ensure that the Chief Pilot had full authority to run SPS in a safe manner, the Operations Manual was satisfactorily amended, and other outstanding issues acquitted.

Observation:

The Office of Legal Counsel Informal Conference Procedures document contains the following passages of relevance:

Who actually participates in an informal conference?

Ordinary participation in an informal conference should be limited to the affected person and his or her legal representative, the responsible delegate and CASA's legal counsel.

In some cases, it may be useful and appropriate for other persons to participate in an informal conference. Such person may include an employee, employer or colleague of the affected person, and other CASA technical or operational officers, whose presence is necessary to provide necessary technical or operational information germane to the matters under consideration.

How are informal conferences conducted ?

If, on the basis of the information available both before, and as a consequence of the conference:

- *the delegate determines that there are particular actions the person might take to remedy or correct such theoretical and/or practical deficiencies as the delegate believes to have been responsible for the conduct giving rise to the notice; and*

- *the person agrees to undertake those remedial or corrective actions (e.g. specified practical training, theoretical study, examinations, etc.).*
- *CASA's legal representative will draw up a simple written agreement specifying:*
- *the particular corrective or remedial action(s) the person has agreed to undertake;*
- *the manner in which the person will discharge his or her obligations under the agreement;*
- *the time frame within which the person will complete the tasks he or she has agreed to undertake; and*
- *the specific basis on which the delegate will decide whether or not the person has **successfully** discharged his or her corrective and/or remedial obligations within the terms of the undertaking.*

Recommendation:

I **recommend** that the Informal Counsel procedures be amended to require that:

- (a) those attending an Informal Conference should ensure that they obtain a full briefing on relevant matters before the Conference;
- (b) the delegate ensure that relevant technical advisers such as the assigned FOI and SAWI either attend the Conference or meet with the delegate before it is held;
- (c) after the Conference the delegate take no decision other than that foreshadowed in a show cause letter without discussing a proposed decision with relevant technical advisers and fully assessing their views; and
- (d) the delegate prepare a full statement of reasons for any decision eventually before advising the operator of that decision.

12.235 **Regulatory Transaction 54:** On 13 May 1997 Ms O'Brien e-mailed Mr Nolan as follows:

Attached is the outcome of the informal conference with SPS.

It was agreed at the meeting that you and I would review the compliance and safety history of the company and meet with the owners to advise them on the relevant areas eg CAO 48 and review their scheduling practices.

Would you please organise;

- brief for me*
- *an agenda for an operators meeting (possible dates 2 June, 11 June)*
- a surveillance schedule including ramp checks.*

- 12.236 Mr Nolan informs me that he discussed this message with Ms O'Brien and pointed out to her that he had been constantly meeting with SPS and had previously provided her with a detailed surveillance schedule. He says that he told her that he could thus see nothing further he could do in response to her message. So far as I can ascertain, she did not disagree with this assessment on his part. Unfortunately Mr Nolan did not record this conversation on the file. (RT54)
- 12.237 Mr Diamond informed me that he expected Ms O'Brien to put in place a heightened surveillance system as a result of the indications that he had given to Mr Handel at the Informal Conference about the likely consequences of further default by SPS. He did not reduce that expectation to writing, whether in the letter to SPS or by e-mail or minute to Ms O'Brien. (RT54)
- 12.238 Mr Nolan informs me that he had scheduled an increased level of surveillance of SPS but that Ms O'Brien instructed him to revert to the regularly programmed level of surveillance. He says that Ms O'Brien told him that Mr Diamond was engaged in ongoing discussions with SPS and that it was desirable to let the company "settle down" after the show cause action and not give them cause to suggest that Mr Nolan or CASA was running a vendetta against them. Mr Nolan says that he therefore dropped the plan for increased surveillance back to the regular programmed level. Unfortunately the plan for increased surveillance that he says he developed was not included in the file papers to which I had access. (RT54)

Conclusion re Regulatory Transaction 54:

I regard Ms O'Brien's explanation of these events, included in her submission to me, as unsatisfactory. She seems to suggest that additional surveillance was not required because it was not foreshadowed in Mr Diamond's letter to SPS. I do not regard that as conclusive one way or another. She also seems to suggest that Mr Nolan had not arranged additional surveillance because he did not document that arrangement. Again, I do not regard that as determinative. As I read her submission, she suggests that her e-mail request to Mr Nolan was only a request for a document setting out the surveillance that would be programmed in any event. That seems to me to be an unlikely construction. She also notes that there was, as it transpired, additional surveillance carried out in the following six months. But this was not programmed and was simply reactive to emerging events, such as the resignation of a Chief Pilot after less than three weeks in the job. She also seems to rely on the fact that Mr Nolan did not recommend increased surveillance during that period, but this is explicable by reference to his understanding that neither Mr Diamond nor Ms O'Brien would support such a recommendation.

In my view, Ms O'Brien should have scheduled additional surveillance of SPS operations after the decision taken by Mr Diamond not to cancel or suspend the SOPS AOC. I consider that she should have done so either because she understood what Mr Diamond expected of her or, even if she did not share that understanding, as a matter of good management and good sense.

- 12.239 **Regulatory Transaction 55:** On 22 May 1997 Mr Handel nominated Mr Tony Willis as Chief Pilot for SPS. Mr Willis spoke to Mr Nolan by phone and later faxed his resume, saying that he looked forward to meeting Mr Nolan at a Chief Pilot interview scheduled for 29 May 1997.
- 12.240 On 26 May 1997 SPS pilot Mr Hayden Brammer advised Ms O'Brien that Mr Kuruvita had also decided to relinquish his position with SPS, and sought an appointment to discuss his own appointment as Senior Pilot. On 29 May 1997 he spoke to Mr Nolan and advised that he intended to relinquish his position with SPS, and sought an appointment to discuss his own appointment as Senior Pilot. On 29 May 1997 he spoke to Mr Nolan and later wrote to him about gaining approval to endorse other pilots on floatplanes. (RT55)
- 12.241 On 29 May 1997 Mr Nolan faxed Mr Willis and advised that he would only support Mr Willis' appointment as Chief Pilot if a suitable person was also appointed as Senior Pilot. On the following day he attended at SPS and observed the proposed Chief Pilot being checked and trained by the proposed Senior Pilot. (RT55)
- 12.242 On 3 June 1997 Ms O'Brien noted Mr Brammer's appointment as Senior Pilot and approved Mr Willis' appointment as Chief Pilot. (RT55)

Conclusion re Regulatory Transaction 55:

Subject to the comments already made about the use of the Chief Pilot/Senior Pilot expedient, there seems to me to be no basis for criticism of Ms O'Brien in relation to her approval of Mr Willis as Chief Pilot.

- 12.243 On the same day Mr Willis sent a note to all SPS employees outlining his proposals to address the safety issues at SPS. Mr Nolan copied this to Ms O'Brien for her information. It seemed at this stage that there were hopes that such issues at SPS might be in the past. (RT55)
- 12.244 On 13 June 1997, the CASA Board Safety Committee received a regular report that indicated that Non-compliance Notice 104090 had been issued to SPS for operating an aircraft in excess of its gross maximum Take-off Weight. It appears that the reference to a Non-compliance Notice numbered 104090 was mistaken and that the correct reference should have been Non-compliance Notice 104089.
- 12.245 The hopes for improvement at SPS under Mr Willis were short-lived. On 17 June 1997 Mr Willis issued a Flying Order Book notice at SPS. It said in part:

In the three weeks prior to my interview, and after my appointment, the following issues have been discussed with Mr Handel in the hope of quickly achieving legality or satisfying our duty of care.

Unfortunately this approach has not worked.

As the Chief Pilot I am legally liable for any harm that may come as a result of this inaction.

Therefore no flight is authorised to commence if any of the following have not been adequately attended to. (RT56)

- 12.246 Thereafter he set out a list of directions on nine issues. The content of these was clearly indicative of his perception of major problems at SPS on issues such as refuelling, measuring fuel on board, non-availability of the Operations Manual, fuel usage figures that didn't make sense, inadequate fuel reserves, performance data and the possible use of "private flights" to avoid legal obligations. (RT56)
- 12.247 **Regulatory Transaction 56:** Late on 17 June 1997, Mr Handel faxed Ms O'Brien, referred to discussions with her regarding the "unsuitability" of Mr Willis as Chief Pilot, and nominated Mr Kuruvita for that post.
- 12.248 Mr Kuruvita was interviewed by Mr Nolan and found satisfactory. Ms O'Brien advised Mr Handel that Mr Kuruvita would be approved and Mr Handel advised Ms O'Brien on 20 June 1997 that Mr Kuruvita would commence as Chief Pilot on 21 June 1997. Mr Kuruvita was subsequently formally approved as Chief Pilot by Ms Kerry Hilsberg, Acting DFOM, on 21 June 1997. There is nothing on the file to indicate whether Mr Kuruvita's appointment as Chief Pilot was conditional on the appointment of a Senior Pilot but, in any event, it seems that Mr Brammer was appointed to that latter position. (RT56)
- 12.249 Mr Willis advised that he would relinquish the position of Chief Pilot from midnight on 20 June 1997. On the same day he issued another Flying Order Book notice (which he copied to Mr and Mrs Handel, Mr Nolan and the "Minister") in the following terms:

The company Operations Manual, A1.17, states that the pilot in command is to ensure that the alighting area is safe for all takeoff, landing and surface operations. He or she is also required to ensure that suitable undershoot and overshoot areas are available.

We do not meet our legal obligations or duty of care to our passengers by operating to or from unsurveyed alighting areas. This is true regardless of the size of the areas because, in the event of a mishap, we may be required to quantify and prove the dimension.

The CAAP contains recommended water alighting area dimensions, and approach and overshoot gradients.

Company flights are only authorised to use waterways that meet or exceed the dimensions listed in the CAAP.

There are no alighting areas listed in our ALA register (including Gunnamatta Bay) that have been surveyed or that have been proven to meet these minimum dimensions.

From 1630 Hrs, today, no flight is authorised to or from any alighting area that has not been surveyed and is proven to meet the minimum dimensions as specified in the CAAP. (RT56)

- 12.250 He then issued another notice which had the effect of incorporating his Flying Order Book notices into the Operations Manual. In effect, these actions would have precluded SPS operations. (RT56)

Conclusion re Regulatory Transaction 56:

Subject to the comments already made about the use of the Chief Pilot/Senior Pilot expedient, there seems to me to be no basis for criticism of Ms O'Brien or Ms Hilsberg in relation to the approval of Mr Kuruvita as Chief Pilot.

However, the circumstances surrounding Mr Willis' departure should, in my view, have raised a level of concern on Ms O'Brien's part about whether Mr Handel was prepared to allow any Chief Pilot to operate SPS with a proper regard to aviation safety as opposed to commercial outcomes. If nothing else, at this stage it would have been even more appropriate to increase the level of surveillance of SPS activities; alternatively, formal counselling of Mr Handel on such matters could have been readily justified. There is no indication on the files that consideration was given to such matters.

For his part, Mr Nolan informed me that he believed there was no point in him making a recommendation on this point in light of Ms O'Brien's and Mr Diamond's reactions to his earlier recommendations for action in relation to SPS. He says that Ms O'Brien was certainly aware of Mr Willis' actions and he presumed that she kept Mr Diamond informed.

I note that Ms O'Brien does not agree with my conclusion on this point. She says that CASA's role was confined to dealing with the application for approval of Mr Kuruvita as Chief Pilot. I do not accept that CASA was so limited. In my view it would be a nonsense if CASA was required to meekly stand by simply approving new Chief Pilot applications despite a history that indicated significant doubt that successful applicants would be able to conducting operations in a safe manner.

- 12.251 **Regulatory Transaction 57:** On 21 June 1997 Mr Kuruvita faxed Mr Nolan a copy of his own Flying Order Book notice. It listed his assessment of 13 areas that needed attention and of his proposals to deal with them immediately and in the longer term. It also noted that he could not locate five of the Non-compliance Notices that had been issued to SPS - he later asked Mr Nolan to provide copies of these. He stated that Mr Willis' Flying Order Book notice of 20 June 1997 was cancelled "as I believe its intent was to harm SPS and its operations due to personal differences between Mr Willis and SPS". He said that:

As discussed with Mr Nolan, I have made it my responsibility to ensure the recommendations set out in the CAAP are materialised into an official ALA register for all company ALAs. As you can imagine this will take some hours to compile but I believe 15.08.1997 to be a sufficient deadline.

12.252 He also stated, in relation to performance data that:

Due to lack of performance information supplied by Maule Corp Inc, P charts have been requested by Ian Kearsley. I have been informed Maule will be conducting tests on a Maule M7 located in Foster, and I will be following this up.
(RT35)

Conclusion re Regulatory Transaction 57:

As will appear, Mr Nolan continued to liaise with SPS in relation to the matters identified by Mr Kuruvita in this Flying Order Book notice. As will become apparent, while they were not all dealt with as they should have been, that was not for a want of trying on Mr Nolan's part. There is thus no criticism I would make of any individual CASA officer on this point.

12.253 On 25 June 1997 Mr Nolan met with Mr Kuruvita and Mr Brammer to discuss the Flying Order Book issued by Mr Willis and the subsequent issue by Mr Kuruvita. It seems from the file that those discussions focused on the ALA Register and performance data.
(RT57 and RT35)

12.254 On 30 June 1997 Mr Kuruvita provided some Operations Manual amendments to Mr Nolan and advised that the ALA Register had been finished and he was hoping to deliver it to Mr Nolan "in the near future". (RT57)

12.255 As noted above, Mr Willis had sent his Flying Order Book entry to the Minister for Transport and Regional Development. It is apparent that a member of the Minister's staff sought a briefing on the matter, and this was sent to CASA's Corporate Relations office on 30 June 1997.

Observation:

On the assumption that it was passed on to the Minister's adviser, this briefing would in my view have satisfactorily answered the query made.

12.256 On 4 July 1997 Mr Kuruvita responded to Non-compliance Notice 104081 which had been issued in February 1997 to Mr Gorman with a response date of 1 March 1997, and advised that "emergency check lists are now available to the pilot in aircraft VH-AGX and VH-AEL. A list of equipment required on each flight is being incorporated into the SPS Procedure Manual which includes the emergency check list." Mr Nolan subsequently noted that that material had in fact been incorporated. (RT57)

- 12.257 **Regulatory Transaction 58:** On 11 July 1997 Mr Kuruvita wrote to Mr Nolan seeking approval to endorse a nominated pilot on floatplanes. He stated that "As you know South Pacific Seaplanes crew flight and duty times have been exceeded in the past, greatly due to a lack of qualified crew. It is my duty to ensure this does not happen in the future." He thus sought Mr Nolan's assistance in securing the approval sought as soon as possible.

Conclusion re Regulatory Transaction 58:

It appears that this application was not dealt with to finality, probably because of other matters that were on foot from time to time in relation to SPS, including Mr Kuruvita's resignation. Ad hoc approval was given on occasions to allow the endorsement of named individuals. As will later appear, a separate application to amend the SPS AOC to allow flying school activities was later approved.

There is no criticism I would wish to make of any individual CASA officer in this regard.

- 12.258 On 17 July 1997 Mr Nolan conducted scheduled surveillance on SPS (prior to the re-issue date for its AOC). He noted that "there are a number of issues which must be rectified prior to renewal of AOC". (RT57)
- 12.259 On the same day he noted acquittal of Non-compliance Notice 104088. This was a further response to that provided by Mr Gorman in March 1997, and Mr Nolan noted that "life jackets are now carried in the seat pockets and door pockets." (RT 57 - see also RT48)
- 12.260 On 18 July 1997 the CASA Board received a report from the previous Board Safety Committee meeting which noted that SPS "has a history of safety problems" and determined that various Non-compliance Notices, including 104090 issued to SPS should be considered by the Minister for publication in a Serious Deficiency Summary - as noted above, this was presumably meant to be a reference to Non-compliance Notice 104089.
- 12.261 **Regulatory Transaction 59:** On 28 July 1997 Mr Handel lodged an application for re-issue of the SPS AOC.
- 12.262 On 6 August 1997 Mr Nolan wrote to Mr Kuruvita advising the matters which required his attention as a result of the scheduled surveillance. These were as follows:

I Operations Manual

Section A4.3 does not state the actual company procedures used to determine actual passenger weights.

Section A3.5 Aircraft Flight Fuel Log does not include the fuel burn or consumption.

Section A4.12 states that Dangerous Goods may be carried, however advice from you indicates that you do not. The Operations manual should reflect the actual company intention and if Dangerous Goods are to be carried, then a Dangerous Goods Manual is to be provided.

- 2 *The Performance Chart information relating to Maule M7 Floatplane Take-Off and Landing distances, requested by Mr I Kearsley in September 1996, has not been received.*
- 3 *The ALA register does not address the "obstacle clear gradient" requirements of CAAP 92-1 (0) or Section 1.17 of your Operations Manual.*
- 4 *Section B2 of the Operations Manual "Flight Planning" is Reserved and therefore there are no company instructions or procedures available to enable pilots to operate in accordance with AIP OPS FPLAN-3 2 "Flight Notification". (RT57)*

12.263 **Regulatory Transaction 60:** In around August 1997 it seems that Adams Aviation Pty Ltd, the maintenance organisation used by SPS, wrote to SPS expressing concern about the maintenance program for SPS aircraft. Mr R Vale, the DAM, noted that Adams Aviation was in fact the registered owner of two of the three aircraft in question and that maintenance obligations rested with the aircraft registration holder. He thus asked Mr Richard Best to sort out the situation with respect to these aircraft before SPS was approached. Mr Best asked Mr Herb McFarlane to follow up.

Conclusion re Regulatory Transaction 60:

There appears to have been some confusion generated by this transaction. There seems to have been a focus on what was regarded as the irony of an owner of two aircraft writing to CASA to complain about the maintenance program for their own aircraft, which were leased to an operator who was as part of its leasing arrangement directing their maintenance. In my view, it may have been more appropriate to immediately focus more directly on the adequacy of the maintenance program itself. However, as will later appear (see Regulatory Transaction 65), the maintenance program was the subject of follow-up and, on balance, I do not consider that it is appropriate to offer any criticism on this issue.

12.264 On 26 August 1997 Mr Kuruvita wrote to Mr Nolan in the following terms:

Further to our phone conversation on the 25th August, I once again apologise for not keeping you informed regarding the AOC inspection and your letter to me dated 06 August. I realise I have slipped behind in the renewal of South Pacific Seaplanes AOC and am faced with only a short time to complete the required tasks. By tomorrow 28th August I will present to you at least a contingency plan and list of items to be incorporated as company policy in the operations manual, I will personally ensure these items are carried out in full by September 15, 1997.

I would also like to inform you that I have given South Pacific Seaplanes my termination of employment notice and will therefor (sic) relinquish my position as Chief Pilot no later than 16th August (sic) 1997.

This reference to "16 August 1997" was clearly in error. Mr Nolan sought clarification and was apparently informed that the reference should have been to 16 September 1997.

Thank you again for your patience and co-operation. (RT57)

12.265 On the same day (apparently), Mr Kearsley advised Mr Nolan that he expected a Flight Manual Supplement with performance data to be submitted for approval by another organisation the following week and that SPS would then be able to issue its own approved performance data. (RT36)

12.266 **Regulatory Transaction 61:** On 21 August 1997 Mr Gorman wrote a letter lodging the **twenty-first complaint against SPS**. That letter, which he sent to the members of the CASA Board and to the then Minister for Transport and Regional Development, the Hon John Sharp, was in the following terms:

It is with great concern and after much deliberation that I prepare this submission. This will also be my very last correspondence with CASA regarding the substandard management practices of South Pacific Seaplanes {SPSP} as other submissions appear to have evoked no discernible improvements.

I acted as chief pilot for SPSP for about six months, taking over from Jon Davies on December 23rd 1996. Jon resigned after intractable problems with the management of SPSP namely Philip and Janet Handel. It was not long before I encountered the same conflict of interest. The Handels are consumed by an overriding commercial imperative to glean as much money out of the operation as possible. The desire to maximise return on investment is understandable, however the Handels compromise safety in the process and not being pilots themselves, understand or encounter few of the risks.

I feel it is somehow futile to document all of these conflicts over the period of my involvement with SPSP since these have already been listed to CASA. I have a journal full of them and there are numerous non compliance notices recorded against SPSP. But as a final attempt to prevent another "Seaview" or "Monarch" occurring, I am hoping the board will be somehow able to help.

*The Bankstown office although diligent in discharging surveillance duties seems unable to achieve any change in behaviour from the management of SPSP. I was greatly concerned when as the Chief Pilot for SPSP I was not invited to a 'show cause' {why the company's AOC should not be suspended} meeting between CASA and the Handels. I considered my position and after legal advice resigned. I became even more alarmed when the Handels emerged from this meeting thinking that they had scored a victory over the regulator and it was to be **business as usual**.*

My greatest fear was that I would end up in the coroners court being held responsible for the deaths of members of the public which could have been avoided.

I have since worked casually for SPSP and have observed no improvement in the standard of the operation. In fact I was told second hand that I would not be employed casually again, after last weekend, for entering unserviceable flaps on the maintenance release. To enter unserviceable faults in the maintenance release is regarded as a being against the company spirit and taken personally by the management. With the fourth Chief Pilot in eight months now also considering resignation and inexperienced pilots being inducted I fear the worst.

Although no longer legally responsible I feel I have a duty of care to the travelling public. I read with anxiety the accounts of the "Seaview" crash and how the Commission of Inquiry found that "...it was a picture of an unsafe organisation". To compare the South Pacific Seaplanes situation to the Seaview scenario I believe is not unfair. In my view SPSP is definitely an "unsafe company". The Handels are unfortunately not fit and proper people to hold an AOC. This statement is not made lightly or in isolation.

With this submission I believe that I have discharged my duty of care. I have included my letter of resignation and a rather comprehensive internal operational memorandum. Given that I am a career pilot I would ask that this correspondence be held in the strictest confidence.

- 12.267 On 28 August 1997 it appears that Mr Pike visited CASA's Sydney office and put in place arrangements for Mr Gorman's allegations to be examined. A message sent by Mr Elder on 29 August 1998 to the Deputy Chairman's office stated that:

...the Director has asked John Pike to ensure that the matter is fully investigated. John Pike visited the Sydney Office yesterday and has put in place arrangements for this investigation. A report of the investigation will be provided to the Board as soon as it is available.

Mr Burns says that he was not asked to initiate a "full investigation". He does however recall Mr Pike's visit to his office and a discussion about SPS in which Mr Pike advised that Mr Gorman had written to the CASA Board. Confirmation of that discussion is found in an e-mail he sent Mr Pike the next day advising that the SPS AOC had been renewed for three months to allow SPS to "rectify outstanding safety issues". Whatever terminology was used at this meeting, the matters raised in Mr Gorman's letter were considered, a report was prepared on 3 September 1997 and a brief was subsequently submitted to the CASA Board. (RT61)

- 12.268 On 29 August 1997 Mr Kuruvita responded to Mr Nolan's fax of 6 August which identified matters required to be rectified to allow issue of the re-issued AOC. That letter made it clear that various matters had not been fully dealt with despite assurances. It was in the following terms:

- a) *All company flights are confirmed on actual passenger weights supplied by the passengers themselves. If the pilot is at all concerned with the reliability of the stated weights, bathroom type scales must be used to determine actual weight of passengers. If an overweight condition is evident dispatch is to be immediately contacted and the passengers will be allowed to make alternative arrangements.*
- b) *New fuel log is being produced.*
- c) *Dangerous Goods will not be carried and section A4.12 will be revised.*

Please call Ian Kearsley as he has signed and approved data produced by HSJ Aviation. This data is now being produced into a flight manual supplement.

New ALA charts are being drawn with overshoot and undershoot areas depicted.

Item 6 of South Pacific Seaplanes Procedures Manual will be included in Operations Manual Section. (RT57)

Observation:

It is notable that Mr Kuruvita, having previously advised that the revision of the Operations Manual was completed and would be delivered shortly, was now saying that the revision was not yet finished.

- 12.269 **Regulatory Transaction 62:** At about this time, according to Mr Nolan, Mr Kuruvita contacted him at home, probably twice, and advised that he intended to resign. Mr Nolan recalls that Mr Kuruvita said that he didn't want to leave SPS "in the lurch" and he asked what the CASA reaction would be to a nomination of Mr Brammer as Chief Pilot. In the course of these conversations, Mr Nolan recalls that Mr Kuruvita spoke of the difficulty he was experiencing in working with Mr Handel and mentioned as an example an occasion on which he had had to refuse an instruction from Mr Handel to pick up Mr Handel and fly him to Rose Bay in circumstances which would have involved an unlawful flight in the dark.
- 12.270 On 29 August 1997 Mr Nolan issued a further AOC to SPS, as Acting DFOM. However, he did so only for a period of three months instead of for the usual 12 months, and he wrote to Mr Handel informing him that the outstanding matters had to be addressed. He so informed Mr Trevor Burns, who had by then taken up duty as RM SER. Mr Burns in turn passed that advice on to Mr Pike. (RT59)

Conclusion re Regulatory Transaction 59:

Having regard to the decision which had been taken by Mr Diamond in relation to the show cause letter, this decision of Mr Nolan was not unreasonable although not necessarily the preferable decision (by which I mean that an alternative decision to suspend the AOC could have been justified in my view).

Notwithstanding the level of scepticism which I understand he felt by this stage about the capacity of SPS to adequately meet its regulatory obligations, he was well aware that his views were not shared by Mr Diamond and Ms O'Brien and believed that any decision on his part to decline to issue a new AOC was unlikely to be supported. In this context, Mr Nolan's decision was understandable.

However, given the degree of scepticism on his part, his action in issuing the AOC for only a short period was both warranted and appropriate.

- 12.271 Mr Nolan then sought confirmation that Mr Kuruvita was to resign and asked him to give an effective date. (RT62)
- 12.272 On 30 August 1997 Mr Kuruvita wrote to Mr Nolan seeking approval to endorse two named pilots onto floatplanes. (RT58)
- 12.273 **Regulatory Transaction 63:** On 30 August 1997 Mr Davies wrote a letter to Mr Frank Grimshaw, General Manager - Airworthiness, CASA Canberra, which was received on 3 September 1997. It was in the following terms:

I wish to bring an important matter to your attention; one which I have brought to the attention of Mary O'Brien - Bankstown District Manager, Barry Diamond - District Manager (SE Region), CAIR/BASI and John Pike - Deputy Director CASA to no avail.

One of the most important matters I have raised is that all three Maule floatplanes (VH AGX, VH AEL and VH LRZ) operated by South Pacific Seaplanes - Sydney all have illegal and undersized undercarriage struts and attach lugs and incorrect Flight Manuals. All three aircraft operate daily and have been since I raised this matter in November 1996.

There have since been two undercarriage failures which, luckily did not result in fatalities and have no doubt not been entered into aircraft Log Books.

I am now associated with Maule and know that the serial numbers of the undercarriage on all three aircraft are those of the A Series with a MTOW of 2400lbs, not 2750lbs as per their Flight Manuals and as per most loads they are carrying.

I find it astonishing that nothing has been done to rectify this matter considering the risk in not taking immediate action leaves both the Operator and CASA open to serious negligence.

Lives have now been at risk for 10 months; How much longer does CASA intend to bury it's head in the sand?

Is the only way to fix things, to do so openly in the media? If so, that will be my next and last attempt to avoid disaster.

I look forward to someone taking responsibility and include the attached for your information.

- 12.274 On 3 September 1997 Mr Burns prepared a "current situation report" in relation to SPS for Mr Elder, General Manager Corporate Relations who was responsible for the provision of briefs to the CASA Board. A copy of Mr Burns' report is at Attachment C1. Corporate Relations personnel adapted that report slightly to convert it into the format for a brief to the CASA Board, a copy of which is at Attachment C2. Mr Burns was not asked to clear the resultant brief, but I do not find that surprising given the commonality between the two documents. (RT61)

Observation:

In my view, that report provided far too sanguine a view of the issues then current in relation to SPS because of its lack of detail. I do not suggest that the content of the report was factually inaccurate. Rather, I suggest that it did not go far enough in giving a detailed description of SPS operations and the regulatory issues involved. As such, I consider that it would have given Mr Elder and in turn the Board a false sense of security about the significance of those issues and the way in which they were being dealt with. Moreover, the references in that document to an "action plan" seem to me to imply a level of scrutiny in excess of that to which SPS was actually then subject. What was called an "action plan" was simply a name given to the content of a letter which Mr Nolan had written to SPS in the course of his ongoing dealings with the company.

A number of points have been put to me about my criticism of this and later reports prepared by Mr Burns.

First, it is said that they were not prepared as briefs for the CASA Board. I accept this. But I also believe that a Regional Manager should reasonably expect that information provided in reports requested by Corporate Relations may well be included in briefs to the Board.

Second, it is apparently suggested that the author of such a report should not be accountable for the content of the resultant brief to the Board unless the latter is specifically cleared with him. If there were any material difference between the two documents, I would agree with this. But in my view a comparison of Attachments C1 and C2 does not disclose a material difference.

Third, it is apparently suggested that those who settle briefs to the Board should be accountable for them. I agree with this. But of course, if they are provided with material that is not obviously lacking in detail, they cannot be expected to revert to the author of the report to seek additional detail. Officers in positions such as those of General Manager, Corporate Relations and General Manager, Aviation Safety

Compliance should be able to rely on a Regional Manager to generate reports that contain sufficient detail for the purposes to which they might reasonably expect those reports to be put.

Fourth, it is said that reports to be provided to the Board were meant to contain only factual material. I accept that there was no requirement for reports such as those of which I am critical to contain recommendations to the Board or similar content. But I do consider that a properly prepared factual report will contain sufficient depth of detail to enable the reader to assess whether or not the factual statement of past or proposed regulatory action represents a sensible, analytical and strategic reaction to the facts.

Fifth, it was put to me that these reports were prepared by subordinate officers and with input from the District Office. However, it was also acknowledged that the role of the RM SER was to clear the report after being satisfied that it was factually correct. I consider that that role extended to ensuring that the report was adequate in its detail for the purposes to which it might reasonably be expected to be put.

Finally, it was noted that no senior CASA officer had offered any criticism of these reports at the time they were received or since. But that is explicable because the absence of what I regard as appropriate detail was not apparent on the face of any of those reports.

- 12.275 On 4 September 1997 Mr Grimshaw replied to Mr Davies advising that various matters in relation to SPS were currently being investigated under the direction of Mr Burns, that he had referred Mr Davies' letter to Mr Burns, and that it would receive the attention it deserved. He then instructed that the veracity of Mr Davies statements be checked and added "Please also ensure that any necessary action to redress anomalies with the [Aircraft Flight Manuals] or unsafe conditions with the undercarriage components is taken as a matter of urgency." (RT63)
- 12.276 On 8 September 1997 Mr Kuruvita provided Mr Nolan with some Operations Manual amendments and advised him that "the ALA matter is still being processed". (RT57)
- 12.277 On the same day Mr Rob Elder, General Manager, Corporate Relations, provided Mr Chris Falvey in the Minister's office with a brief prepared on the basis of the report prepared by Mr Burns in relation to SPS and informed him that Mr Burns would be meeting with Mr Gorman "to brief him on the action the Authority is taking". (RT61)

Observation:

I have been unable to identify any record of Mr Burns meeting with Mr Gorman.

- 12.278 On 11 September 1997 Mr Handel wrote to Ms O'Brien to nominate Mr Brammer as SPS' new Chief Pilot. On the following day, Mr Kuruvita advised Mr Nolan that he would remain as Chief Pilot until the new Chief Pilot was approved. On the same day Mr Nolan approved Mr Kuruvita to conduct conversion training for a small number of named pilots. (RT62)
- 12.279 On 15 September 1997 Mr Kuruvita sought a further approval to allow him to endorse Mr Steve Kennington who had been interviewed as a prospective employee and Chief Flying Instructor for SPS. Mr Nolan granted this on 16 September 1997. (RT58)
- 12.280 Also on that day Mr Nolan noted that Non-compliance Notice 104089 issued on 1 April 1997 and due for response on 14 April 1997 had not been formally acquitted, but noted that SPS had revised the Operations Manual and purchased scales to rectify the identified problem of flying overweight. (RT50)
- 12.281 On 17 September 1997 Mr Kuruvita advised Mr Nolan that he would be away for several days and would not be available, saying that queries should be addressed in his absence to Mr Brammer or Mr Handel. Mr Nolan replied asking whether he would be performing his Chief Pilot duties during the period and reminding him of the legal obligations in that regard. Mr Handel replied by fax that Mr Kuruvita was "aware of his responsibilities and is exercising them". (RT62)
- 12.282 On the same day, Mr Neville Probert, Engineer, Aircraft Certification sought detail from Mr Davies in relation to his assertions about the undercarriage struts of the Maule. Mr Davies replied on 19 September 1997 giving Mr Probert a follow up contact name and saying:
- There has been several cases already of undercarriage failure on these Maules, one where the airframe was cracked due to excessive loads on the rear struts and one where a forward starboard strut cracked. Two others have been reported to me since my departure from the company by employees.* (RT63)
- 12.283 On 22 September 1997 Mr Nolan commenced assessment of Mr Brammer for appointment as Chief Pilot in accordance with Mr Handel's nomination. (RT62)
- 12.284 On 23 September 1997 Mr Kuruvita wrote to Mr Nolan to advise that he was resigning from midnight that day. (RT62)
- 12.285 On the following day, Mr Brammer rang Mr Nolan to advise that he no longer wished to continue with his application as he had resigned from the company. (RT62)
- 12.286 **Regulatory Transaction 64:** Despite that Mr Handel faxed Mr Nolan on 24 September 1997 saying that, "due to unforeseen staff movements", SPS had been left without a Chief Pilot. He nominated Mr Kennington to replace Mr Kuruvita and requested an urgent appointment for a Chief Pilot interview.
- 12.287 Mr Kennington had not at that time completed his floatplane endorsement. Mr Handel stated that:

to ensure the safe and lawful continuation of our operation we propose to have our more experienced Float Pilot, Hayden Brammer aid Stephen through this initial period until he is competent to act alone. After Hayden has left our company, as is expected to occur in the near future, Ali Cimen will fill his place as adviser to Stephen.

[Mr Cimen was the pilot of the flight on 27 March 1997 that had resulted in the issuance on an Non-compliance Notice and whom Mr Nolan had recommended be counselled, although that recommendation had not been accepted by Mr Diamond when he accepted Mr Handel's response to the show cause notice issued in March 1997.] (RT64)

- 12.288 Mr Handel also added "the company cannot operate at all until the appointment of a new Chief, and as at this time there is no float qualified person available, we ask that this proposal be given consideration to match the circumstances." (RT64)
- 12.289 **Regulatory Transaction 65:** On 24 September 1997 Mr Best asked Mr McFarlane to write to the registration holders of the various SPS aircraft expressing concern as to the appropriateness of the maintenance schedule for them and seeking advice on that matter. On the same day Mr McFarlane wrote to the SPS maintenance organisation drawing attention to his concern about the adequacy of the maintenance program currently applied to SPS aircraft having regard to their extreme operating environment and requesting review of those programs. While I have been unable to locate a copy, it seems that Mr McFarlane also wrote or spoke to Mr Handel on this same issue.
- 12.290 On 25 September 1997 Mr Probert advised Mr Kearsley that he had gone as far as he could in investigating Mr Davies' allegations about the Maule undercarriage and asked if Mr Kearsley could take over the matter. (RT63)
- 12.291 On the same day Mr Nolan replied to Mr Handel's fax and informed him of the conditions Mr Kennington would have to meet to be appointed as Chief Pilot. He reminded Mr Handel that SPS could only conduct AOC-approved operations after the appointment of a Chief Pilot. (RT64)
- 12.292 On 1 October 1997 the CASA Board noted that a report on SPS was expected to be provided at the meeting scheduled for 24 October 1997. (RT61)
- 12.293 On 1 October 1997 Mr Elder was advised that the papers indicated that the SPS Maules were modified for the proper weight, contrary to Mr Davies' assertion, but that Mr Kearsley and Mr McFarlane were still pursuing the matter. (RT63)
- 12.294 It seems that SPS did not cease operation during this period despite the fact that it was without a Chief Pilot and thus legally unable to conduct charter operations. Instead it appears to have sought to operate under an AOC - first that of Great Lakes Seaplanes (from 27 September 1997 to 3 October 1997) and later of Air Pioneer (from 4 to 9 October 1997). (RT62 and RT64)
- 12.295 On 3 October 1997 Great Lakes Seaplanes wrote to Mr Ian Baldwin of CASA advising that SPS were no longer operating under their AOC. Mr Baldwin had indicated to that company that, if the arrangement was to persist, he would require assurance that full supervision of SPS activity was occurring. (RT62 and RT64)

- 12.296 On 6 October 1997 Mr McFarlane noted that VH-LRZ and VH-AGX had been inspected and met the manufacturer's weight specifications. On the following day he noted that VH-AEL had not been inspected but that two independent reports had verified that it also met the manufacturer's specifications. He reported accordingly to Mr Best. (RT63)
- 12.297 On 8 October 1997 Mr Handel advised Mr Nolan that he was nominating Mr Michael Alexander for the position of Senior Pilot. He sought early assessment of Mr Alexander "as South Pacific Seaplanes has not been able to operate for the last two weeks". It appears however that SPS may at this stage have been seeking to operate under the AOC of Air Pioneer of Mackay. Mr Peter Rundle, Acting DFOM, faxed Air Pioneer to inquire about that on 9 October 1997. It seems that Air Pioneer was told that, if SPS was to operate under the Air Pioneer AOC, Air Pioneer must take an active, on-site role in SPS operations and Air Pioneer decided not to do that and ceased its relationship with SPS on 9 October 1997. The file later indicates that SPS ceased operations from that day until 15 October 1997 when its new Chief Pilot was approved in the circumstances outlined below. (RT64)
- 12.298 On the same day Mr Nolan advised Mr Kennington that Mr Alexander was not experienced enough to be considered for that position. He confirmed that in writing on 10 October 1997. Mr Handel had by this time apparently nominated Mr Steve Hindle as Senior Pilot. It will be recalled that he was Senior Pilot to Mr Davies when the latter was first approved as Chief Pilot. (RT64)
- 12.299 **Regulatory Transaction 66:** On 9 October 1997 it appears that CASA became aware that the *Witness* television program was shortly going to broadcast material that might relate to one or more seaplane operators. Mr Elder faxed the Executive producer of the program inviting him:
- to provide CASA with any evidence that you or your Reporters might have alleging safety breaches by this or other operators, so that we can arrange to have the matters investigated.*
- 12.300 Various undertakings were given to the producers of the program with a view to obtaining any information the producers might have that might be relevant to air safety "in the interests of the safety of fare-paying passengers which is the number one priority of ... CASA". However, the producers declined to provide such material, the writer stating that "I am obliged to protect my sources".
- 12.301 On 13 October 1997 Mr Probert and Mr Kearsley discussed by e-mail what needed to be done to finally resolve the matter raised by Mr Davies in relation to the Maule undercarriage. (RT63)
- 12.302 **Regulatory Transaction 67:** Also on 13 October 1997, Mr McFarlane issued a **fourth Aircraft Survey Report** (no 80680 - Code A), in respect of VH-AGX and citing:
- (a) *assess and rectify as required the r/h outboard elevator hinge,*
 - (b) *assess and rectify as required the damage to the l/h elevator trailing edge.*

Conclusion re Regulatory Transaction 67:

It is not apparent to me what initiated the visit which led to the issue of this Aircraft Survey Report -it may have been the Gorman allegations, the *Witness* program, or Mr McFarlane's concerns in relation to the maintenance program for SPS aircraft in respect of which correspondence had already been issued.

In any event, given the seriousness of the defects identified, the action was clearly warranted.

- 12.303 On 14 October 1997, following preliminary publicity, the *Witness* program was broadcast. After reference to an operator known as Adventure Air, the program said:

And it seems that Adventure Air is not an isolated example. A second company, South Pacific Seaplanes, is, according to former pilots, a Seaview tragedy waiting to happen. (RT66)

- 12.304 Mr Davies was interviewed on the program. Reference was made to his previous correspondence to CASA, and to the Boxing day incident. Mr Handel was interviewed and asserted that SPS operations were safe. Mr Davies disputed that; Mr Handel counterclaimed. Reference was made to Mr Gorman's letter to the CASA Board and a quotation was given from it. Particular reference was made to the turnover in Chief Pilots at SPS, and the fact that SPS had flown without a Chief Pilot. CASA Board Member Mr Foley was interviewed and undertook that the Board would thoroughly investigate the matters raised in relation to SPS. (RT66)

Conclusion re Regulatory Transaction 66:

Mr Elder's endeavours to secure advice from the producers of *Witness* ahead of the broadcast of the program as to any evidence they might have in relation to regulatory breach by SPS were in my view clearly appropriate.

The issues raised in the program in relation to SPS were not specific. At this time the matters raised by Mr Gorman were already assigned to investigation by Mr Burns and the Board was aware of the steps that it had been advised were being taken in that regard.

- 12.305 Mr Nolan assessed the suitability of Mr Kennington and Mr Hindle for appointment to the positions of Chief Pilot and Senior Pilot on 15 October 1997, and Mr Kennington's appointment was approved. (RT64)

Conclusion re Regulatory Transactions 62 and 64:

In my view, Mr Nolan acted appropriately in dealing with the notification of Mr Kuruvita's pending resignation. Additionally, prompt action seems to have been taken in ascertaining whether or not SPS was properly using an "AOC of convenience" in the period between Mr Kuruvita's effective resignation and Mr Kennington's appointment, and in securing withdrawal of the arrangements that were found to be inappropriate.

Mr Kennington's appointment was dealt with appropriately, subject to the comments made earlier in this report in relation to the use of the Chief Pilot/Senior Pilot expedient and the non-imposition of those arrangements as conditions on the SPS AOC or the Chief Pilot's approval.

- 12.306 **Regulatory Transaction 68:** In 17 October 1997 Mr Kennington wrote to Mr Nolan saying that SPS wanted to conduct conversion training "as a commercial operation" and stating that he believed no change was required to the SPS AOC for that purpose. Mr Nolan sought legal advice from the Office of Legal Counsel in this regard, and was advised on 20 October that SPS could only charge a fee for such training if it was carried out by the holder of a Flight Instructor rating, under an AOC authorising Flying Training, and by an instructor holding a floatplane endorsement. Mr Nolan conveyed that information to Mr Kennington on the same day. On 22 October 1997 Mr Kennington purported to apply for a variation to the SPS AOC to add Flying Training and asked for any necessary forms.
- 12.307 On 24 October 1997 the CASA Board noted that the report on SPS that had been expected to be presented to that meeting was to be provided to Members out of session as soon as possible. (RT61 and RT66)
- 12.308 On 27 October 1997 FOI Mr Ron Bartsch provided Mr Burns and Ms O'Brien with a brief on SPS in the form of a memorandum from Ms O'Brien to Mr Burns. Mr Nolan was heavily involved in other matters at this time and Ms O'Brien informed him that they would have preference over the need to prepare this brief - which judgment on her part I have no reason to contradict. A copy of this brief is set out at Attachment D (RT 61 and RT66)

Observation:

This brief was a high level overview of the recent regulatory history to that date. Having regard the entirety of the known facts as set out above, I consider that it was not very detailed.

In saying this I intend no criticism of Mr Bartsch, who was not the assigned FOI in relation to SPS. While Ms O'Brien informed me that he spent two days preparing his report and checked some matters with Mr Nolan, my own experience indicates that an extended period of study of the relevant files is necessary to provide an accurate and detailed overview of the situation in relation to SPS.

However, given that she has told me that she was aware of all salient facts, I do consider that Ms O'Brien should have checked to ensure that the brief provided a proper sense of the significance of the issues in relation to regulation of SPS that were then current. CASA's regulation of SPS was at this time the subject of some intense public scrutiny as a result of the broadcast of the *Witness* programme, in which circumstance it should reasonably have been expected that the most senior levels of CASA would require a detailed understanding of those issues to guide their subsequent involvement.

- 12.309 **Regulatory Transaction 69:** On 29 October 1997 Mr Burns sent Mr Best a copy of a letter he had received from a member of the public. This **twenty-second complaint against SPS** was from a person who advised that he had observed VH-AEL at Port Stephens in July that year. The letter stated that:

Following the screening tonight of a report that a company which operates seaplanes from Sydney harbour was under investigation for possible breaches of aircraft safety regulations, there is a matter which I believe should be brought to your attention.

On July 3-4 this year, I was staying at The Anchorage, Port Stephens. At dusk on July 4, a float plane alighted near the hotel and taxied to the adjoining marina.

The next morning I notice the aircraft was moored in the marina. Being interested in aircraft (I held a Commercial Pilot License for some years) I decided to take a closer look at it. The aircraft was a Maule float 'plane registered VH-AEL.

What took my eye was the condition of the starboard rudder trim control cable. The swaged end appeared to be rusted solid onto the trim tab lug such that the control cable was bent inboard at a sharp angle at the swage joint because the swage fitting was unable to pivot. This would induce unusual bending stress at the swage-to-cable joint when the trim tab was operated. My initial reaction was to wonder why such fittings would not be made of stainless steel or similar given the hostile salt-spray environment in which it operates. A more sinister question which arises is "what about the condition of less obvious parts?"

I offer the above information in the interest of aircraft safety. Those familiar with this aircraft type and required maintenance standards will doubtless be able to judge its relevance to any current or future inquiry.

- 12.310 Mr Burns asked Mr Best to action the letter as he saw appropriate.

Conclusion re Regulatory Transaction 69:

Mr Best cannot recall seeing that correspondence. He says that, if he did see it, he would have sent it to the assigned SAWI for consideration and any necessary investigation. He also says that, if the correspondence was received by a SAWI, it would have been placed on the relevant aircraft file.

This correspondence is not on any of the SPS aircraft files.

I have been unable to ascertain whether there was any investigation of this matter at all.

Certainly, the present assigned SAWI, Mr Simpson, says that he has never heard of the incident.

While this matter is most unsatisfactory, I have no basis on which to criticise any particular officer in relation to the inaction on this complaint.

- 12.311 On 13 November 1997 the CASA Board noted that a report on SPS had been provided to the Board Safety Committee out of session. (RT61 and RT66)
- 12.312 **Regulatory Transaction 70:** On 14 November 1997 an administrative assistant at CASA rang SPS to remind them that their AOC expired at the end of November, and was advised that the re-issue application was being prepared. It was later received on 18 November 1997.
- 12.313 **Regulatory Transaction 71:** On 19 November 1997 Mr Nolan conducted an unscheduled Ramp Check at Rose Bay. He noted on the file that he had raised a **twelfth Non-compliance Notice** for unsecured cargo in the passenger cabin of VH-AEL. [I have been unable to ascertain the number of this Non-compliance Notice or obtain a copy of it.] Mr Nolan also noted that there still remained outstanding from the August periodic inspection the issue of the ALA Register not complying with CAAP 92-1 and section A1.17 of the SPS Operations Manual.

Conclusion re Regulatory Transaction 71:

The issue of this Non-compliance Notice was clearly appropriate.

- 12.314 On 21 November 1997 SAWI Paul Simpson recommended renewal of the AOC, noting that the airworthiness file does not contain any anomalies since the last renewal. (RT70)
- 12.315 On the same day Mr Burns provided Mr Elder and Dr Aleck with a short brief for the CASA Board (Attachment E). Again that report was a brief overview of the recent regulatory history. In these respects it was, I believe, subject to the same criticism that I have made in relation to the earlier brief that is contained at Attachment C. Importantly, it fails to mention that the "action plan" referred to in the earlier brief at Attachment D (and now called a "contingency plan") had not been honoured by SPS. Its concluding paragraph is however important to note. It stated that:

Since South Pacific Seaplanes re-commenced operation on or about 15 October there has been no information to suggest that the company is not compliant.
(RT61 and RT66)

- 12.316 On 25 November 1997 Engineering Manager Mr Kearsley recommended that the AOC be renewed, noting that "I have sighted supplement for floatplane strip length and returned for amendment. I expect to approve supplement on Friday 28 November." (RT36 and RT70)
- 12.317 On 25 November 1997, Mr Nolan faxed Mr Kennington urgent advice about the ALA Register issue and the fact that "it did not contain sufficient information for pilots to satisfy the requirements of the Company Operations Manual Section A1.17". It seems that Mr Kennington provided an ALA Register on the same day. (RT70)
- 12.318 **Regulatory Transaction 72:** On 28 November 1997 Mr Burns informed Mr Pike and Mr Elder (cc Mr Nolan and Ms O'Brien) that an SPS aircraft had been involved in an accident on 27 November 1997, noting that the pilot was the sole occupant and suffered minor injuries. His e-mail continued:

At this point we don't have further any details on the accident but weather appears to have been a significant factor (possibly coupled with the fact that the pilot is relatively inexperienced in floatplane operation, as are all SPS pilots).

Mike Nolan, the assigned FOI will telephone the Chief Pilot this morning to obtain more details and to quiz him on the effectiveness of his supervision of the operation, specifically on whether it was prudent for the aircraft to be operating in the weather conditions that prevailed at the time. You will recall that in December 1996 the company (under another CP) experienced a very similar accident in similar Wx.

The South Pacific Seaplanes AOC is due for reissue on 30 November (this Sunday), at this stage Mike Nolan has not made a recommendation on reissue to Mary O'Brien as he has only just received the data we required for inclusion in the company's ALA register and has not had the opportunity to assess that data.

Mike Nolan also advised me that shortly after the accident yesterday he received a phone call from an angry Rob Brittain, the CP of Sydney Harbour Seaplanes who is critical of CASA permitting the continued operations of South Pacific Seaplanes. Brittain stated that he was going to take his concerns to the Board and the Minister.

I will keep you updated on developments.

- 12.319 That e-mail was faxed to the CASA Board the same day. (RT72)
- 12.320 On the same day, 28 November 1997, Mr Nolan faxed Mr Kennington asking that he contact him about the accident the previous evening involving VH-AEL. He noted the file later in the day that this had been discussed with Mr Kennington and that a report had been requested to be sent to the DFOM. (RT72)
- 12.321 On the same day he faxed Mr Kennington setting out the precise issues the report was to address, and reminding Mr Kennington of his responsibilities as Chief Pilot. (RT72)

- 12.322 On 28 November 1997 Mr Nolan noted that the ALA Register provided by Mr Kennington “does not contain satisfactory information for pilots to satisfy their responsibilities in accordance with the Operations Manual A1.16 & A1.17. Discussed with Chief Pilot who agreed to rectify.” He thus recommended that the AOC be renewed for only 2 months. (RT70)
- 12.323 On 1 December 1997 an out-of-session brief on SPS was provided to the Board Safety Committee. This is set out at Attachment F. Once again I do not consider that this brief contained an adequate representation of the significance of the issues or of the action being taken or required to be taken. (RT61, RT66 and RT72)
- 12.324 On 1 December 1997 Ms O’Brien advised Mr Pike, Mr Elder and Mr Burns (cc Mr Nolan) that the SPS AOC had been re-issued for two months, saying that “the only outstanding matter is revision of the ALA register which the current Chief Pilot will complete in that time.” (RT70)

Conclusion re Regulatory Transaction 70:

The issue of a short-term AOC to require SPS to amend its ALA Register was at least appropriate. It may conceivably have been justifiable to take even stronger action in the circumstances. However, I am not prepared to be critical on this basis.

Ms O’Brien’s advice that “the only outstanding matter” was the ALA Register is not correct. At this stage there was, of course, the investigation of the circumstances surrounding the 27 November 1997 accident which was to be finalised. Also the complaint made about the condition of VH-AEL when observed at Port Stephens had been received but not investigated.

Despite these matters, I do not wish to be critical of Ms O’Brien’s description of the ALA Register as the only outstanding issue. The accident was known to the addressees of her e-mail and I consider that they would not have interpreted her as meaning to exclude it from consideration. And, as explained above, the Port Stephens complaint was apparently unknown to Ms O’Brien.

- 12.325 In response to Mr Burns’ e-mail of 28 November 1997, Mr Elder e-mailed Mr Burns on 1 December 1997 asking for details of the phone call from Mr Britten. Mr Burns replied the same day that he couldn’t add much, but adding that Mr Britten had phoned Mr Nolan “on the day of the Maule accident and expressed his anger at the bad publicity South Pacific Seaplanes is giving the seaplane industry and demanded to know why CASA continued to permit SPS to operate.” (RT72)
- 12.326 **Regulatory Transaction 73:** In the afternoon of 2 December 1997 Mr Handel faxed Mr Nolan saying that he had sourced a Cessna 185E floatplane, VH-HTS, and wished to have it added to the SPS AOC to replace VH-AEL. He said that he expected the aircraft to arrive in the next few days and wanted to use it in charter operations during the coming weekend. He thus asked that the AOC be amended expeditiously.
- 12.327 Mr Nolan was not available to deal with this issue and Ms O’Brien assigned it to a relatively recently recruited FOI, Mr Len Yates, who was still undergoing his probationary training. As I understand it, she indicated to him at that time that there should be no trouble

in adding the Cessna to the AOC and that he should provide a recommendation to her by the end of the week. (RT73)

- 12.328 Later that afternoon Mr Kennington faxed Ms O'Brien with his account of the 27 November accident. He advised that after touch down in Rose Bay, following an attempted landing in Gunnamatta Bay which was aborted due to bad weather, a strong gust of wind struck the aircraft causing the left hand float and wing tip to dig into the water, spinning the aircraft around and flipping it upside down. Mr Kennington sought to answer the specific questions asked by Mr Nolan and set out the operational changes he planned to introduce as a result of the accident. He concluded by saying:

As a commercial operation we have a need to operate when we can, however we do not push ahead regardless of the conditions. In my short term as Chief Pilot I have on several days suspended or postponed operations due to poor conditions. On the day of the accident [the pilot] and I were both caught out by the speed and severity of the late change that day. (RT72)

Conclusion re Regulatory Transaction 72:

There does not appear to be on the files any further analysis of the 27 November 1997 accident and it appears that the explanation of it that was provided was accepted by CASA.

In all the circumstances there does not appear to be any basis for criticism of that acceptance.

- 12.329 On 4 December 1997, Mr Yates faxed Mr Kennington pointing out that the SPS Operations Manual was arguably specific to Maule floatplanes and that the Cessna could not be operated in accordance with it. He thus indicated that Mr Kennington would have to ensure that the Cessna was operated only in accordance with the aeroplane flight manual and pilot operating handbook until the performance and planning parameters applicable to the Cessna were incorporated into the SPS Operations Manual. Later that day he faxed Mr Kennington again seeking confirmation that the Cessna flight manual contained data for determining water take-off performance. Apparently it did not. Mr Yates appears to have sought the assistance of Mr Kearsley in locating performance data for a Cessna 185E with floats. This was located at CASA Canberra and faxed on to SPS. (RT73)
- 12.330 On the same date SAWI Paul Simpson recommended approval of the variation to the AOC from an airworthiness perspective, noting that there had been no anomalies since the last renewal and that Hawker Pacific had now been nominated by SPS as its maintenance organisation. Later that day Mr Kearsley also recommended approval of the variation, noting that "I have checked C185E has appropriate float supplement containing performance data". Again on that day Mr Nolan recommended approval of the varied AOC on the basis that the Operations Manual was to be amended to add in data relevant to the Cessna. (RT72)
- 12.331 On 5 December 1997, Ms O'Brien issued the new AOC adding the Cessna, for the period to end January 1998. (RT73)

Conclusion re Regulatory Transaction 73:

On balance I consider that there is no significant criticism that should be made of the outcome of this transaction.

There were a number of irregularities: the application to have the Cessna 185 was not made on an approved form; the recommendation from SAWI Mr Simpson (who was at that stage a newly recruited officer still on probation) was not signed off by the DAM; and the provisions of the AOCM were not followed.

As to the last of these, while a recent memorandum from Mr Leaversuch, then Acting General Manager, Flying Operations Branch, Canberra, should perhaps have alerted Ms O'Brien to the need to apply the procedures set out in the AOCM in respect of this transaction, I note that the AOCM was at that time only recently introduced and that there was (and may still be) considerable confusion as to its status and applicability. Accordingly, I am not prepared to criticise Ms O'Brien on this point, and I certainly do not criticise Mr Yates (who was a recently recruited FOI still on probation) who so far as I am aware would not have seen Mr Leaversuch's minute.

The addition of the Cessna to the SPS AOC, while flawed in these respects, followed what had been a CASA practice for many years in circumstances where an alternative process was not unambiguously mandated, and on this basis I consider criticism to be inappropriate.

- 12.332 On 8 December 1997 SAWI Mr Simpson wrote to the SPS maintenance organisation seeking a response to Mr McFarlane's earlier letter of 24 September 1997 in relation to the maintenance program for SPS aircraft, and reminding the organisation of its obligations under CAR 42. (RT65)
- 12.333 On 16 December 1997 SAWI Simpson wrote to Mr Handel in relation to VH-AEL which had been immersed in salt water in the 27 November accident, to express concern about the airworthiness of the aircraft after the accident and on a continuing basis. His concern was that maintenance procedures should be appropriate to prevent corrosion or deterioration of the airframe structure and associated components. He gave notice that the Certificate of Airworthiness of VH-AEL was suspended until further notice and set out the steps that need to be taken to have that suspension lifted. (RT65)
- 12.334 On the same day he wrote another letter to Mr Handel seeking a response to an earlier approach of 24 September 1997 expressing concern about the maintenance program for VH-AGX and VH-LRZ. (RT65)

12.335 On 18 December 1997 Mr Elder wrote to Mr Handel in the following terms:

I am writing to advise that, at its December meeting, the Board of the Civil Aviation Safety Authority decided not to proceed with the proposed action of referring company names, including your company, to the Minister of Transport and Regional Development for consideration for publication in a Serious Deficiency Summary.

In the circumstances, I trust you will agree that little useful purpose would now be served by a detailed response from me to the points raised about this issue in the correspondence from your organisation.

Observation:

It appears that this follows on from the decision of the Board on 13 June 1997 to report the issuance of a Non-compliance Notice to SPS to the Minister for Transport and Regional Development. While I have been unable to locate the associated correspondence, it appears that SPS was advised of that decision of the Board, that it wrote to the Board in protest, and that the letter quoted above was sent in response to that letter from SPS.

This response does not reflect a position adopted in relation to SPS alone, but rather more generally in relation to the use of Serious Deficiency Summaries. I have thus not considered this issue further.

12.336 **Regulatory Transaction 74:** On 8 January 1998 SAWI Paul Simpson discussed with Mr Handel the proposal that SPS might seek approval to undertake its own maintenance. Mr Handel was provided with the checklists for such an application, and was told that he still had to address the concerns about maintenance programs raised in previous correspondence with him.

12.337 On the same day Mr Kennington sought Mr Nolan's approval to endorse a named pilot on floats. Mr Nolan responded by reminding Mr Kennington of his previous advice in relation to commercial training. As a result, on 9 January 1998 Mr Handel made application for a variation of the SPS AOC to add Flying Training to the approved activities of SPS. (RT68)

12.338 Mr Nolan assessed Mr Kennington's suitability to be approved as Chief Flying Instructor on 28 January 1998, noting that he discussed the SPS ALA Register with Mr Kennington at that time. (RT68)

12.339 Also on 28 January 1998 Mr Nolan noted on file that the revised AOC sought by SPS was to be issued on the basis that the ALA Register presented to Mr Nolan on that day was to be incorporated in the Operations Manual and a copy provided to CASA by end February 1998. (RT70)

12.340 On 30 January 1998 Ms O'Brien wrote to Mr Handel enclosing a new AOC (BK535224-06), valid to end May 1999, which added Flying Training to SPS' approved activities. In the covering letter she reminded Mr Handel that "the ALA Register produced to satisfy the requirements of Section A1.17 of the Operations Manual is to be incorporated into the document by the 14 February 1998 and a copy of the register in its final form supplied to this Authority". (RT68)

Conclusion re Regulatory Transaction 68:

The processing of Mr Handel's application, initiated by Mr Kennington in October 1997, for approval to conduct float plane endorsements on a commercial basis appears to me to have been appropriately handled.

The more general processing of the SPS application for re-issue of its AOC seems to me to have been less appropriately handled.

The two previous AOCs had been issued for short periods only, with a view to forcing SPS to address outstanding regulatory issues.

The AOC issued at end-August 1997 was for 3 months only, and SPS had been advised of a number of matters that were required to be addressed - inclusion of performance data and other matters in the Operations Manual, and finalisation of the ALA Register.

The AOC issued at the beginning of December 1997 was for two months only, at which stage at least the performance data amendments had not been made to the Operations Manual and the ALA register was still inadequate.

By the time this AOC came to be issued, correct performance data had still not been incorporated in the Operations Manual but amendments to the ALA Register had been received. Those amendments were apparently regarded as indicating that SPS was "heading in the right direction" in relation to the ALA Register. The examination I have had undertaken in relation to the latest SPS ALA Register suggests that it is still a very imperfect document, and a similar examination indicates that the Operations Manual contained significant errors and deficiencies.

In these circumstances, I believe that the issue of another short-term AOC with a stipulated timetable SPS to remedy a comprehensive list of problems would have been fully justifiable. Indeed, with the benefit of hindsight, many might say that withholding the AOC altogether would have been appropriate.

However, on balance, I have concluded that it would not be appropriate to be unduly critical on this point. It is clear that Ms O'Brien was still requiring SPS to work on the ALA Register and its incorporation into the Operations manual, and that Mr Nolan was continuing to persevere in relation to the Operations manual more generally. While I would have regarded a short term conditional issue as more appropriate, this calls for a matter of judgment and I am not prepared to say that Ms O'Brien's judgment was clearly wrong on this point.

- 12.341 A file note dated 4 February 1998 records that Mr Nolan visited SPS and discussed with Mr Kennington the need to amend the SPS Operations Manual to provide for its new Flying School status. He noted that the company was to provide a syllabus and Operations Manual amendment. (RT68)
- 12.342 On 23 February 1998 Mr Probert asked Mr Pieter Van Dijk to make inquiries about documentation relating to the installation of floats on Maule M7 aircraft, following up on Mr Davies assertions in this regard. (RT63)
- 12.343 On 24 February 1998 Mr Kearsley e-mailed Mr Probert noting that he had recently discovered that Mr Davies' complaint had not been formally closed off. He provided a draft response and sought Mr Probert's comments, which were provided on 26 February 1998. (RT63)
- 12.344 On 27 February 1998 Mr Demarco visited SPS to assess the float alighting gear course and conduct of flying training. He noted the file that matters were satisfactory. (RT68)
- 12.345 On 11 March 1998 Mr Probert wrote to Mr Davies in the following terms:

I refer to your letter dated 30 August 1997 to Mr Frank Grimshaw of the Civil Aviation Safety Authority regarding the undercarriage struts and MTOW of three Maule M-7-235 aeroplanes operated by South Pacific Seaplanes.

Airworthiness staff of CASA's Bankstown District Office have spoken by telephone to Mr Robert Claggett in the USA to determine the modifications necessary to raise the MTOW of the Maule aircraft from 2530 lb to 2750 lb. Mr Claggett is a part holder of Supplemental Type Certificate No. SA937SO which approves installation of the floats. Mr Claggett described the undercarriage parts required for operation at 2750 lb. Two of the Maule aircraft operated by South Pacific Seaplanes have since been inspected by a CASA Airworthiness Inspector and found to contain the features described by Mr Claggett.

The advice from Mr Claggett is therefore at variance with the advice I received from Mr Greg Vaughan. Consequently I have attempted to obtain documentary information from Mr Claggett, the STC holder, which can be used to decisively determine the status of the float installation and the maximum weight of the aircraft.

I had hoped to have resolved this matter many weeks ago and I thank you for your patience. I will advise you of any further outcome from my latest approach to Mr Claggett. (RT63)

- 12.346 On the same day he wrote to Mr Claggett as foreshadowed in the letter to Mr Davies. (RT63)
- 12.347 **Regulatory Transaction 75:** On 23 March 1998 Mr Nolan e-mailed Mr McFarlane (cc Ms O'Brien) in the following terms:

Rob Britten Chief Pilot of Sydney Harbour Seaplanes (Beavers), rang me last night (Sunday 22 March 98), and advised that he had information passed to him from pilots of South Pacific Seaplanes, that the company has been operating Maule VH-LRZ for the past week with a known crack in one of the float attach brackets.

Because of the safety issue, I believe that we should investigate this matter immediately.

Please advise me of the action you intend and if I can be of any assistance. Mr Peter Barkway spoke to Hawker Pacific the same day, and informed Mr McFarlane that the matter had not been reported to them by SPS. Mr McFarlane thereupon asked Mr Simpson to visit SPS to get to the bottom of the matter.

12.348 On 24 March 1998 Ms O'Brien e-mailed Mr Nolan asking him to advise her of the result of the inquiries Mr Nolan had asked Mr McFarlane to initiate. (RT75)

12.349 Later that day, Mr Simpson advised Mr McFarlane by e-mail (cc Mr Barkway and Ms O'Brien) that he had that day inspected VH-LRZ and issued **the fifth, sixth and seventh Aircraft Survey Reports** to be issued to SPS, as follows:

- ASR 105184 Code A - "left hand forward float attach strut has a crack on the outboard side approximately 2' in length through the bolt attach point" - this was later acquitted on 27 March 1998;
- ASR 105185 Code A - "both lower longerons are badly corroded at the pulley brackets associated with the water rudders. Corrosion holes are evident through tubes" - Mr Handel responded to this on 30 March 1998 and again on 3 April 1998;
- ASR 105186 Code B - "both left hand and right hand pilot entry doors were unable to be opened externally" - Mr Handel responded to this on 30 March 1998. (RT75)

12.350 In fact Mr Simpson also issued a **fourth Aircraft Survey Report**:

- ASR -105187 - Code B - "water rudder pulley brackets have been welded to fuselage longerons. This modification is not in accordance with the float installation drawings. Provide data for a modification." This was later acquitted on 30 March 1998 or thereabouts. (RT75)

12.351 The effect of the two Code A Aircraft Survey Reports was to ground VH-LRZ immediately. (RT75)

12.352 Mr Simpson wrote to SPS that day enclosing a copy of the Code A Aircraft Survey Reports and directed SPS under CAR 38 to enter the defects on the Maintenance Release. (RT75)

12.353 Mr Simpson's report to Mr McFarlane read as follows:

For your info.

Today I conducted an unscheduled ASSP 451 of VH-LRZ owned by South Pacific Seaplanes as per your instructions.

2 class "A" ASRs were issued and 12 class "B" as follows:

- ☐ ASR 105184 Class "A" The float attach strut has a crack approx 2" in length through the bolt attach point.*
- ☐ ASR 105185 Class "A" Both lower rear fuse longerons are badly corroded.*
- ☐ ASR 105186 Class "B" Both pilot entry doors unable to open externally.*

It is with a great deal of concern the Chief Pilot indicated to me he was aware of the crack in the float strut and he said "I am monitoring it". This particular defect could have had a catastrophic consequence if left unchecked.

It is also with a great deal of concern that I note the operator has not answered your correspondence dated 24/9/97 and my follow up letter dated 8/12/97. The letters were asking the operator to evaluate the appropriateness of his maintenance system, given the harsh operating environment the aircraft are subject to.

Further to this it should be noted the aircraft was involved in an accident where the aircraft was fully immersed in salt water. I am left wondering about the internal condition of the steel tubes in regards corrosion. To date there is no record of any internal inspection of the tube structure. The maintenance carried out after the accident simply refers to cleaning of the structure?

It was noted while looking at the aircraft the water rudder pulley brackets appeared to be modified. The drawings you have supplied me for the Float installation indicate the brackets have been modified. A quick look at the log books show no evidence of a modification been carried out. An ASR Class "B" will be issued to supply appropriate data for the mod. (RT75)

12.354 On the following day Mr Simpson copied this report to Mr Nolan. Mr McFarlane then advised Mr Nolan as follows:

Further update on South Pacific Seaplanes, as you can see the allegation has been verified and we have taken the appropriate action, also given the previous unanswered correspondence, and the fact their C185 is in Hawker Pacific with defect problems I am having the other Maule, AGX looked at as well, as I have stated on many occasions I believe this operation is not safe in all aspects, not just airworthiness, having observed their operations in varying traffic and weather conditions at Cronulla over the last few sailing seasons. (RT75)

12.355 This reference by Mr McFarlane to previous observations by him that SPS was not a safe operation requires some elaboration. He has informed me that he is a keen sailor and, in the course of that pursuit, had frequently observed SPS operations. He had formed a very negative view as to these, which he says he orally but "formally" advised to Ms O'Brien. When he saw that no action was taken in response to his advice, he says that he mentioned the problems to other FOIs at various social gatherings and to Mr Nolan who, he says, shared his concerns but informed him that he had been unable to get sufficient evidence to win support for action against SPS. Mr McFarlane says that he advised his boating friends who were similarly concerned to complain to the Waterways Authority and to CASA in the hope that such complaints might prompt action.

Observation:

Ms O'Brien, in her submission to me, is critical of Mr McFarlane for not reducing his concern to writing in accordance with CASA's system for reporting risk observations.

She says that "it is beyond belief that an experienced officer such as McFarlane could make such comments or statements concerning his observations and then be told by another officer that there was insufficient evidence and then not provide the evidence necessary. Such statements are implausible and could not be the basis of any criticism if it is alleged that they were said to Ms O'Brien and not perfected in the appropriate way."

Notably however, and somewhat strangely, Ms O'Brien does not deny that Mr McFarlane made such comments to her.

12.356 Mr McFarlane then asked Mr Simpson to inspect VH-AGX. (RT75)

12.357 On the same day Mr Nolan faxed Mr Kennington, asking him to attend a meeting at CASA on 1 April 1998 to discuss matters arising from the Aircraft Survey Reports with himself and Mr Simpson. (RT75)

12.358 Late on 25 March 1998 Mr Simpson inspected VH-AGX and issued a **ninth Aircraft Survey Report**:

- ASR 105188 Code B- "right and left horizontal stabilisers have splits in top surface of fabric exceeding 3" in length" - this was acquitted by Mr Handel on 30 March 1998. (RT75)

12.359 Mr Simpson also issued the **thirteenth Non-compliance Notice** (506236) as follows:

Pilots operating Maule aircraft registered VH-AGX and VH-LRZ failed to enter defects into the Maintenance Release. The defects were obvious and the Operator and Chief Pilot were aware of the defects.

[As at 8 May 1998 Mr Simpson was of the view that the acquittal of this Non-compliance Notice was not satisfactory as no amendments to the Operations Manual had been submitted to CASA. So far as I can ascertain no CASA officer has yet accepted this Non-compliance Notice as having been acquitted.] (RT75)

12.360 On 26 March 1998 Mr Simpson reported on this inspection by e-mail to Mr McFarlane (cc Ms O'Brien and Mr Nolan) and said:

Prior to VH-AGX arriving I had a long conversation with Mr Phil Handel. I broached (sic) the subject with him regarding his failure to respond to our correspondence in regards his maintenance system. He was of the opinion he had addressed this issue by having his maintenance carried out by HP. I explained in great detail our requirements and our concerns relating to his maintenance system. I gave the usual education session to him regarding pilot maintenance and his obligations relating to this.

When the aircraft finally arrived and the defects discovered I explained to both the operator and the Chief Pilot their obligations in regards to entering defects on the M/R. It was totally apparent by their lack of dialogue they were aware of their responsibilities. (RT75)

12.361 He also e-mailed Mr Nolan (cc Ms O'Brien) as follows:

This is for your info in regards to my conversation with Steve Kennington during the unscheduled inspection carried out on 24/3/98.

Steve was surprised if not shocked to see me arrive at their office.

I explained to Steve why I was there and he proceeded to show me the aircraft.

The corrosion I initially found was obvious and when I arrived at the aircraft the rear bulkhead was removed. I have no idea why it was removed but I am left wondering who was peering down the rear of the aircraft prior to my arrival. I told Steve I would be placing a Class "A" ASR on the aircraft and explained to him my reasoning for that. He certainly did not appear convinced.

When I discovered the crack in the float strut I called out to him to show him the crack. It was immediately apparent he was aware of the defect.

I explained to him I would be grounding the aircraft and said the aircraft would not be going anywhere with a fault like that. He remarked that the strut was still attached to the other side trying to indicate that all was OK. I proceeded to explain to him that the strut with a crack of this nature had lost more than half of its design strength and no longer had any redundancy. He then remarked that they were monitoring the crack?

Hope this helps. (RT75)

12.362 On the same day, Mr Nolan prepared a report summarising Mr Simpson's findings and concluding:

Continued operation by this company with Mr Kennington as Chief Pilot poses a serious threat to the safety of fare paying passengers and the general public. The seriousness of these matters negates the conduct of the counselling process.

I recommend the immediate suspension of Mr Kennington's' Chief Pilot approval under the provisions of CAR 268, pending investigation of this matter. This recommendation is in line with the contents of the discussion paper titled A NEW APPROACH TO ENFORCEMENT dated 5th March 1998 as presented to the aviation community on the 6th March 1998 by the Chairman of the CASA Board. (RT75)

- 12.363 He copied that report to Mr Garth Cartledge, the outposted Office of Legal Counsel lawyer in South East Region headquarters. Mr Cartledge informed Mr Nolan that he agreed with the content of the report and would be available to look at any draft notice prepared as a result of Ms O'Brien's consideration of it. (RT75)
- 12.364 Mr Nolan then sent his report to Ms O'Brien by e-mail, with copies to Mr McFarlane and Mr Simpson. (RT75)
- 12.365 On the same day, Mr McFarlane sent an Immediate Safety Report to Mr Burns. That report included the following statements:

Pilot reported being expected to operate aircraft in an unsafe condition (cracked float attach strut) ... This operator has been the subject of attention by the media over reported allegations of safety breaches (1997) ... suspension of Chief Pilot approval is recommended. (RT75)

- 12.366 On 27 March 1998 Mr Nolan e-mailed Mr Burns and Ms O'Brien in the following terms:

I now have information that Maule floatplane VH-LRZ was operated into Rose Bay on Sunday, 22nd March 1998 on a passenger charter with two passengers on board. Just prior to 6pm, the pilot in command requested, through Sydney Flight Service, that someone from Sydney Harbour Seaplanes observe the landing at Rose Bay at approximately 6pm. Sandy Antal, an employee of Sydney Harbour Seaplanes, observed the landing from that company's rescue boat. Because of the strength of the wind (estimated at 25 knots) prevented the Maule from manoeuvring, he towed the aircraft to the South Pacific Seaplanes marina. Two passengers were disembarked and the pilot in command, (identified as Steve Kennington, the company chief pilot), said that he thought that one of his strut fittings had broken on take-off, as it had a crack in the fitting and they were waiting for a part. Mr Antal then returned by boat to the Sydney Harbour Seaplanes marina and shortly thereafter observed the aeroplane departing Rose Bay.

Trevor ... I have forwarded this to you in Mary's absence and it should be read in conjunction with a minute I sent to Mary yesterday, a copy of which is attached below ...

I reiterate the recommendation made in that minute "... that continued operation by this company with Mr Kennington as Chief Pilot poses a serious threat to the safety of fare paying passengers and the general public and that Mr Kennington's Chief Pilot approval be suspended under the provisions of CAR 268, pending investigation of this matter." (RT75)

- 12.367 Later that day Mr Burns faxed Mr Kennington (cc Mr Cartledge, Ms O'Brien and Dr Jonathan Aleck) advising that he was considering cancelling or suspending his Chief Pilot's approval in light of the following facts and circumstances:

...

2. *Inspections of the operations of South Pacific Seaplanes revealed the following matters:*

On 24th March 1998 on aircraft Maule M-7-235 VH-AGX the left hand forward float attach strut was found to have a crack approximately two (2) inches in length through the bolt attach point on the outboard side.

On 26th March 1998 splits exceeding three (3) inches in length were found in the top surface fabric of right and left stabilisers on Maule M-7-235 VH-LRZ.

3. *Despite the fact that you were aware of the defects outlined in paragraph 2 above, you failed to ensure that they were entered on the aircraft maintenance release.*

4. *These facts show that you have failed to discharge your duties and responsibilities as Chief Pilot in accordance with Civil Aviation Order 82.0, Appendix 1, paragraph 2.2(a) in that you:*

allowed South Pacific Seaplanes aircraft to operate contrary to the Company Operations manual sections A1.9(g) and A3.2;

allowed South Pacific Seaplanes aircraft to operate contrary to Civil Aviation Act Sections 29(1)(b) and 28BD in that upon becoming aware of the defects you failed to ensure that they were endorsed on the maintenance release and declare the aircraft unairworthy in accordance with Civil Aviation Regulation 47(1); and

allowed South Pacific Seaplanes aircraft to operate contrary to Civil Aviation Act Sections 29(1)(b) and 28BD in that upon becoming aware of the defects you failed to ensure that they were endorsed on the maintenance release in accordance with Civil Aviation Regulation 50.

(RT75)

- 12.368 Mr Burns gave Mr Kennington 7 days to show cause why his approval as Chief Pilot should not be cancelled, and offered him the opportunity to attend an Informal Conference. (RT75)

Conclusion re Regulatory Transactions 61, 75 and 76:

So far as I can ascertain, the issuance of this show cause letter to Mr Kennington appears to be the culmination of the investigation into the allegations made by Mr Gorman in his letter to the CASA Board (RT61) and by Mr Britten both orally (RT75) and later in writing. (RT76)

In my view it was at least a justifiable response. It is possible that the show cause action could have been based on a wider range of issues. It is also possible that action could additionally or alternatively have been taken against the SPS AOC, having regard to the degree of influence that it was believed that Mr Handel was able to exert, and apparently did exert, in relation to the day-to-day operations of SPS.

On balance however, I do not wish to be critical on either of these bases.

- 12.369 On the same day Mr Claggett provided Mr Probert with the requested technical data in relation to the installation of floats on the Maule M7. (RT63)

Conclusion re Regulatory Transaction 63:

There is no record that I have been able to identify that demonstrates that Mr Davies received a final response to his letter to Mr Grimshaw of 30 August 1997. The letter sent to him on 11 March 1998 indicated that he would receive a further letter once Mr Claggett had provided the technical data necessary to finally resolve the issue raised by Mr Davies in relation to the floats used on the Maules. However, having regard to the matters that were current in relation to SPS at the time Mr Claggett's advice was finally received, I do not wish to offer any criticism on this point.

I note that, as with the earlier complaint in relation to the floats installed on the Maule, this complaint took an extremely long time to resolve. I do not criticise any individual in this regard, as I suspect that the reason has more to do with the structural relationship between the Flying Operations and Engineering Branches. I mention that issue in Chapter 10 as something to which consideration might be given.

- 12.370 On 30 March 1998 Mr Kennington accepted the offer of an Informal Conference. (RT75)

- 12.371 **Regulatory Transaction 76:** On the same day Mr Britten of Sydney Harbour Seaplanes wrote a long letter to the Chairman of CASA, with copies to the Minister for Transport and Regional Development, BASI and Ms O'Brien. He recounted the history of his complaints against SPS over time and said:

South Pacific have had a number of Chief Pilots in the last twelve or eighteen months, I think the count is up to six. In several instances these pilots have only stayed with the company a very short time until they have discovered what practices they were expected to continue. On one occasion the then Chief Pilot left after reporting to the Operator that he had a aileron jammed in flight only to be told this had been going on for a little while and would be fixed shortly.

All of this brings me to the most recent event concerning the operations of this company. Last Sunday 22 March 1998, an aircraft operated by South Pacific Seaplanes registration VH-LRZ reported to Flight Service Sydney that it was experiencing some operational difficulties with the suspicion that the aircraft had hit something in the water on takeoff on a journey to Rose Bay. At the pilot's request flight service contacted Sydney Harbour Seaplanes and my staff were asked to observe the safe arrival of the aircraft. Contact was made with the aircraft by radio from Sydney Harbour Seaplane's base in Rose Bay and the pilot carried out a fly past with three experienced float pilots observing the aircraft to see whether or not significant damage had taken place to the floats. Nothing was able to be observed from the ground and the aircraft subsequently made a safe landing after Sydney Harbour Seaplanes had positioned its safety boat in a suitable spot in Rose Bay. LRZ was then towed to South Pacific Seaplane's facility in Rose Bay by SHS safety boat. The pilot in command of LRZ was Chief Pilot of South Pacific Seaplanes, Mr Steve Carrington. He indicated to the SHS pilot who towed him in that LRZ had a cracked float strut fitting and it had been operated in this situation for about a week whilst they were waiting for a part. The passengers disembarked from the aircraft, our safety boat returned to our base and LRZ then immediately departed Rose Bay and flew to an unknown destination. Up to the point of admission of the known defect the pilot's actions were proper but the decision to then depart without any extensive examination of the aircraft is beyond my comprehension. Had the cracked float fitting failed (as the pilot initially suspected) then the result almost certainly would have been a multiple fatality.

As Chief Pilot of Sydney Harbour Seaplanes I reported our version of events on the operation of LRZ to the Civil Aviation Safety Authority at 8.00pm on Sunday, 22 March. I am unsure as to what action has been taken by CASA.

Over the last several months it has been reasonably well known at Bankstown that South Pacific have been "shopping" their maintenance around having had some difficulties with the maintenance system they had used for some time. They moved on from maintenance organisation to maintenance organisation as each of them sought to enforce a more strict maintenance regime on to South Pacific Seaplanes.

12.372 On the same day Mr Elder copied Mr Burns' show cause letter to members of the CASA Board. Mr Wes Willoughby asked Dr Aleck:

Why did we issue a show cause on the Chief Pilot and not on the AOC holder? We should be making the AOC holder fix his problem (under the Act) rather than the Chief Pilot (under a CAR). (RT75)

12.373 On 1 April 1998 Mr Kennington provided the following response to the show cause letter:

Crack in Forward Float Attach Strut

On Sunday 22 March, in the late afternoon, Maule M-7-235 floatplane VH-LRZ was subjected to a rough water takeoff and landing at Rose Bay. The aircraft seemed to be handling differently after the takeoff. After landing at Rose Bay it became evident that there was a crack in the forward float attach strut on the left hand side. Prior to this concerns had been focused on a smaller crack on the leading edge of the strut. The cause of the strange handling of the aircraft was put down to loosening of the brace wires caused by the heavy takeoff and landing. I decided that there was still sufficient integrity and strength in the landing gear to allow a positioning flight to Gunnamatta Bay. The flight was made without incident with just myself on board. On arrival at Gunnamatta Bay the operators were informed of the defect and that the aircraft was not to be flown until the strut and brace wires had been attended to. No entry was made on the Maintenance Release because the aircraft was expected to be repaired prior to its next flight.

On Monday 23 March, a replacement strut was sourced and was fitted to the aircraft late in the afternoon of Tuesday 24 March after an airworthiness inspection earlier in the day.

This is a recurring problem. We have had to replace 3 struts to date. The problem is possibly a design fault regarding the attachment point of the brace wires and it will be discussed with maintenance engineers in due course. These cracks seem to start from the centre of the strut just beneath the bolt hole and progress outwards in both directions from that point. They are difficult to detect as a crack in the metal as the strut is in compression, when the aircraft is stationary, and any cracks are forced closed. They can appear to be just a crack in the protective coating.

Splits in Fabric on Horizontal Stabiliser on VH-AGX

This is another recurring problem. We were monitoring the splits and expected that they would not elongate and would be repaired at the next 100 hourly which was expected to occur on Monday 6 April. As a result of the Airworthiness inspection on Wednesday 25 March, VH-AGX was repaired by Hawker Pacific at the Georges River boat ramp on the morning of Thursday 26 March.

Maintenance Release

The maintenance releases have seen few if any endorsements in Part 2 because of an underlining fear of prosecution over endorsements that may be interpreted differently by different parties. Major faults are dealt with expediently which nullifies the need to enter the problem on the Maintenance Release. The more insignificant problems are presented to the engineers for tidying up at the next 100 hourly. Although maintenance releases have not been filled out a company form titled "South Pacific Seaplanes Defect Report" has been. These forms, one for each aircraft, are displayed at the Pilots' desk for common viewing. The forms either accompany the aircraft when submitted for their 100 hourly or are faxed to the maintenance organisation. It is apparent that my use of the maintenance release is not in accordance with CARs and Company Operations

Manual policy and will be revised. The introduction of the companies own on site engineering staff and facilities will I hope alleviate some of the frustrations we are experiencing regards maintenance. (RT75)

- 12.374 On the same day Mr Simpson prepared a further report on his visits to SPS of 25 March 1997. His last paragraph was as follows:

It was obvious they were aware of the defect and I explained to both Phil and Steve their obligations in regards to entering defects on the maintenance Release. It was totally apparent by their lack of dialogue they were aware of their responsibilities. (RT75)

- 12.375 **Regulatory Transaction 77:** On 1 April 1998 an Informal Conference was held with Mr Kennington. There is no record on file of that Informal Conference. Mr Cartledge says that he would have taken handwritten notes of it, but he cannot now locate them. Mr Burns has confirmed that the meeting was attended by Mr Burns, Ms O'Brien, Mr Cartledge and Mr Kennington. It is not clear whether Mr Handel was in attendance, but Mr Burns has informed me that he, Ms O'Brien and Mr Cartledge held a separate meeting with Mr and Mrs Handel on the same day at which SPS' obligations under the Act were made clear. There is similarly no record of that meeting.

- 12.376 There is no written record of the reasons for the decision taken by Mr Burns after those meetings. However, on 2 April 1998 he wrote to Mr Kennington as follows:

In a notice sent to you on 27th March 1998 you were asked to show cause within seven (7) days why your Chief Pilot's approval should not be cancelled or suspended on the grounds set out in that letter. The issues were discussed at an informal conference on 1st April 1998.

As a result of those discussions I am still not convinced that I should not cancel your appointment on the grounds that your performance is no longer of an acceptable standard. I have some concern that you are not meeting your responsibility of ensuring that South Pacific Seaplanes air operations are being conducted in compliance with the Civil Aviation Act, the Civil Aviation Regulations and the Civil Aviation Orders.

On the other hand, I am not convinced that I should cancel your appointment as I am of the opinion that your failure to meet your responsibilities is not wilful and that, with application, you can improve your performance to an acceptable standard.

In the circumstances I have decided to grant you a further opportunity to satisfy me that I should not act against your approval. I am therefore extending the original period of seven (7) days granted in the notice of 27th March by a further twenty-eight (28) days to allow you that further opportunity.

Prior to the end of that period CASA will conduct a safety audit of South Pacific Seaplanes and my final decision concerning your Chief Pilot's approval will be influenced by those aspects of the results of the audit which relate to your duties and responsibilities as outlined in Appendix 1 to Civil Aviation Order 82 and such further submission that you put to me in that time.

The safety audit, which will be conducted by a small team comprising Flying Operations and Airworthiness Inspectors, will include an interview with you at which you will be given the opportunity to demonstrate your understanding of your duties and responsibilities.

I must note however that this extension of time in relation to your notice does not affect CASA's duty to take other action in the event of further safety issues arising in the interim.

Conclusion re Regulatory Transaction 77:

The process for conducting this Informal Conference warrants criticism for its lack of a formal record of what transpired and of detailed reasons for the decision that was subsequently taken.

Mr Burns considers that his letter constitutes a written record of the Informal Conference and of the reasons for the decision taken as a result of it. I do not agree with that assessment. The letter does indicate in brief terms the matters which were discussed at the meeting, but not the detail of what was said. It contains a statement of the decision made as a result, but does not contain any detail of the reasons for that decision. I note that the Informal Conference procedures do not require a detailed record of reasons to be prepared. In my view, that should nevertheless have been done as a matter of good management. I elsewhere recommend that these procedures should be amended to make that requirement clear.

I also believe that it was inappropriate for this Conference to have been held either without Mr Nolan present or without detailed briefing from and consultation with him before and after it was held. However I note that Mr Burns and Ms O'Brien both consider that Ms O'Brien had an adequate understanding of the facts to make this unnecessary. Given the subsequent decision to initiate the special audit, my view that it was inappropriate to not involve Mr Nolan is of no consequence on this occasion.

If there had been no further action against Mr Kennington or SPS as a result of this Informal Conference, I would have regarded that as a matter for significant criticism. However, I believe that Mr Burns' decision to initiate a special audit of SPS was an extremely good decision, albeit one that could have been justified earlier. This audit would allow, for the first time, a "whole of operator" view to be taken of the status of regulatory compliance by SPS. Such could have been justified much earlier in my opinion, and was thus at least appropriate and proper at this time.

Observation:

It is important to note that the show cause action against Mr Kennington remains unresolved as at the date of this report. As will later appear, this action was placed "on hold" while later suspension and show cause action was taken against SPS itself.

Recommendation:

In my view, it would be appropriate for a decision to now be taken in relation to the show cause action that was initiated in relation to Mr Kennington. I consider that it would be undesirable for that matter to be dealt with only after (and if) the proceedings in relation to the SPS AOC are resolved.

- 12.377 **Regulatory Transaction 78:** Later on 2 April 1998 Mr Burns sent an e-mail to Mr Bob Hoy, Manager, Safety Audits, Coffs Harbour, asking him to conduct the special audit referred to in the letter to Mr Kennington; he asked Ms O'Brien to make FOI Ms K Hilsberg available for the special audit team; and he asked Mr McFarlane to make Mr Simpson available also.
- 12.378 Also on 2 April 1998 Mr Burns' assistant sent Mr Hoy a copy of a "running brief" she had been maintaining at Mr Burns' request and in Mr Burns' name in relation to SPS. The last two paragraphs of that brief were as follows:

Having regards to the information provided by Rod Britten, both verbally and in his letter of 30 March 1998 to Dick Smith and the information provided by Mr Kennington and Mr and Mrs Handel on 1 April, I was not able to come to the view that Mr Kennington's actions on 22 March 1998 warranted suspension or cancellation of his Chief Pilot approval. However, in the course of the informal conference with Mr Kennington he did not demonstrate a complete understanding of his Chief Pilot duties and responsibilities.

As a consequence I have extended the show cause period for a further 28 days. Prior to the end of the extended show cause period a special safety audit of SPS will be conducted. A final decision regarding Mr Kennington's Chief Pilot approval will be made after reviewing those results of that audit which relate to Mr Kennington's performance. (RT77)

- 12.379 **Regulatory Transaction 79:** On 8 April 1998 a Waterways Authority officer sent Mr Nolan a copy of a report which had been written by a Senior Marine Investigator of the Waterways Authority. It was written to his Regional Manager on 28 January 1998 in relation to an alleged encounter between an SPS aircraft and a dive charter by the name of "Southern Comfort". It was in the following terms:

A minor collision at low speed occurred as the seaplane was taxiing before takeoff with the pilot and two passengers on board. The 10 metre charter diving vessel was making an approach to a jetty at Rose Bay to disembark its passengers with the owner/operator at the helm. The incident occurred in good visibility and fine conditions. Both vessels were operating in accordance with Waterways Authority Regulations and alcohol was not a factor. The police were not called and the incident was not reported to an authority within 24 hours. The seaplane sustained minor damage to its port wing top that was repaired to aviation authority standards before the plane re-entered service and the dive charter vessel had some minor scratching on its guardrail.

Comments:

- The seaplane pilot stated that he observed the dive vessel as he began to taxi out on the port side of his vessel. He considered that the other vessel was required to give way in this situation and continued on his way out from the shore. He then realised that a collision was imminent and was unable to avoid it by any manoeuvre.*
- The dive vessel master stated that he did not see the seaplane until just before the collision took place and was unable to avoid it.*
- The seaplane did not have any means of applying astern propulsion, such as reverse thrust by way of its propeller, and had only restricted ability to manoeuvre by turning because of its configuration.*
- The rotating propeller did not strike the diving vessel, whose eight passengers were carried in the open after part behind the cabin.*

Conclusions:

- 1 *It is apparent that the incident resulted from two main factors:*
 - the failure of the pilot to keep his vessel clear of the other initially, when he first observed it and was in clear water, as required by Rule 18 of the Navigation (Collision) Regulations;*
 - the failure of the diving vessel's master to keep a proper lookout, as required by Rule 5 of the Navigation (Collision) Regulations, so as to have observed the seaplane and taken action to avoid a collision.*
- 2 *It is also apparent that the pilot, although experienced, was unaware that a taxiing seaplane is required to avoid other vessels in the first instance.*
- 3 *The danger of a rotating propeller striking a vessel that may be carrying passengers is one of the additional factors in assessing any operating restrictions on this type of operation.*
- 4 *It is unlikely that prosecution action against one or both masters would be successful or achieve any additional benefit for the Waterways Authority.*

Recommendations:

- 1 *The pilot of the seaplane could be issued with a SEIN for causing Danger, in accordance with Clause 5 of the Water Traffic Regulations, if the maximum period for taking penalty action imposed by the IPB has not expired. He could alternatively be given a Formal Warning for that offence with a letter adding that this incident would normally have been dealt with more severely by the Waterways Authority, because of the potential for it to have been more serious.*
- 2 *The master of the diving vessel could be given a Formal Warning for failing to keep a proper lookout as required.*
- 3 *Both masters should be reminded of the requirement to report such incidents to the Waterways Authority in accordance with the Regulations.*
- 4 *The Waterways Authority should refer to this incident in any review of Seaplane Operations, the issuing of Aquatic Licences from Seaplane activities or if a similar incident occurs in future.*

12.380 Mr Nolan has informed me that he has no recollection of this document, and certainly there is nothing on the file copy to indicate that he has seen it. While the incident is now quite dated, the matters alleged are potentially significant. (RT79)

Conclusion re Regulatory Transaction 79:

This complaint against SPS operations is serious in its terms and, if received and acted upon in a timely way, could have formed the basis for significant regulatory action against SPS.

Given that there is no record of who in CASA, if anyone, saw this correspondence from the Waterways Authority, there is no basis for criticism of any individual officer.

Recommendation;

I **recommend** that this matter be now considered with a view to ascertaining whether there is any formal action that should be taken in relation to this incident.

I also **recommend** that CASA consult with the Waterways Authority in relation to the processes followed in passing complaints from that Authority to CASA. In this instance, the incident to which the complaint relates occurred on 28 January 1998 but it was apparently not reported to CASA until 8 April 1998. Investigation of such incidents, and the gathering of evidence to support regulatory action, can be prejudiced by such delay. If such are not already in place, it would be desirable for there to be arrangements for very prompt notification of such incidents to CASA.

12.381 On 16 April 1998 Hawker Pacific wrote to Mr John Laycock at CASA Bankstown in the following terms:

The above aircraft and its sister aircraft have raised considerable concerns within Hawker Pacific. At present, they are carrying fare paying passengers while operating under fairly extreme conditions using Schedule 5 as the basis for continued airworthiness.

Hawker Pacific are presently developing a more sophisticated system of maintenance to address continued airworthiness in the light of the operation being undertaken. At present CASA accept (sic) Schedule 5 as adequate, although I believe you would agree with Hawker Pacific that a more sophisticated system of maintenance is needed.

I think it appropriate that CASA provide some documented guidelines to assist Hawker Pacific in developing this Schedule. Our present proposal intends to look at the following:

- Corrosion through a rolling series of x-rays covering the complete structure.*
- Corrosion Prevention through the introduction of a corrosion inhibitor.*
- The inspection of structural elements that may have poor fatigue performance resulting from float operation.*
- Replacement of corroding components with parts made with corrosion resistant materials.*
- Corrosion limits.*

As you would be aware OEM data on this aircraft is close to non existent and we are unlikely to get much support from the OEM. If you are able to assist us in this exercise it would be greatly appreciated. (RT65)

- 12.382 On 16 April 1998 Mr Nolan sent an e-mail to Mr Burns (cc Ms O'Brien) saying that he had read Mr Burns' brief of 2 April 1998 (Attachment G) and believed it did not "adequately explain the seriousness of the accusations". Mr Nolan asked Mr Burns to send a statement prepared by him to the recipients of Mr Burns' brief. That statement set out Mr Nolan's understanding of the facts in relation to the cracked strut and Mr Kennington's knowledge of it. He concluded, in his view, "until these matters are investigated his delegation should be suspended under the provisions of CAR 268(1)". Mr Burns did not agree to circulate Mr Nolan's statement because the 2 April brief had not been circulated outside the South East Regional Office. Instead, it had been routinely prepared so that the Office would be in a position to respond quickly to any Central Office request for an update. (RT76 and RT77)
- 12.383 On 17 April 1998 a pilot with Sydney Harbour Seaplanes made a statement as to the incident of 22 March 1998 in which Sydney Harbour Seaplanes had been asked to assist the SPS observe and aircraft, as reported above. (RT76)
- 12.384 On 20 April 1998 Mr Burns e-mailed Mr Nolan (cc Ms O'Brien and Mr Hoy) saying that he would like to discuss with Mr Nolan his reasons for allowing Mr Kennington further time to show cause rather than cancelling his approval forthwith. He noted that he had asked Mr Hoy to arrange for the special audit team to brief himself, Ms O'Brien and Mr Nolan on 23 April 1998 after the team's exit interview with SPS. Mr Hoy replied saying that he thought Mr McFarlane should also attend that meeting, and Mr Burns agreed. (RT77 and RT (78))
- 12.385 The special audit commenced on 20 April 1998 when the team carried out background research at the Bankstown office. They then spent the better part of 21 and 22 April at SPS premises, mainly with Mr Kennington and Mr Handel. On the morning of 23 April they conducted their exit interview with SPS and outlined the nature of the matters on which they would report. (RT78)
- 12.386 During the course of the special audit the following Non-compliance Notices were issued:
- 103712 - Grade 2 - "evidence that several pilots operated in excess of flight and duty time limitations on CAO 48" - this related to the period 1 January 1998 to 31 March 1998 and the pilots involved included Mr Kennington. Mr Kennington responded on 30 April 1998;
 - 103713 - Grade 2 - "pilots operated in excess of the flight and duty time limitations of CAO 48". This was acquitted on 25 April 1998;
 - 103714 - Grade 3 - "procedures and instructions for C185 aircraft are not included in company Operations Manual" - Mr Handel replied on 25 April 1998 advising that Mr Kennington had been instructed to amend the Operations Manual to include details for the Cessna aircraft;
 - 103715 - Grade 5 - "copies of expired maintenance releases not kept by operator". Mr Handel responded on 25 April 1998 advising that copies of maintenance release will be taken before aircraft are presented for their 100 hour inspection;

- 506238 - Grade 3 - "No Major Defect Reports have been submitted by operator - major defects have been evident on both VH-LRZ and VH-AGX on various several occasions". At 8 May 1998, Mr Simpson was of the view that this Non-compliance Notice had not been satisfactorily acquitted;
- 506240 - Grade 3 - "passenger manifest not compiled and maintained". At 8 May 1998, Mr Simpson was of the view that this Non-compliance Notice had not been satisfactorily acquitted;
- 506241 - Grade 2 - "deficiencies identified in the Operations Manual". At 8 May 1998, Mr Simpson was of the view that this Non-compliance Notice had not been satisfactorily acquitted;
- 506242 - Grade 5 - "Certificate of Registration not transferred". This was satisfactorily acquitted by lodgment of an application for transfer of registration;
- 506243 - Grade 2 - "the C of R holder and Chief Pilot were unaware the daily inspection was to be carried out to Schedule 5 of the CARs". At 8 May 1998, Mr Simpson was of the view that this Non-compliance Notice had not been satisfactorily acquitted. (RT78)

12.387 On 22 April 1998 Dr Aleck took up with Mr Burns Mr Willoughby's query about why show cause action had been taken against Mr Kennington rather than SPS. Mr Burns advised that he had acted against the Chief Pilot "for his actions in operating an aircraft that appeared to have a major defect ... My concerns go to his willingness to exercise his responsibilities as CP". (RT75)

12.388 Dr Aleck replied setting out his views about when it was appropriate to act against the operator and when it was preferable to act against the Chief Pilot. Mr Burns responded saying that he agreed that each case should be treated on the merits and said:

In my experience, in the majority of cases we need to sheet the responsibility home to the operator. However sometimes the responsibilities lies squarely with an employee, in which case the most appropriate course is to take action against that employee's certificate, licence or approval. (RT75)

12.389 On 23 April 1998 Mr Pike wrote to Mr Britten as follows:

Thank you for your letter of 30 March 1998 to Mr Dick Smith in which you express concerns about the operations of Aquatic Air, trading as South Pacific Seaplanes. Mr Smith has asked that I respond on his behalf.

I am advised that on 22 March 1998, you talked to Mr Mike Nolan, Flying Operations Inspector, Bankstown District Office of the Civil Aviation Safety Authority (CASA) about this matter. Following that discussion, CASA officers met with the company's principals and Chief Pilot to discuss the issues you have described.

As a result of the meeting, action is being taken to establish that all aspects of South Pacific Seaplanes' operations comply with the requirements of the Civil Aviation Act, Civil Aviation Regulations and Orders.

Thank you for writing to me about this matter . Please be assured that your concerns are being given the most serious consideration and, if evidence is found, CASA will take appropriate action. (RT76)

12.390 On 23 April 1998 the special audit team met with Mr Burns, Ms O'Brien, Mr McFarlane and Mr Nolan and outlined their findings. While the recollections of individual attendees seem to differ somewhat about the precise views expressed at that meeting, it seems to be common ground that the team's report would favour action being taken against SPS and that Mr Burns proposed to suspend or cancel the SPS AOC on receipt of the team's report. It seems that it was suggested at one stage that he should act against SPS immediately without waiting for the report to be finalised. However, he stated that he was not prepared to do that because, if challenged by SPS in the AAT, CASA would not have an adequate documentary basis on which to launch an early response. (RT78)

12.391 On 5 May 1998 Mr Hoy e-mailed Mr Burns what was said to be the final text of the audit team's report. The key findings of the report may be summarised as follows:

- while the Operations Manual was not reviewed in detail, sufficient evidence was found to indicate that sections of the manual were either inappropriate and/or deficient in reflecting SPS' operations and SPS staff did not follow the information contained in the Manual;
- CASA requirements in relation to aircraft maintenance had not been addressed by SPS to CASA satisfaction;
- the Chief Pilot had no knowledge of the daily inspection requirements of Schedule 5 of the CARs;
- no defect reports had been submitted to CASA in respect of major concerns with float attach struts cracking on four occasions, or in respect of numerous difficulties with door latching mechanisms;
- no references were made in the Operations Manual to the specific operational requirements of the Cessna 185;
- the registration of the Cessna had not been transferred to SPS despite its purchase of the aircraft;
- SPS consistently did not record defects on Maintenance Releases - while they used an alternative form for this, there were no procedures in the Operations Manual for its use;
- there were repeated excess flight and duty times recorded for the Chief Pilot and two other pilots;
- passenger names were not entered on passenger manifests by some pilots, and only names of the person making a booking was entered on the booking sheet that was relied upon by some pilots who did not use passenger manifests at all;

- the load sheet required by the Operations Manual to be completed for each flight was not being followed when there were less than 3 passengers on a flight;
- expired Maintenance Releases were not maintained as required by CAO82.1;
- facilities for the use of the Chief Pilot and other pilots were extremely poor and in the view of the team did not meet the standard required by section 28BG(b) of the Act;
- there was a strong suggestion that the Chief Pilot put commercial considerations ahead of his Chief Pilot responsibilities to fare-paying passengers;
- the AOC holder did not seriously accept his responsibilities as an AOC holder.

The team's recommendation was that:

Based on the results of the audit, the history, the unsatisfactory acquittal of issues covered in "show causes" and their approach to safety issues, it is the consensus of the team that South Pacific Seaplanes AOC be immediately suspended pending cancellation. (RT78)

12.392 On 5 May 1998 Mr Cartledge drafted a letter notifying SPS that its AOC was to be suspended and settled the text in conjunction with Mr Hoy. Mr Burns then e-mailed Mr Pike and Dr Aleck in the following terms:

You will be aware that several weeks ago I required the Chief Pilot of South Pacific Sea Planes to show cause as to why his Chief Pilot approval should not be varied, suspended or cancelled. In the course of the informal conference in relation to that show cause I became concerned that the Chief Pilot did not have a clear grasp of his responsibilities.

In informal discussions, held separately with the directors of the company, I also became concerned that they were not meeting their obligations under Section 28BE of the Civil Aviation Act.

To address these concerns I ordered a safety audit of South Pacific Sea Planes. This audit was conducted on 21-22 April 1998, and I received the audit team's final report today. The report indicates serious systemic problems with the company and I am concerned that continued operations by this company will compromise the safety of charter passengers.

I have decided, therefore, to suspend the AOC of South Pacific Sea Planes under section 28BA(3) of the Civil Aviation Act, effective today.

On Thursday 7 May 1998, I intend to write to South Pacific Sea Planes asking the directors to show cause why the AOC should not be cancelled.

Attached is a copy of the letter of suspension faxed to South Pacific Sea Planes this afternoon.

I will keep you apprised of developments. (RT78)

12.393 CASA Board members and the Minister's office were advised of Mr Burns' decision to suspend the SPS AOC by Mr Elders' office on 5 May 1998. (RT61, RT66 and RT78)

12.394 Notwithstanding the terms of Mr Burns' e-mail, the letter to SPS was in fact dispatched on 6 May 1998. The facts and circumstances on which Mr Burns said he was relying to justify the suspension of the AOC were set out as follows:

- 1 *Aquatic Air Pty Limited Trading as South Pacific Seaplanes (hereafter South Pacific Seaplanes) is now, and at all times mentioned in this notice was, the holder of Air Operators' Certificate No. BK535224-06 authorising Charter and Aerial Work Operations using Maule M-7-235 and Cessna 185E type aircraft.*
- 2 *As at 21st and 22nd April 1998, South Pacific Seaplanes' Operations Manual did not contain such information, procedures and instructions with respect to the flight operations of all types of aircraft, including the Cessna 185E operated by South Pacific Seaplanes, as are necessary to ensure the safe conduct of the flight operations.*
- 3 *On or about 23rd March 1998, South Pacific Seaplanes aircraft VH-LRZ sustained damage in the form of a two inch crack in the left hand forward float attach strut on the outboard side and was permitted to be flown before the damage had been remedied. No endorsement had been entered and signed on the Maintenance Release No 265154.*
- 4 *South Pacific Seaplanes failed to declare aircraft VH-LRZ unairworthy as a result of the cracked forward float attach strut referred to in paragraph 3 Above.*
- 5 *On or about 24th March 1998, South Pacific Seaplanes failed to endorse defects discovered on aircraft VH-LRZ, namely, corroded longerons and L.H. and R.H. pilot entry doors which could not be opened externally, on its Maintenance Release No: 265154.*
- 6 *On or about 25th March 1998, South Pacific Seaplanes failed to endorse defects discovered on aircraft VH-AGX, namely, splits exceeding 3 inches in the fabric covering the top surface of both left and right hand horizontal stabilizers, on its Maintenance Release No: 265155.*
- 7 *As at 21st and 22nd of April 1998 it was apparent that maintenance required under Civil Aviation Regulation Schedule 5 - Daily inspections on aircraft VH-LRZ and VH-AGX had not been completed but South Pacific Seaplanes allowed certification to be entered on Maintenance Releases No. 265154 and 265155 respectively that the said maintenance had in fact been completed.*
- 8 *During the period 1st January 1998 and 31st March 1998, pilots - Kennington, Alexander and Fenelon acted as pilots in command and in circumstances which resulted in them exceeding flight and duty time limitations as outlined in Civil Aviation Order 48.*

- 9 *As at 21st and 22nd April 1998 it was apparent that South Pacific Seaplanes had failed to keep copies of expired maintenance releases for each aircraft for the immediately preceding twelve months.*
- 10 *South Pacific Seaplanes failed to compile and leave for retention at aerodromes of departure passenger lists containing the aircraft registration, the names of the passengers carried, the date and estimated time of departure, and places of embarkation and destination in respect of numerous flights operated under the Air Operator's Certificate.*
- 11 *At its Cronulla premises, where its operating crew are based, South Pacific Seaplanes as at 21st and 22nd April 1998 did not have suitable facilities for the Chief Pilot to perform his duties, having regard to the nature of its operations, in that there is only a small desk in the meal room, which is adjacent to an open workshop where outboard motor maintenance is performed. The same facilities are also used by all other pilots.*
- 12 *The procedures and practices contained in South Pacific Seaplanes operations manual were not up to date as at 21st and 22nd April 1998. In particular, Section A3.1 does not reflect the additional requirements required in a daily inspection due to operations in a "salt water" environment. Section A6.1 covering Flight Authorisation does not provide procedures to be followed. Section A.3 covering refuelling procedures does not identify current procedures.*
- 13 *As a result of a series of breaches of the Civil Aviation Act, the Civil Aviation Regulations and the Civil Aviation Orders the Civil Aviation Authority on 6th April 1977 (sic) required Aquatic Air Pty Limited to show cause why its Air Operators' Certificate should not be suspended or cancelled. In the event, no suspension or cancellation action was taken but the fact that it was issued, combined with the fact of continued breaches by the company raises grave doubts as to its ability to meet the requirements of the Act, the Regulations and the Orders. (RT78)*
- 12.395 Later that day Mr Cartledge provided Mr Burns with a draft letter to SPS asking them to show cause why their AOC should not be cancelled. This draft relied on substantially the same grounds as set out above to justify the action proposed to be taken. (RT78)
- 12.396 Still later in the day, Mr Hoy e-mailed Mr Burns noting that the extended period for the show cause action taken in respect of Mr Kennington had expired and recommended that, given the results of the special audit, Mr Kennington's approval as Chief Pilot should be cancelled. (RT77)
- 12.397 **Regulatory Transaction 80:** And finally on that day, CASA was advised that SPS had lodged with the AAT an application for review of the suspension decision, and an application to stay the operation of that decision pending the AAT's determination of the application. In the application Mr Handel claimed:

*All matters of concern expressed in the suspension letter **have been addressed** in the appropriate manner and verification made to CASA.*

There is nothing outstanding that could be considered a threat to public safety. Hawker Pacific can attest to the safety of our aircraft.

The company is prepared to employ a safety consultant, Mr Barry Diamond (formally South East regional manager of CASA) to oversee the establishment of a safety program to ensure compliance until matters can be resolved.

The company employs 8 people and would experience considerable hardship if not allowed to operate during this time and if prolonged would be forced to retrench.

12.398 On 7 May 1998 Mr Burns wrote to Mr Kennington in the following terms:

You will recall that in that letter I advised you that my final decision concerning your Chief Pilot's approval would be influenced by the results of the safety audit of South Pacific Seaplanes that CASA was going to conduct prior to 30 April 1997.

That audit has now been completed and, as you are aware, has resulted in the suspension of South Pacific Seaplanes' Air Operator's Certificate. As you are also no doubt aware, South Pacific Seaplanes has appealed my decision to the Administrative Appeals Tribunal.

The audit results suggest to me that you do not meet your responsibility of ensuring that South Pacific Seaplanes (sic) air operations are being conducted in compliance with the Civil Aviation Act, the Civil Aviation Regulations and the Civil Aviation Orders. On all of the materials available to me after the audit I am still not convinced that I should not cancel your Chief Pilot's approval on the grounds that your performance is not of an acceptable standard.

While, however, South Pacific Seaplanes' Air Operator's Certificate is suspended you are not performing in the role of Chief Pilot and there is therefore no safety requirement demanding that I make a decision concerning your Chief Pilot's approval and I do not propose to do so at present.

However, should South Pacific Seaplanes' application to the Administrative Appeals Tribunal for a stay of suspension be successful, or should its application to that Tribunal for review result in my decision to suspend being revoked or set aside the issue of safety will require that I examine your matter and make a decision concerning your Chief pilot's approval. (RT77)

12.399 Also on that day, Mr Burns wrote to Mr Handel formally asking him to show cause why the SPS AOC should not be cancelled. He also wrote a separate letter to Mr Handel advising him of the action he had taken in relation to Mr Kennington. (RT77 and RT78)

12.400 Again on 7 May 1998, the office of the Minister for Transport and Regional Development wrote to Mr Britten in relation to his letter of 30 March 1998 to the CASA Chairman which had been copied to the Minister. The Minister's office referred to CASA's previous advice to Mr Britten of its actions in response to his letter, and thanked Mr Britten for bringing his concerns to the Minister's attention. (RT76)

12.401 Finally, on that day Mr Cartledge and Mr McKenzie discussed the show cause letter and Mr Cartledge noted that:

[Mr McKenzie] said that Canberra had to sort out exactly who is dealing with the matter - the issue of stay will ultimately be [Dr Aleck's] - need clarification re the purported policy that CASA will always give stay. I said that [Mr Burns] would want (and should have) input into the question of whether there should be a stay of suspension. [Mr McKenzie] agreed and said that [Mr Burns] would have to make phone calls. Rob Elder running with matter re stay of suspension. (RT80)

12.402 On 8 May 1998 Mr Simpson provided Mr Robert Paice of the Office of Legal Counsel with the following summary of the then current position in relation to the Aircraft Survey reports and Non-compliance Notices which had been issued during the course of the safety audit:

For your information please find the following notes;

Aircraft Survey Reports

- Aircraft Survey Reports 105184, 105185, 105186, 105187 associated with VH-LRZ have all been acquitted in a timely manner.*
- Aircraft Survey Report 105188 associated with VH-AGX was acquitted in a timely manner.*

Non Compliance Notices

- NCN 506236. Acquittal not satisfactory at this time as no amendment to their operations manual has been received by CASA. Refer CAR 215(8).*
- NCN 506238. Acquittal not satisfactory. No Major Defect Reports have been received by this office for defects associated with VH-LRZ and VH-AGX. The defects associated with ASR 105184, 105185, 105188, can be considered a major defect in accordance with CAR 51A. The cracked float strut (ASR 105184) which according to the operator, is the fourth time this defect has occurred, has never been reported.*
- NCN 506240. Acquittal not satisfactory at this time as no amendment to their operations manual has been received by CASA. Refer CAR 215(8).*
- NCN 506241. Acquittal not satisfactory at this time as no amendment to their operations manual has been received by CASA. Refer CAR 215(8).*
- NCN 506242. Acquittal satisfactory. Application has been received.*
- NCN 506243. Acquittal not satisfactory for the preventative Action section. No additional requirements to the Daily Inspection have been submitted to CASA for approval in accordance with CAR42(a)(ii).*

Rob, this is the only info I can give you at this time. Please phone me if I can help further. (RT80)

12.403 On 8 May 1998 Hawker Pacific Pty Limited wrote to Mr Handel as follows:

This letter confirms the agreed arrangements between Hawker Pacific and South Pacific Seaplanes for the maintenance of your aircraft.

Since taking on the maintenance of your aircraft approximately five (5) months ago, we have been observing the prescribed maintenance program and you have authorised the rectification of all defects that have been identified during those inspections.

It has become evident that the aircraft are in need of major inspections and a more comprehensive inspection and repair program is necessary, and we acknowledge we have received your instructions for that to take place. These arrangements were formalised at our meeting on 29 April 1998.

At this meeting you also agreed to Hawker Pacific to implement recommendations put forward in regard to preventative maintenance and corrosion control. (RT65)

12.404 It appears that CASA received this letter on 18 May 1998. (RT65)

12.405 And again on 8 May 1998 Mr Burns wrote again to Mr Kennington giving him notice of the following additional matters to which he proposed to have regard in considering whether or not to revoke Mr Kennington's Chief Pilot approval, and giving him until 13 May 1998 to respond:

The additional facts and circumstances are:

That you have failed to discharge your duties and responsibilities as Chief Pilot in accordance with Civil Aviation order 82.0 appendix 1, paragraph 2.2. (a) in that you:

- 1 *did not arrange flight crew rosters in accordance with the Company's Operations Manual section A2.9 during the period from the beginning of January 1998 until 21st and 22nd April 1998;*
- 2 *did not ensure Daily Inspections of the aircraft operated by the Company were carried out in accordance with the requirements contained in Schedule 5 of the Civil Aviation Regulations, in particular, you did not know whether the purported daily inspections certified in Maintenance Releases Serial Numbers 265154 and 265155 in respect of aircraft VH-LRZ and VH-AGX respectively had actually been carried out;*
- 3 *during the period 1st January 1998 and 31st March 1998, you did not maintain the operator's system to record flight crew duty and flight times to ensure compliance with Part 48 of the Civil Aviation Orders. Your failure to maintain this system caused yourself and pilots M. Alexander and S. Fenelon to be in breach of CAO 48 by exceeding the flight and duty time limitations on repeated occasions during this period, for example:*

- (a) *Fenelon from 1st January to 5 January 1998 inclusive had exceeded 30 hours flight time in*

7 days thus being in breach of CAO 48.1 para 1.16.

- (b) *Alexander on 2nd February, 23rd March and again 3rd April 1998 had exceeded 30 hours flight time in 7 days thus being in breach of CAO 48.1 para 1.16.*
- (c) *Alexander from 2nd January to 21st January 1998 inclusive, 25th January 1998, 31st January 1998, 1st February 1998, 18th February 1998, from 21st February to 14th March 1998 inclusive, 17th March 1998 and from 21st March to 23rd March 1998 inclusive had exceeded 100 hours flight time in 30 days thus being in breach of CAO 48.1 para 1.15.*
- (d) *Alexander on 10th January 1998, 11th January 1998, 25th January 1998, 22nd February 1998 and 8th March 1998 had exceeded 90 hours duty time in 14 days thus being in breach of CAO 48.1 para 1.13.*
- (e) *Yourself from 1st January to 6th January 1998 inclusive, 15th February 1998 and 16th February 1998 had exceeded 30 hours flight time in 7 days thus being in breach of CAO 48.1 para 1.16.*
- (f) *Yourself from 3rd January to 17th January 1998 inclusive and from 24th January to 26th January 1998 inclusive had exceeded 100 hours flight time in 30 days thus being in breach of CAO 48.1 para 1.15.*
- (g) *Yourself on 22nd February 1998 and 22nd March 1998 had exceeded 90 hours duty time in 14 days thus being in breach of CAO 48.1 para 1.13.*

- 4 *allowed South Pacific Seaplanes aircraft to operate contrary to the Company Operations Manual section A.4.1 in that you failed to ensure passenger manifests were compiled and kept during the period from the beginning of January 1998 until 21st and 22nd April 1998;*
- 5 *did not ensure that Part B of the company's Operations Manual was updated to cover the operations of a Cessna 185E Floatplane introduced into service in December 1997, thereby being in breach of CAR 215(2);*
- 6 *did not ensure the company's Operations Manual was up-to-date to identify how flight Notification would be achieved as required in Section A6.1 of that manual; and*
- 7 *during the period from the beginning of January 1998 until 21st and 22nd of April 1998 you allowed South Pacific Seaplanes to operate contrary to the Company Operations Manual section B3.3 by failing to ensure aircraft load sheets were completed before each flight and failure to retain such documents for 6 months as required by section A4.2 of the company Operations Manual. (RT77)*

Conclusion re Regulatory Transaction 78:

In my view, the special audit was undertaken in an appropriate and thorough manner, especially having regard to the short time period during which it was conducted, and its conclusions were well justified.

Similarly, I consider that the decisions taken by Mr Burns to suspend the SPS AOC and to require them to show cause why the AOC should not be cancelled were fully justified.

Further, I believe it was appropriate to give Mr Kennington notice of the additional matters which flowed from the special audit and to which he would have to respond before the show cause action taken in relation to his Chief Pilot approval could be resolved.

Recommendation:

As noted above, the matter of the show cause action in respect of Mr Kennington remains unresolved and it would, I believe, be appropriate for a decision to be taken in that regard without waiting for resolution of matters outstanding in respect of the SPS AOC.

12.406 On 8 May 1998 Mr Handel wrote to Mr Burns responding to Mr Burns' letter to him in relation to Mr Kennington's Chief Pilot approval. He expressed his support for Mr Kennington, noted the fact that Mr Kennington had no prior experience as Chief Pilot, complained about Mr Nolan's requirement to bring to an undefined standard our ALA register, a task which has defeated three former chief pilots, and said that SPS was prepared to relieve Mr Kennington of his flying duties until all administrative matters were considered satisfactory. Later in the day Mr Kennington provided Mr Nolan with a series of amendments to the SPS Operations Manual said to have become operative on 30 April 1998. (RT77)

12.407 On 10 May 1998 Ms O'Brien e-mailed Mr Hoy about the addendum he had added to the report of the special audit. In part that addendum had noted the following points:

- (a) the addition of the Cessna 185 to the SPS AOC "appeared to have been given a high priority to **facilitate the commercial needs of the operator** ... Evidence was not available on the file to indicate that the requirements in part 1 of the AOCM had been fulfilled ... The holder of the AOC had not submitted amendments to their Operations Manual covering the introduction of a new type of aircraft. Neither had any amendments been raised up to the time of this audit."
- (b) information covering the "informal conference held on the 9 May 1997 and proposed agreed actions by the operator could not be found on either the Regional or District Office files. ... the [subsequent letter to Mr Handel] failed to meet the requirements laid down in the amendments contained in the Compliance and Enforcement manual covering informal conferences ..."
- (c) "it is noted **WITH CONCERN** that informal conferences/meetings held between management of CASA and Principals of South Pacific Seaplanes have excluded the **technical discipline Inspectors**. These persons having (sic) the full and intimate knowledge of the South Pacific Seaplanes operations and are therefore in the best position to give advice to CASA Management during such discussions. This is not an isolated case."
(RT78)

12.408 Ms O'Brien queried "whether the items in the addendum have a place in the audit report at all as they do not directly relate to the scope of the audit." (RT78)

12.409 Eventually, after some and protracted e-mail correspondence on this topic, it was eventually agreed that the addendum would be removed from the special audit report and placed on a separate file. (RT78)

12.410 Mr Burns annotated this addendum on 10 June 1998 in relation to point (c) above:

Note: This has not been the case since 1 July 1997 in SER. Either or both the appropriate District Office Manager (DFOM or DAM) and the assigned FOI or AWI attend all informal conferences to provide RM with technical advice. Their advice is normally provided after the informal conference in response to the submissions made during the conference.

This note is somewhat ambiguous as it is not clear whether he was suggesting that officers at both the DFOM and FOI or DAM and AWI ranks would attend each Informal Conference. However, he has advised me that his practice, which the note was intended to convey, was that the District Manager(s) always attended and that, if either he or the relevant District Manager thought that the assigned Inspector could bring some knowledge or understanding that the District Manager was not able to bring, the relevant FOI or AWI would also attend. (RT78)

- 12.411 On 11 May 1998 the AAT heard the SPS application for a stay of the suspension decision. CASA instructed counsel to resist that application. Mr Handel and Mr Kennington appeared personally before the AAT and sought to cross-examine Mr Hoy. Following the conclusion of the hearing, the AAT refused the application for a stay. (RT80)

Conclusion re Regulatory Transaction 80:

In my opinion the action taken to resist the initial SPS application to the AAT for stay of the AOC suspension decision was appropriate and proper.

- 12.412 Also on 11 May 1998 Mr Burns received a letter from Mr Kennington providing Mr Kennington's response to the additional matters on which Mr Burns had sought his advice. He addressed the various issues raised in Mr Burns' letter, generally stating that they were problems that he had "inherited". Significantly, he stated that "Parts A and B of the Company's operations manual are in severe need of a complete overhaul". (RT77)
- 12.413 In that letter Mr Kennington said, among other things:

Daily Inspections/Schedule 5

The important thing to stress here is that I am guilty of not being aware that Schedule 5 was an applicable regulation for my operation but I am not guilty of performing an inadequate daily inspection. After studying Schedule 5 during and after the Safety Audit, it was evident that all the checks it called for were in fact being covered. The problem was of documentation rather than facilitation and therefore did not compromise the safety of our flying operations. To resolve this completely I need to meet with a representative of CASA Airworthiness to fully understand all the maintenance arrangements. I will organise this meeting as soon as possible.

Recording flight crew duty and flight times

Once again this was an inherited problem. I took up my position of Chief Pilot at the busiest part of the year. I was aware that pilots were exceeding their flight and duty times but it was difficult to see a way to responding quickly to this problem.

Please note that the breaches of the regulations were for exceeding the cumulative totals. There is no mention of any daily flight or duty times being exceeded. If concerns were for determining fatigue of a flight crew member the daily times would be considered to carry the most weight. As we are a VFR by day operation the pilots get rest periods every night.

Please do not assume from the preceding paragraph that I am justifying continued contravention of the regulations. I am not. Talks have been had, understandings have been reached and a plan has been implemented to contain the problem. Namely the introduction of a new roster, the recruiting of more part-time company pilots and the use of a computer programme that records flight and duty times thereby facilitating the monitoring of each pilots hours. Pilots in the future will be able to keep with the regulatory hours.

Update of the Operations Manual

Parts A and B of the Company's operations manual are in severe need of a complete overhaul. All sections of the manual are important. To give one section priority over another did not make any sense. As an interim measure I have updated those sections which were identified as needing immediate attention during the Safety Audit. While this quick fix may be a solution to keeping the manual sufficiently CASA worthy, it does not address the entire issue.

The operations manual of South Pacific Seaplanes was initially prepared by a dedicated company. Amendments were initially also prepared through that company. It is now apparent that South Pacific Seaplanes needs to do these amendments internally to make them more meaningful and available much quicker.

The entire contents of the operations manual has now been entered onto computer and is about to undergo its overhaul. The process is only in its early stages as there is much to discuss, research and apply for in the form of approvals and exemptions. It may be worth noting that Part E of the South Pacific Seaplanes Operations Manual, which I wrote and incorporated into Manual last December, did not receive any criticism at the Safety Audit. Setting up and documenting the Flying School operation for the Company was one of my first major undertakings in my role as Chief Pilot. The professional quality of the documentation of Part E is yet another proof of my ability to fulfil the role of Chief Pilot. If I am allowed the chance I am sure the rewrite I will do of Parts A and B will be of an equivalent high standard. (RT77)

Observation:

Mr Burns considers that Mr Kennington's statement that Parts A and B of the Operations Manual required a "severe and complete overhaul", when read in context, were not intended to imply that the current Operations Manual did not meet CASA requirements but instead implied only a desire to further improve the Operations Manual so that it exceeded those requirements. It seems to me that this view could only be justified if the Operations Manual was thoroughly examined. But, in any event, there are no objective CASA requirements as to what an Operations Manual should contain and the obligation under CAR 215(5) to review an Operations Manual from time to time in light of experience is not limited in this way. I have elsewhere recommended that the present ambiguous law in relation to the status of the Operations Manual and CASA's obligations in relation to it be reviewed.

12.414 On 12 May 1998, Mr Handel wrote to Mr Burns as follows:

As you would be aware I was not successful in my stay application yesterday 11th May.

Without the stay it is imperative that the matter be heard A.S.A.P. for the sake of my 8 employees who I will be forced to dismiss if we cannot operate within a reasonable time.

To this end I appeal to you to advise me as to the most expedient way to a conclusion. I am confused by the tribunal procedures as I was only attempting to work while the matter was resolved, but now it seems that there is a continuing process, a weeks preparation by your people, a conference, then hearing.

It would seem unnecessary and is not what I intended. I have applied (to Mary O'Brien by mail) for an informal conference as part of the process I imagined would take place.

*I would appreciate your prompt attention to this appeal and await your reply.
(RT80)*

12.415 On 13 May 1998 Mr Handel faxed Dr Aleck seeking his intervention as he had not had a response to his letter to Mr Burns of the previous day. Dr Aleck replied the following day saying that he was aware of no additional material which would alter the situation from what had pertained at the time of the stay hearing, and urging Mr Handel to bring any contrary view to Mr Burns' attention. Dr Aleck later spoke to Mr Burns and on 17 May 1998 faxed Mr Handel to say that he was not inclined to take any further action to intervene pending the Informal Conference which had by then been scheduled. (RT80)

12.416 **Regulatory Transaction 81:** On 14 May 1998 Mr Paice noted that a meeting involving Mr Handel, Mr Burns and Mr Cartledge was to be held at 11am that day to advise Mr Handel "what we require to be fixed", that an Informal Conference was to be held the following week, and that "if agreement reached we can consent to a stay".

- 12.417 Also on 14 May 1998, the Board Safety Committee was informed that the SPS AOC had been suspended, that SPS would be asked to show cause why its AOC should not be cancelled, and that the AAT had rejected SPS' stay application. An extract of Mr Burns' e-mail of 5 May 1998 was included. (RT80)
- 12.418 On 15 May 1998 the CASA Board was informed that SPS' application for a stay had been refused by the AAT. (RT80)
- 12.419 On 15 May 1998, while preparing the "section 37 documents" for lodgment with the AAT, Mr Paice e-mailed Mr Burns, Mr Cartledge, Mr Hoy and Mr Nolan to ask if there was anything on the files that should not be disclosed to the applicant. Mr Burns forwarded this message to Ms O'Brien "for info and response as necessary". Ms O'Brien replied to Mr Burns as follows:

Not to my knowledge but I have not really looked at the files. (RT81)

Ms O'Brien stressed to me that this message was not intended to imply that she was not thereby able to provide the necessary degree of technical and detailed input to assist decision-making on SPS. She informed me that it meant only that, while she did not believe there was any item on the files that should not be released to the applicant, she had not checked the file on that day.

- 12.420 The Informal Conference requested by SPS was held on 18 May 1998. Mr Nolan asked Ms O'Brien if he could attend and was told that Mr Burns did not require his presence because he did not want a "cast of thousands" there. Mr Nolan says that he pressed the point with Ms O'Brien but that she said she would not take Mr Nolan to the Conference but that, if he wanted to go against Mr Burns' stated wish, he could speak to Mr Burns direct. Mr Nolan chose not to do so in the circumstances. (RT81)
- 12.421 It appears that Mr Handel provided Mr Burns with a written response to the show cause letter in relation to cancellation of the SPS AOC at or just immediately before the meeting commenced. This provided material in response to each of the various matters raised in the show cause letter. At one point he noted that:

As a result of your surveillance and safety audit showing deficiencies in our Company operations, my Chief Pilot and I have attended BASI's Safety Seminar, instigated a move to put in place a safety programme (BASI's Indicate) with the engagement of Mr Barry Diamond. (RT81)

- 12.422 There is no formal record of this Informal Conference. Mr Cartledge took some handwritten notes during the meeting, but did not use them to prepare a formal record of the meeting. After the accident of 26 July 1998 he had these notes typed up. They may act as a reminder to the author, but they convey little sense of the content of the meeting to me. (RT81)

12.423 The Informal Conference was attended by Mr Handel, Mr Kennington, Mr Burns, Ms O'Brien, Mr McFarlane and Mr Cartledge. I am informed that SPS was not told of a decision at the meeting. Despite this, it seems that Mr Handel rang the AAT almost immediately thereafter to say that CASA had agreed to consent to a stay. When the AAT rang Mr Paice to confirm this at noon, he was unaware of the outcome and rang Mr Cartledge. Mr Cartledge informed him at about 12.30pm that the meeting was over and that a set of conditions on which a stay would be agreed were then being drafted. At 4.10pm Mr Cartledge e-mailed Mr Paice the conditions which had been drafted and which were faxed to SPS at 4.35pm. Those conditions were as follows:

- 1 *That Aquatic Air Services Pty Ltd will lodge with CASA by 8th June 1998 a maintenance scheme for its aircraft which is satisfactory to CASA*
- 2 *Aquatic Air Services Pty Ltd will ensure that aircraft defects will be recorded in the maintenance release in accordance with the Regulations and the Orders*
- 3 *Aquatic Air Services Pty Ltd will ensure that all its pilots are familiar, and comply with, the procedure for recording aircraft defects on maintenance releases*
- 4 *A revised Operations Manual for Aquatic Air Services Pty Ltd will be lodged with CASA by 8th June 1998*
- 5 *Aquatic Air Services Pty Ltd will have initiated a safety plan acceptable CASA by 8th June 1998*
- 6 *Until compliance with conditions 4 and 5 above, the Aquatic Air Services Pty Ltd Chief Pilot will not be rostered to fly more than fifteen (15) hours in any seven day period. (RT81)*

12.424 On 19 May 1998 Mrs Handel advised Mr Cartledge that SPS was agreeable to the conditions and so, later that day, Mr Paice faxed a copy of those conditions to the AAT and advised that CASA would agree to a stay of the suspension decision if those conditions were imposed on SPS. (RT81)

12.425 On 20 May 1998 Mr Paice rang Mr Burns "to discuss final instructions for the stay hearing". His file note of that conversation reads:

Rang TB to discuss final instructions for stay hearing.

Raised issue of:

- (1) *in the first place SPSP were so bad we had to suspend without notice;*
- (2) *Now we consent to stay on the basis of conditions which purport to require problems be fixed by 8 June 88.*
- (3) *where, in the period 21 May to 8 June do they become "safe", why do we consent to OPS before they become safe.*

TB said that he was satisfied SPSP had already implemented sufficient changes in OPS and demonstrated those changes in the informal conference, he consider they are above the safety threshold.

I recommend we should also do an inspection of the aircraft to determine, best we can, the current state of airworthiness. TB agreed, said he would get Herb McFarlane to do by end of the week.

Mr Burns says that this note demonstrates that Mr Paice did not have an understanding of the reasons for the six conditions developed by Mr Burns. He says that he explained to Mr Paice that:

- *SPS had addressed all of the grounds on which the regulatory action against the SPS AOC had been based.*
- *that I wanted to maintain pressure on SPS to take additional steps to improve its safety systems and procedures.*
- *that I proposed to achieve this by not immediately lifting the suspension on the AOC but to keep the stay on foot for as long as practicable.*
- *the conditions to be placed on CASA consenting to the AAT placing a stay on the AOC suspension were designed to invoke improvements in SPS' safety systems, not to fix any outstanding problems. (RT81)*

12.426 On 20 May 1998 Dr Aleck e-mailed Mr Burns as follows:

Further to the telephone update you and Garth provided me on Monday (18 May), could I ask you (or Garth) to prepare a brief, dot-point summary of what transpired at your meeting with Handel and Kennington.

In particular, could you specify the terms of the conditions you will be asking SPSP to accept as conditions to which a stay order from the Tribunal would need to be subject, if CASA were not to oppose an application for such an order.

If anything else has occurred in connection with this matter since we spoke, I'd appreciate if you could include that information as well.

I realise you are both busy with ... matters today. I would be grateful if I could get the SPSP update by the end of the week, however. (RT81)

12.427 Mr Burns did not respond. Instead, Mr Cartledge replied that Mr Burns had asked him to send Dr Aleck a copy of the terms on which the stay would be agreed.

12.428 On 21 May 1998, the AAT convened to hear the new stay application. The AAT had re-drafted the conditions as provided by Mr Paice, and the Deputy President passed a copy of the following text to each of the parties and asked if the terms were agreeable to them:

- 1 *In lieu of direction number 2 given on 11 May 1998, the Tribunal now orders, pursuant to section 41(2) of the Administrative Appeals Tribunal Act 1975, the stay of the relevant decision pending the decision of the Tribunal on the ultimate hearing of this application or pending further order by the Tribunal upon the following conditions.*
- a) *That the applicant will lodge with the respondent by 8 June 1998, a maintenance scheme for its aircraft which is satisfactory to the respondent.*
 - b) *The applicant will ensure that aircraft defects will be recorded in the maintenance release in accordance with the regulations and the orders applicable.*
 - c) *The applicant will ensure that all its pilots are familiar and comply with the procedure for recording aircraft defects on maintenance releases.*
 - d) *The applicant will lodge with the respondent a revised operations manual no later than 8 June 1998 which manual is to be satisfactory to the respondent.*
 - e) *The applicant is to initiate a safety plan acceptable to the respondent no later than 8 June 1998.*
 - f) *Until compliance with the proceeding two conditions, the applicant's chief pilot will not be rostered to fly more than 15 hours in any seven day period.*
3. *If any breach of any of the above conditions is alleged by the respondent, application may be made on short notice, with supporting evidence, for revocation of this subsection 41(2) order. (RT81)*

12.429 As will be apparent, the former references to "Aquatic Air Pty Ltd" and "CASA" had been changed to "the applicant" and "the respondent" and other minor style changes had been made. However, one significant change had been made "which manual is to be satisfactory to the respondent" were added to the fourth condition which related to the Operations Manual. (RT81)

12.430 Mr Paice informed me that he sought to cross-check the AAT's form of words which he had submitted, and believed that they were not materially different. As to the addition to the fourth condition, he says that he either did not notice it or, if he did, simply assumed that it was as CASA had always intended in any event. Mr Paice and SPS each signified to the Deputy President their consent to the draft directions, and they were then made by the AAT. (RT81)

12.431 Mr Paice has advised me that he cannot recollect whether he copied the revised form of words to Mr Burns, Ms O'Brien or others. It seems to be more likely that he did not do so because he did not perceive that they were materially different.

12.432 Following the hearing, Mr Burns wrote to Mr Handel as follows:

I confirm that at 9.30 A.M. on 21st May 1998 the Civil Aviation Safety Authority consented to the Administrative Appeals Tribunal granting a stay of the suspension on Air Operations Certificate imposed by me on 7th May 1998.

That stay was granted subject to certain agreed conditions.

As there is now a stay on the suspension there is no impediment to South Pacific Seaplanes resuming flying operations and, indeed, has been none since the stay was granted.(RT81)

12.433 On 25 May 1998, having heard that Mr Burns had agreed to a stay, Mr Hoy e-mailed Mr Burns as follows:

Trevor,

As the person who led the safety audit team and subsequently was required to appear before the AAT and be questioned by firstly, the Managing Director of SPP and secondly, the Chief Pilot of SPSP, allow me to say, I find the subsequent decision to allow SPSP back into the air, based on their undertaking to correct their deficiencies by 8th June 1998, to say the least strange.

Given that they may have taken steps to correct some of the deficiencies as highlighted by the safety audit team, is, I believe, insufficient reason to allow them back into the air.

It would seem to me CASA has 2 standards viz:

- 1) an entry control standard (as laid down in Volume 2 of the AOCM) for those whose wish to apply for an Air Operators Certificate and*
- 2) a lower standard for the holders of AOC's which have been suspended.*

The audit team identified a number of serious deficiencies which caused the team to recommend suspension of the AOC. This recommendation was subsequently endorsed by yourself, the responsible DFOM and DAMs and led to the suspension. Thereupon a "show cause" letter was sent to the M.D. of South Pacific Seaplanes asking WHY their AOC should NOT be canceled. (sic)

If CASA felt the deficiencies were serious enough to warrant suspension, surely, we needed to satisfy ourselves that South Pacific Seaplanes had corrected ALL deficiencies and therefore had satisfied CASA that they met the requirements outlined in section 28(1)(a) and (b) of the Civil Aviation Act.

Afterall (sic) are we not supposed to be looking after the fare paying passengers?

There seems little to be gained by safety audit teams carrying out these type of audits, making recommendations and then finding actions taken as a result of the recommendations being watered down to a degree whereby the audit serves little or no purpose.

Having said that, I respect your position as the Delegate who ultimately had to make the decision, just extremely disappointed at the decision. (RT81)

12.434 Mr Burns responded the same day, saying:

Before discussing those conditions let me make it clear that I am satisfied that South Pacific Seaplanes meets the requirements to hold an AOC, otherwise I would not have agreed to consent to the stay of the suspension. Your assumption that the company has been given a period of grace in which to meet minimum standards is not correct. I have not applied a lower standard to South Pacific Seaplanes.

Turning now to the conditions. In total there are six conditions on the stay. Of the six conditions four of them impose requirements on South Pacific that exceed the entry control standards specified in the AOCM. The other two conditions simply spell out the requirement that all defects be recorded on the maintenance release and that the company will ensure that all its pilots comply with this requirement. (RT81)

12.435 On 29 May 1998 Dr Aleck e-mailed Mr Elder to advise him of the consent stay order and the conditions on which it was granted, and asked that the members of the Board Safety Committee be informed of that development. Mr Elder copied Dr Aleck's e-mail to the Committee members on the next working day, 1 June 1998. (RT81)

12.436 It was not until 1 June 1998 that Mr Nolan was provided with a copy of the conditions on which the stay had been agreed, despite his position as the assigned FOI for SPS, and then I understand only because he asked that such be sent to him. (RT81)

Conclusion re Regulatory Transaction 81:

In my opinion the decision taken to consent to a second stay application by SPS was not the preferable decision that should have been taken. In my view, it would have been preferable to leave the suspension on foot and allow the AAT to review that decision on its merits in the ordinary course.

In that event, as Mr Burns had already appreciated, it would also have been necessary to take a decision in relation to the cancellation of the AOC and he had issued a separate show cause notice in that regard. Given the view I take about the suspension decision, I consider that there were good *prima facie* grounds on which such a decision could have been based and sustained before the AAT.

I also consider that the process followed in reaching that decision was not the preferable process and was defective in the following respects:

- Mr Burns did not seek advice on the SPS response to the show cause notice before or immediately after the Conference from those best placed to advise on such matters, such as Mr Nolan and Mr Hoy;
- the Informal Conference was not attended by those best equipped to assess the matters discussed at that time - again, Mr Nolan or Mr Hoy;

- a formal record of what transpired at the Informal Conference was not prepared;
- a written record of the reasons for the decision taken immediately after the Informal Conference was not prepared;
- Mr Burns did not seek to test his proposed decision with those in the best position to comment on what he proposed to do - again, Mr Nolan and Mr Hoy;
- Mr Burns did not consult such persons in relation to the range of conditions upon which he proposed to consent to a further stay application;
- Mr Burns did not act to develop a comprehensive range of conditions which would deal with all outstanding matters that had been identified in the special audit;
- Mr Burns acted on his view that the SPS Operations Manual in force at the time was adequate, following amendments made by SPS with effect from 30 April 1998, without having those amendments assessed by the assigned FOI ;
- Mr Burns did not consult with Dr Aleck, Acting General Manager, Aviation Safety Compliance about the conditions on which he proposed to consent to the stay, or with any other equally or more senior officer of CASA, or with any member of the CASA Board, notwithstanding that he knew that SPS was a matter in which the Board had a direct interest as a result of representations to the Board and the Minister, and notwithstanding his knowledge that there was significant public interest in matters affecting SPS as a result of the *Witness* broadcast.

I note that Mr Burns does not agree with this assessment of the process he followed.

As to the involvement of Mr Nolan or Mr Hoy, Mr Burns says that it was appropriate for him to rely on Ms O'Brien to provide any necessary factual or technical input or to seek such herself if she felt she needed it. He says that Mr Nolan had no more knowledge of the matters arising from the special audit than he, Ms O'Brien or Mr McFarlane. He also says that Mr Hoy's role concluded at the completion of the audit and that he had no responsibility with subsequent regulatory oversight. But in my view Mr Nolan's long experience with SPS would have provided a valuable insight when considering whether or not proposed conditions were likely to be effective, and both Mr Nolan and Mr Hoy would have been able to assess whether the conditions were comprehensive enough to deal with all outstanding issues.

In this latter regard, Mr Burns says that he was advised that, in taking this decision, he was confined to a consideration of the matters he had set out in the show cause letter. That may be a correct view in respect of a proposed cancellation of the SPS AOC, but I believe it was not correct in relation to a proposed agreement to an AAT stay application.

In relation to the comprehensiveness of the conditions, Mr Burns says that they were adequate to deal with all matters that had been raised in the show cause letters when regard was had to the Operations Manual amendments that SPS had lodged and which were effective from 30 April 1998 and to the various undertakings given by SPS at the Informal Conference.

As to the former, my advice is that the Operations Manual amendments were not adequate and contained error - for example, the amendments state that Maule pilots are to use take-off and landing distances no shorter than 500m, while the approved Flight Manual specifies a distance of 677m. Moreover, Mr Burns' show cause letter had drawn attention to the need for amendment to Section A3.1 of the Operations Manual but the 30 April 1998 amendments did not effect change to this section.

As to the latter, those undertakings were of course not recorded and their likely credibility tested by reference to SPS's history of compliance or non-compliance with the numerous undertakings given by it to Mr Nolan over the years.

Mr Burns says that he was entitled to assume that, apart from the matters addressed in the 30 April 1998 amendments, the balance of the SPS Operations Manual was adequate because Mr Nolan had not told him otherwise. However, the special audit report expressed a general concern about the SPS Operations Manual, noting that it had not been examined in detail, and Mr Nolan was not asked for comment in this regard.

Mr Burns says that there was no need for him to consult with Dr Aleck or other senior officers because he was qualified to make the kind of senior regulatory decisions he took. I accept that he was so qualified and I do not seek to imply that he should have consulted for that reason. He also says that it cannot be reasonably argued that he should have had regard to Mr Gorman's letter of August 1997 or the *Witness* program of October 1997 in taking his decision. He says that he does not believe there was still significant public interest in matters affecting SPS. It seems to me that the media and public reaction of recent months belies that suggestion. I hold to my view that it would have been appropriate for the suggested consultation to have taken place.

Mr Burns notes that Dr Aleck was informed of the conditions before the AAT hearing on 21 May 1998. But, as noted in the Regulatory Chronology, he was not consulted before SPS was advised of the conditions on which it was agreed a stay would be consented.

Finally, as to the mechanism used to allow SPS to resume operations, I consider that, if it was ever appropriate to allow SPS to resume operations on a conditional basis, it was not appropriate to do so by consenting to the AAT granting a stay of the suspension. This is because, if SPS defaulted on the conditions set without at the same time contravening a regulatory requirement, CASA would be unable to act unilaterally and speedily to suspend SPS operations. Instead, it would have to approach the AAT to seek a date for a hearing, argue its case, and then await an AAT decision. While that would not necessarily take an extended period, it would of necessity engender some delay.

I am not critical of Mr Burns for adopting this mechanism on this occasion, or of Mr Paice for not initiating action to seek to have a more senior officer override that decision of Mr Burns. Mr Burns' view was that keeping the matter before the AAT would maintain compliance pressure on SPS, and his approach was not illogical, unlawful or clearly wrong.

However, it was not in my opinion the preferable way to go about the matter and is a mechanism that should not be adopted in future because of the way in which it inhibits CASA's ability to react unilaterally to any emerging problem.

Observation:

It is apparent that, in accordance with the usual practice in AAT matters in which CASA becomes involved, Mr Paice regarded himself as standing in a solicitor/client like relationship to Mr Burns. In my view, it is generally inappropriate for the initial decision-maker to be responsible for directing activity in relation to applications for AAT review, or legal proceedings, taken against his or her own decision. I consider that it is preferable for such matters to be elevated within the organisation so that a less personally oriented view is taken and a degree of internal review undertaken before a response to the proceedings is settled.

Recommendation:

In light of the experience gained in these AAT proceedings, I **recommend** that:

- (a) the expedient of agreeing to a conditional stay not be further adopted - instead, in like circumstances, if a resumption of flying operations could be justified it would be preferable to revoke the suspension and proceed with show cause action in relation to cancellation;
- (b) that the internal arrangements for the handling of AAT proceedings and other challenges to CASA decisions be amended to give the Office of Legal Counsel a more substantive role - whether by requiring that all instructions be issued by an officer of higher rank than the officer who took the challenged decision, or by authorising OLC staff to elevate instructions from the initial decision-maker to a higher level within CASA whenever they perceive difficulty with the instructions they have received.

12.437 On 1 June 1998 Mr Britten wrote to the members of the CASA Board to complain about "the manner of handling" of his 30 March 1998 complaint against SPS. While he expressed that as the subject of his letter, it was more properly a complaint against the granting of the stay, saying that it had:

sent a message to the Aviation Community generally that they are not 'fair dinkum' in dealing with AOC holders who choose to thumb their nose at the regulations. (RT81)

12.438 Mr Elder acknowledged receipt of that letter on 9 June 1998 on the Chairman's behalf and on 11 June copied the letter to the CASA Board Members and noted that Dr Aleck would be in a position to update the Board Safety Committee on 12 June 1998. The CASA Chairman subsequently responded to this letter from Mr Britten on 23 July 1998 when he advised Mr Britten that the information he had supplied had been acted upon by CASA. (RT76)

12.439 **Regulatory Transaction 82:** Also on 1 June 1998 Mr Hoy faxed Mr Burns to enquire whether appropriate personnel would be made available immediately to assess "ALL" the documents which SPS would be required to lodge by 8 June 1998. Mr Burns replied:

"Absolutely. I have just got off the phone with Mike Nolan. Eric Demarco will be assisting with the assessment of the Operations Manual with appropriate input from Paul Simpson."

12.440 Mr Hoy responded by noting that Mr Simpson would be on leave at the relevant period, but Mr Burns did not advise any alternative arrangement. This is not to suggest that it was Mr Burns' responsibility to monitor the leave arrangements of all SAWI working in the South East Region. The approval of leave and the making of relief arrangements would have been Mr McFarlane's role as DAM. However, Mr Burns was thereby on notice that the person he might ordinarily expect could be assigned to the task of assessing the SPS maintenance program when it arrived would not be available. It is not clear that he should have expected Mr McFarlane to make arrangements to have the program examined by an SAWI on receipt, in the absence of any direct request to Mr McFarlane for that to be done. (RT82)

12.441 On 5 June 1998 Mr Kennington called on Mr Nolan, Mr Demarco and Mr Simpson. After the meeting Mr Nolan e-mailed Ms O'Brien and Mr Burns as follows:

1. *Mr Kennington presented a copy of the New Company Operations Manual identified as 1st June 1998 amendment 10.*
2. *Mr Kennington posed a number of questions relating to the requirements of the CAR and CAO's and the possibility of some exemptions and permissible unserviceabilities. He was advised to present his questions and requests in writing to the Authority. The items included:*
 - Use of Life jackets CAO20.11*
 - Approval of Check Systems CAR232*
 - Conduct of BFR's*
 - Use of Children's seats*
 - PUS for fuel gauges and Turn Coordinator.*
3. *Mr Kennington was asked to contact CASA Airworthiness Engineer Ian Kearsley regarding the inclusion of Take-Off and Landing Performance charts in the aircraft flight manuals. (RT82)*

12.442 Mr Burns noted the same day that a decision would have to be made the following week as to whether SPS had met the stay conditions. (RT82)

12.443 On 9 June 1998 Mr Paice e-mailed Mr Burns saying that, as the deadline for SPS to make submissions had passed, CASA could go back to the AAT to have the stay set aside if SPS had not "come up to speed on all matters". (RT82)

12.444 Mr Burns then e-mailed Ms O'Brien saying that a decision needed to be made as a matter of urgency "whether we are satisfied that the conditions have been met". (RT82)

12.445 Ms O'Brien spoke to Mr Handel that day and he agreed to provide written advice on how SPS had addressed the conditions. She advised Mr Burns of this on 10 June 1998 and he asked her to tell Mr Handel that his written advice had to be received by noon 11 June 1998. (RT82)

12.446 At 1.48pm Mr Burns was sent a copy of Mr Handel's letter of that day in which he stated:

Please be advised that South Pacific Seaplanes has met the conditions as agreed at the Administrative Appeals Tribunal on 21st May 1998 and as proof of that compliance please find:

- (1) *That the maintenance scheme has been lodged by Hawker Pacific to Airworthiness.*
- (2) *That defects are now recorded on maintenance release as copy of current release of LRZ shows.*
- (3) *Pilots are aware of procedures for recording defects. This awareness has been accomplished in three ways:*
 - Discussion at meeting*
 - By reading amendment in operations manual*
 - Notice on notice board (see attached).*
- (4) *Revised operations manual was submitted to your office on the 5th June 1998.*
- (5) *That South Pacific Seaplanes has accepted and initiated the BASI indicate program under the guidance of, Mr Barry Diamond.*

Two meetings have been held and attached is list of hazards identified at these meetings.
- (6) *That our Chief Pilot has not flown more than 15 hours/per week as shown by attached copy of relevant log book pages. (RT82)*

12.447 At 3.08pm Mr Burns e-mailed Dr Aleck and Mr Paice as follows:

I am satisfied that South Pacific Seaplanes has met the conditions placed on the AAT stay of the AOC suspension.

Condition 1

A maintenance scheme for SPS aircraft has been lodged with Bankstown DO by Hawker Pacific. This scheme has yet to be assessed.

Condition 2

Defects are now recorded on maintenance releases, copy of maintenance release provided as sample.

Condition 3

Pilots have been made aware of requirements for recording of defects, this awareness has been accomplished by discussion at a meeting of all pilots, by requiring pilots to read the relevant section of the SPS Operations Manual and by placing a notice on the company notice board (copy of notice provided to Bankstown DO).

Condition 4

A revised Operations Manual was submitted to Bankstown DO on 5 June, the revised manual is yet to be assessed.

Condition 5

South Pacific Seaplanes has implemented the BASI Indicate Program under the guidance of Barry Diamond. Two safety meetings involving all company personnel have been held and a list of safety issues drawn up for rectification. A copy of that list has been provided to Bankstown DO.

Condition 6

A copy of the relevant pages from the Chief Pilot's log book has been provided to Bankstown DO showing that he did not fly in excess of 15 hours in any seven day period whilst the Operations Manual was revised and the BASI Indicate Program implemented.

Rob

How do we now close this matter off with the AAT? (RT82)

12.448 Dr Aleck replied at 3.35pm in the following terms:

I am not entirely satisfied that, on your own formulation, the requirements of condition 1 have been fulfilled.

*The condition expressly requires that the maintenance scheme lodged with CASA on 8 June 1998 must be acceptable to CASA. If an assessment is necessary to determine whether the scheme is "acceptable", it ought to have been **submitted** to CASA long enough before 8 June to allow for an 'acceptable' version to be **lodged** on 8 (or in this case, 9) June, in accordance with the requirements.*

When was this maintenance scheme lodged? Has at least a prima facie assessment been made of its sufficiency? Has an appropriate scheme been provided in respect of all aircraft in respect of which such a scheme is required?

If there is ANY doubt about the substantive sufficiency of the company's submissions, I would much rather the stay be lifted and their operations be curtailed until these doubts can be resolved, rather than permitting them to continue to operate without our being in a position to say with some confidence that they have, in fact, complied with the applicable requirements - requirements which, in the circumstances, must be interpreted strictly.

I think these issues need to be addressed more fully before we decide NOT to seek a lifting of the stay, and I would appreciate your views AS SOON AS POSSIBLE. (RT82)

12.449 At 3.58pm Mr Burns responded, saying:

As I explained to you on the phone the AW1 who will assess the maintenance scheme is on leave.

I do not intend to split hairs. I will not seek to have the stay imposed. (RT82)

12.450 At 7.37pm Dr Aleck replied:

With respect, I do not consider these to be 'hair-splitting' issues. And as I will be held accountable for these matters, I would like at least to have answers to the questions I raised below:

- 1 *When did Hawker lodge the maintenance scheme you find to have satisfied the lodgment requirement?*
- 2 *Is there no one in the Bankstown Office who is able and/or willing to make even a preliminary assessment of the sufficiency of that submission - especially in light of what hangs in the balance?*

Has a maintenance scheme been lodged in respect of all aircraft for which such a system is required to have been lodged?

The Safety Committee convenes tomorrow at 10.00am. It would be good if we could speak before then. (RT82)

12.451 On 12 June 1998 the Board Safety Committee was informed that the stay application had been granted by the AAT by consent, subject to conditions which were (wrongly) stated to be imposed on the AOC, and that the AAT had listed a Preliminary Conference in relation to the Application for Review for 17 June 1998. The Committee was also informed in a written report prepared by Dr Aleck some days earlier that:

As at 9 June 1998, the Regional Manager, South East Region, was unable to advise as to the company's compliance with those obligations in relation to which demonstrable compliance was required by 8 June 1998. So soon as this information is provided, I will advise the Safety Committee accordingly. (RT81)

12.452 The Board Safety Committee was advised orally by Dr Aleck at the meeting that Mr Burns had confirmed that SPS was complying with the conditions that had been imposed as a condition of the stay. The Committee records note that:

The Committee discussed the unusual processes in connection with CASA's securing the Tribunal's agreement to the arrangement made with Aquatic Air Pty Ltd.

The Committee expressed concern at the way this matter had been handled.
(RT81)

12.453 I understand that this last comment related to the Committee's concern with the unusual process of placing conditions on the stay consent and with the difficulty that Dr Aleck was having in testing the degree of SPS' compliance with the conditions. (RT81)

12.454 On 12 June 1998 Mr McFarlane advised Mr Burns by e-mail:

South Pacific have addressed the maintenance aspects from 2 directions. They submitted a "procedures/quality manual" last week which covers the requirements for a CAR 30 Certificate of Approval, (they intend applying for their own certificate of approval) I have had a look at this manual and it covers all the issues for CAR 30 and includes general safety procedures and work practices for a float plane operation in the maintenance aspects.

Hawker Pacific have submitted a draft variation of the maintenance schedule for the aircraft, I have examined this document but not in detail, however, from my examination our areas of concern have been addressed, especially corrosion and the structural aspects. The assigned SAWI will be completing the detailed assessment and approval on Monday when he returns from sick leave, from my initial examination I don't expect any major anomalies to arise. (RT82)

Conclusion re Regulatory Transaction 65:

It appears that this advice was relevant not only to SPS compliance with the condition imposed on the stay in relation to maintenance of SPS aircraft, but also represented a conclusion to Regulatory Transaction 65 in the course of which Mr Best, Mr McFarlane and Mr Simpson had sought and followed up with SPS and the SPS maintenance organisation in relation to the maintenance program for SPS aircraft.

I perceive no basis for criticism of the handling of this matter.

12.455 Mr Burns then copied that advice to Dr Aleck.

12.456 On the morning of 15 June 1998 Dr Aleck e-mailed Mr Burns as follows:

*Thank you for the information you provided on Friday morning in relation to this matter. Whilst this was certainly useful at the Safety Committee meeting, I was not really able to **fully** answer some of the (not-at-all-unreasonable) questions that were put to me. In part, this was because I did not (and do not) have answers to some of the questions I put to you in my EM of 11 June (15:36).*

I trust you will see the basis of my concern:-

- *CASA acted to suspend this company's AOC for a number of quite specific reasons.*
- *The company sought, but was denied, a stay of that decision in the AAT.*
- *CASA then agreed not to object to a stay, if certain conditions were met.*
- *You now say these conditions were met - in certain instances, merely by virtue of certain documents having been lodged with CASA.*

It is still unclear whether the documents that were required to be lodged by a certain time were, in fact, timely lodged. (Strict compliance with such a requirement in circumstances like this seems to me to be quite proper). What is of greater concern, however, is that, whilst 'compliance' with certain conditions may have been achieved by virtue of certain documents having been lodged, until those documents are assessed, at least on a preliminary basis - and specifically in respect of the matters giving rise to the suspension - how can CASA say that things are any 'better' now than they were when the decision to suspend was given?

If, as you have said in your communications with Bob Hoy, South Pacific meets or exceeds the requirements to hold an AOC - a status you suggest they achieved on 25 May, well before they even lodged the documents due in on 8 June - why are we going ahead with the suspension?

As said, these were questions to which I could not give the Safety Committee confident and unequivocal (sic). More to the point, they are questions I do not feel comfortable being unable to answer to myself with greater certainty.

*So, without suggesting that the world be re-ordered to address these matters, Trevor, I will ask that the **substance** of SP's submissions be assessed **as a matter of urgency**, at least against the specific and most critical issues that gave rise to the decision to suspend in the first instance. Also, I would be grateful if I could get some brief responses to the specific questions raised in my EM of 11 June.
(RT82)*

12.457 Later that day Dr Aleck e-mailed Mr Paice in the following terms:

I am ever less comfortable with this situation. Especially since learning that there was something less than unqualified support from Legal Counsel for this unconventional - and far from unproblematic - exercise.

*As the attached indicates, I cannot see how SPS can be said to have fulfilled certain conditions relating to lodging documents that are 'satisfactory' to CASA, when the documents have yet to be assessed. Beyond this, Bob Hoy has now advised me that he has information indicating that the operator has actually lodged maintenance schemes only for **one** of the two types of aircraft it is authorised to operate. I have not yet been able to get a confirmation or a denial of that from Trevor.*

It is a fair question in the circumstances: If SPS has 'met' all of the 'requirements' to hold an AOC (and thus CASA does not now seek to lift the stay on the decision to suspend the AOC), why not reverse the underlying decision to suspend the AOC?

Of course, Trevor is the decision-maker and it is he who needs to be satisfied. But I fail to see that he has any grounds on which to be satisfied, if the documents submitted have not been assessed. I would appreciate your views on this, Rob.

As to the issue raised with Dr Aleck by Mr Hoy, Mr Burns says that the special audit had identified maintenance issues only in relation to the Maule and not the Cessna and that no one had ever raised with him the issue of what aircraft types the maintenance scheme sought by Condition 1 was to address. But, in its terms, the condition applied to SPS' "aircraft" without distinction. (RT82)

- 12.458 Mr Paice and Dr Aleck discussed the matter later that day and, after the accident of 26 July 1998, Mr Paice documented that discussion in the following terms, which he informed me he confirmed as accurate with Dr Aleck:

I had a telephone conversation with Jonathan Aleck, 16 June 1998 and discussed the matters raised in his em of 15 June 1998. I advised that I had not seen any of the submissions provided by Aquatic Air in response to the conditions of the stay order. As such I was unable to comment on the degree to which Aquatic Air had complied. I did confirm that I had difficulties with the statement that although submissions had not been assessed Aquatic Air was considered to have satisfied the conditions. (RT82)

- 12.459 Dr Aleck and Mr Burns discussed the matter on 16 June 1998 and Dr Aleck then e-mailed Mr Burns as follows:

I just want to confirm my understanding of your intended actions in respect of this matter, based on our discussion earlier this afternoon.

- 1 *Until the maintenance related information and the operations manual revisions submitted by the company have been properly assessed, you accept that you cannot be satisfied that these submissions fully meet the intent of the conditions.*
- 2 *Whilst you have no reason, at this time, to approach the Tribunal with a request that the stay be vacated, neither are you prepared, at this point, to agree to withdraw your decision to suspend the AOC.*

- 3 *At the directions hearing, you will be instructing counsel to advise the Tribunal that you are reviewing the materials the (sic) submitted in order to determine whether they do, in fact, substantially comply with the conditions to which the stay was subject.*
- 4 *If you are satisfied with the substance of the submissions, then you will be considering the imposition of specified conditions on the company's AOC, in lieu of a suspension. The purpose of these conditions will be to help ensure that the company continues to comply with the legislation - and in particular with those provisions of the legislation in relation to which it's prior conduct was found wanting, thus giving rise to the decision to suspend.*
- 5 *On the assumption that the operator will accept the imposition of conditions on its AOC, CASA may approach the Tribunal with a view to introducing the conditions and withdrawing its decision to suspend the AOC at the same time.*

Please keep me advised of developments. (RT82)

Conclusion re Regulatory Transaction 82:

In my view, the process put in place by Mr Burns for assessing SPS' compliance with the conditions that were imposed by him was quite inadequate. The reasons for that conclusion on my part are as follows:

- The first condition related to the maintenance program. Despite Mr Burns' assurance to Mr Hoy that the scheme submitted by SPS would be examined by an SAWI, it was not. Mr Hoy had informed Mr Burns that the assigned SAWI would be on leave at the relevant time, and Mr Burns did not ask Mr McFarlane to make any alternative arrangement. He did get Mr McFarlane to examine the scheme that was lodged, but that was obviously not a detailed examination. While it transpired that SAWI Mr Simpson did later find the scheme to be acceptable, there was no guarantee that that would be the outcome.
- The second condition was that aircraft defects were to be entered on Maintenance Releases (which was in any event simply a statement of the pre-existing law which it seems SPS had been consistently breaching for years). A sample Maintenance Release was lodged by SPS, together with a memorandum from the Chief Pilot to SPS pilots reminding them of the need to enter defects and damage on such forms. An examination of that part of the Release that was faxed by SPS did indeed show that defects had been entered on the release. These documents were accepted by Mr Burns as evidence of compliance with the second condition. On its face, this was a reasonable thing for him to do. However, it should be noted that the Maintenance Release indicated that the aircraft to which it related had operated for some six days with a defective cylinder head temperature gauge which "does not appear to give accurate readout, sometimes no read out at all". While the question of whether that gauge is a mandatory instrument under the CAOs is not completely free from doubt as a matter of law, and Mr Burns not unreasonably considered that it was not a mandatory instrument, operating with this gauge in a defective state would seem to involve a breach of CAR 245(2)(d). This reinforces in my mind

that the preferable course would have been for a more thorough examination of SPS' purported compliance with this condition.

- The third condition was that SPS would ensure that all pilots were familiar with the procedure for recording defects on Maintenance Releases (which again was simply a statement of the pre-existing law). SPS advised that all pilots had been properly instructed in this regard. However, had the full Maintenance Release been obtained and examined, it would have indicated that the form was not fully completed as entries for progressive total time in service were not inserted. This of course was not an issue to which the condition was directed. But nevertheless a fuller examination of the documentation would have raised a further issue. That other issue was indeed comparatively minor but presumably the form prescribed under the CARs has this provision for the entry of progressive total time in service for some sensible purpose. This reinforces in my mind that it would have been desirable to have developed a more comprehensive set of conditions in the first instance.

- The fourth condition was that SPS would lodge a revised Operations Manual, which it did. I am prepared to accept that neither Mr Burns nor Ms O'Brien was aware of the additional words inserted by the AAT on this condition - that is, that the Operations Manual be "satisfactory to the applicant". But I cannot accept that this condition absent those words could ever have been properly regarded as met by an Operations Manual that was not subject to some form of expert examination. Indeed, Mr Burns informed Mr Hoy that Mr Nolan would examine the Operations Manual with the assistance of Mr Demarco. That did not occur because Mr Burns (apparently over Ms O'Brien's objections and at the urging or insistence of the General Manager Airways and Airspace Standards) felt compelled to assign Mr Nolan to other duties on the Airspace 2000 project and he did not make any alternative arrangement for another FOI to undertake that task. Mr Burns and Ms O'Brien each informed me that this condition was not proposed by them, but rather accepted at the instigation of SPS. They said that they saw no specific need for a new Operations Manual because they believed that the existing Operations Manual (which continued to be applied pending the new Operations Manual being promulgated) was quite adequate and better than the industry average. Mr Burns says that he examined the amendments effective from 30 April 1998 and considered that they resolved the issues to which the special audit drew attention. For the reasons set out earlier in this report, that is not correct. I have had each of the three relevant versions of the SPS Operations Manual examined in some considerable detail by an experienced CASA officer. He has informed me that he believes there are many defects in all versions of the Operations Manual, and that several of these are significant. It is notable that his examination of the version submitted in purported compliance with this stay condition discloses the following apparent and significant defects or points of query:

- (a) the definition of overshoot and undershoot areas is unsatisfactory and not in compliance with CAAP 92-1;
- (b) the Manual says that pilots are to ensure that ALA's are no shorter than 500m while the approved supplement to the Flight Manual for the Maule specifies a minimum distance of 677m;

- (c) the explanation of the CAR 166 exemption contains incorrect technical detail for approach speeds;
- (d) the take-off and landing speeds for both the Maule and Cessna aircraft are well above those specified in the approved Flight Manuals;
- (e) the Manual wrongly says that Maule and Cessna take-off and landing distances are not specified, when in fact they are in the approved Flight Manuals;
- (f) the fuel documentation in the Manual does not allow fuel used to be calculated;
- (g) the specified fuel reserve is less than that recommended in CAAP 23-1(0) for charter operations; and
- (h) the ALA data for locations other than Gunnamatta Bay does not meet the requirements specified in the CAO.

- The fifth condition required SPS to initiate a safety plan acceptable to CASA. SPS advised that it "has accepted and initiated the BASI Indicate program under the guidance of Mr Barry Diamond. Two meetings have been held and attached is a list of hazards identified at these meetings". There is no doubt that implementation of the BASI Indicate program would involve an excellent safety plan that would be acceptable to CASA. But there is no indication that the accuracy of SPS' claims in this regard were rigorously tested or that the attached hazard list was examined. I understand that there had been only one safety meeting held, not two. I also understand that Mr Diamond's position in relation to SPS and this plan was not as it was variously portrayed by SPS. I am also informed that the list of hazards that was lodged was superficial and not a concerted risk analysis, and that a risk analysis alone does not constitute an Indicate program. While SPS may have taken some tentative "first steps", they were not more than that. If this was regarded as sufficient to meet the condition that they "initiate" a safety plan, then in my view the use of that limited terminology demonstrates the inadequacy of the condition itself. I accept that full implementation of a proper safety plan takes time, is not a 'quick fix' and does not produce results in the short term. This reinforces to me the need for any such condition to require not only a commencement but also a testing of ongoing commitment and achievement.

- The final condition was that, until the fourth and fifth conditions were met, the Chief Pilot was not to fly more than 15 hours in any seven day period. The documentation lodged in this regard supports the SPS contention that it had met this condition.

12.460 **Regulatory Transaction 83:** On 19 June 1998, the CASA Board met and the minutes of that meeting record that:

The Board discussed at length the unorthodox approach relating to then initial suspension, and later reinstatement with conditions, of the operator's AOC.

Management was asked to ensure that compliance with the conditions introduced by agreement to the operator's AOC be carefully and closely monitored. In addition, the Board asked that the operations of Aquatic Air continue to be closely scrutinised.

The Board also asked management to advise whether other seaplane operators have also had recent surveillance and, if so, to be advised of the results. The Board agreed that, if not, surveillance of the other seaplane operations should be undertaken, with a report to be provided to the July Safety Committee meeting. (RT83)

- 12.461 On 29 June 1998, after the minutes of that meeting had been sent to the Board on 24 June 1998, Mr Elder sent a minute to Dr Aleck and Mr Burns drawing their attention to this decision and request of the Board. Dr Aleck annotated his copy of the minute that he should discuss the matter with Mr Burns.
- 12.462 On 25 June 1998, Mr Paice e-mailed Mr Burns to advise that the AAT wanted to know whether the matter had been settled or, if not, when CASA would lodge its section 37 statement of facts and reasons. (RT82)
- 12.463 Mr Burns replied to Mr Paice's e-mail on 30 June 1998 saying that:

The maintenance system for SPS aircraft has been assessed and found acceptable.

As soon as I get time (early next week) I will be writing to Aquatic Air and advising them that the suspension on their AOC is lifted but that the AOC is varied to amend the expiry date from May 1999 to November 1998.

The reduced period of validity of the AOC is designed to maintain pressure of (sic) SPS to ensure they remain in compliance.

You can advise the AAT that the matter will be formally settled next week. (RT82)

- 12.464 On 6 July 1998 Mr Burns advised Dr Aleck, Mr Cartledge and Ms O'Brien that he had written to SPS in the following terms:

On 6 May 1998 I suspended the above certificate and on 7 May 1998 I sent you a notice requiring you to show cause why the above certificate should not be cancelled under subregulation 269(1) of the Civil Aviation Regulations in light of the facts and circumstances set out in that notice.

On 21 May 1998 the Administrative Appeals Tribunal (AAT) granted a stay of the suspension of the above certificate subject to a number of conditions agreed to by the Civil Aviation Safety Authority (CASA).

After careful consideration of all the evidence in this matter, including matters discussed at an informal conference held at the Authority's South East Region's offices on 18 May 1998, I am satisfied that the matters alleged in my notice of 7 May 1998 did occur and that, in the absence of mitigating factors, are grounds upon which I can and should cancel the above certificate.

I do not however propose to cancel the above certificate on this occasion. In making my decision, I have taken into account the matters you put to me by way of explanation and the corrective actions taken by Aquatic Air Pty Limited T/A South Pacific Seaplanes since 6 May 1998.

Further, I have decided to remove the suspension I placed on the above certificate on 7 May 1998, which suspension was subject to the stay issued by the AAT on 21 May 1998.

In the circumstances, however, I am of the opinion that I must vary the above certificate under s.28BB(2) of the Civil Aviation Act to amend the date of expiry of the certificate from 31 May 1999 to 30 November 1998. A new Air Operator's Certificate showing the revised date of expiry will be issued by the District Flight Operations Manager, Bankstown in the near future.

Appeal

You are hereby advised that, subject to the Administrative Appeals Tribunal Act 1975, Aquatic Air Pty Limited T/A South Pacific Seaplanes, or any person whose interests are affected by this decision, may apply to the Administrative Appeals Tribunal for review of my decision to vary the Certificate within 28 days from the date of this decision. (RT82)

12.465 Mr Burns then asked Mr Paice what the next step with the AAT should be. Mr Paice responded that he would advise the AAT of Mr Burns' decision and it would then be a matter for SPS as to whether they still wished to seek a review of the original decision to impose the suspension, notwithstanding that it had now been revoked. (RT82)

12.466 Also on 6 July 1998 Mr Burns e-mailed Mr Elder as follows:

I refer to your Minute of 29 June in which you conveyed the Board Safety Committee's requests regarding Aquatic Air and surveillance of seaplane operators in South East Region.

With respect to the Aquatic Air request you may assure the Board that SER will continue to closely monitor the operations of Aquatic Air. To this end I have varied the company's AOC to have the certificate expire on 30 November 1998 rather than on 31 May 1999.

As a consequence surveillance cycles and the pre-reissue periodic inspection will need to be advanced, the company will also be required to produce a new compliance statement.

With regard to the surveillance of the other seaplane operations in SER, a special safety audit was carried out on ..., a seaplane operator at ... on 18-21 May.

In mid June I asked Hoy to conduct a special safety audit of ..., that audit has been planned and will commence on 13 July.

The three operators subjected to special safety audits are the most active seaplane operators

The remaining seaplane operators... Unless directed to do so I do not intend to conduct additional surveillance of these remaining operators in the near future as the size of the operations and the lack of any particular triggers do not warrant the expenditure of additional surveillance resources. (RT82)

- 12.467 On 9 July 1998 Ms O'Brien signed a new AOC for SPS (BK535224-07) for the period to end-November 1998. There is nothing in the files to indicate that she applied her mind to each of the matters referred to in section 28 of the Act, which sets out the circumstances under which CASA must issue an AOC. She had informed me, however, that all the circumstances set out in section 28 were in fact considered. Ms O'Brien informed me that as a result of the discussions before, at and after the Informal Conference, she had formed a view that SPS was capable of complying with the Act and the CARs, and that she had been informed that SPS had met all the conditions set by Mr Burns. It was on these bases that she issued the new AOC.
- 12.468 On 10 July 1998 Mr Nolan responded to a request from Ms O'Brien as to his availability to be seconded to work on the "Airspace 2000 Project". He said that, while he was very interested in being involved in that project, he believed that his surveillance workload and other matters precluded that. Amongst the other matters which he listed, the first was:

South Pacific Seaplanes. Assess the company response to the conditions imposed by the Regional Manager which permitted a stay of suspension of the AOC. This includes evaluation of the revised Operations Manual lodged with CASA on 8 June 1998 ... and the Aquatic Air Safety Plan. (RT82)

- 12.469 Following an exchange of e-mails and an assessment of the availability or otherwise of other officers, Mr Burns advised Ms O'Brien that he did not agree with her assessment that Mr Nolan should assess the SPS Operations Manual and that someone else should undertake the Airspace 2000 project. In this regard Mr Burns had offered to assign other FOIs to the task but says that he reluctantly agreed to assign Mr Nolan at the urging or insistence of the General Manager Airways and Airspace Standards in Canberra. Mr Nolan was accordingly seconded to that task for a number of weeks.
- 12.470 On 13 July 1998 Mr Handel wrote to Mr Simpson lodging an application for a Certificate of Approval which, if granted, would allow SPS to undertake its own aircraft maintenance. (RT74)

Conclusion re Regulatory Transaction 74:

This application appears not to have been further processed and, in light of the following events, there is no basis for criticism on that score.

- 12.471 On 20 July 1998 Dr Aleck e-mailed Mr Burns as follows:

In response to specific requests for updated information from the Board Safety Committee, could you please reply briefly to the following questions by 3.00pm tomorrow, Tuesday, 21 July:

- *Has Aquatic Air been, and does it continue to be, closely monitored with a view to ensuring compliance with the terms and conditions of its AOC?*
- *If not, why not, and to what extent has the company been monitored?*
- *If so, what are your views in relation to the extent to which the company has complied, and continues to comply, with the terms and conditions of its AOC?*
- *What other SE Regional AOC holders are authorised to conduct commercial, passenger-carrying seaplane operations?*
- *When was the last ordinary and/or extraordinary surveillance exercise last carried out on each of these operators, and what were CASA's general findings in respect of their operations?*

Thanks very much. (RT83)

12.472 Mr Burns' office responded by sending Dr Aleck a copy of Mr Burns' e-mail of 6 July 1998 to Mr Elder and adding:

In response to your Email to Trevor and me of 20 July, Trevor has asked me to refer this outline of seaplanes operations (attached) which he sent to Rob Elder and Mick Toller a short while ago.

In addition we can advise that the suspension of South Pacific Seaplanes AOC was lifted as the result of Trevor being satisfied that company met the conditions attached to the AAT stay order. However in order to keep SPS focussed on remaining in compliance Trevor varied the AOC to have it expire at the end of November 1998 instead of expiring at the end of May 1999.

The monitoring of company's operations has returned to the scheduled ASSP cycle (having regard to the amended expiry date) with the next audit being an operator's meeting (to be held in September 1998). This will be followed by a periodic inspection and assessment of a compliance statement prior to the re-issue of company's AOC in November 1998. (RT83)

12.473 On 24 July 1998 Dr Aleck provided a written report for consideration at the meeting of the Board Safety Committee scheduled for 30 July 1998, in which he stated that:

The Regional Manager, South-East Region, assures me that Aquatic Air continues to be closely monitored, both in accordance with the ordinarily applicable ASSP criteria and with particular regard to the terms and conditions to which the company's AOC has been made subject.

To date, the operator would appear to be complying with the applicable legislative requirements as well as the additional requirements contemplated by the conditions on its AOC.

I am advised that the Flying Operations Inspector assigned to Aquatic Air has been seconded to the Airspace 2000 program for the next several weeks, and that the assessment of recent amendments to the company's Operations Manual may be suspended or curtailed until his return. In the event, I will be taking steps to ensure that this process is not unduly delayed as a consequence of this particular inspector's absence. (RT83)

Conclusion re Regulatory Transaction 83:

The effect of advancing the AOC expiry date from May 1999 to November 1998 had the effect that the surveillance otherwise to be conducted in the eleven months to May 1999 was now to be compressed into the five months to end-November 1998. This did increase the level of surveillance that would otherwise apply. However, as noted by Mr Burns' office in the message of 20 July 1998, the first surveillance under this regime would not be until September 1998, some 2-3 months after the Board's request for close monitoring and scrutiny was conveyed to Mr Burns. I understand that it was Mr Burns' view (shared by Ms O'Brien) that unplanned surveillance was best undertaken some months after regulatory intervention, by which time an initial pro-compliance effort might have waned. That may be a legitimate view, but nevertheless it appears that the Board sought an immediate rather than a deferred increase in surveillance.

- 12.474 On 26 July 1998, SPS aircraft VH-HTS crashed at Berowra Waters. The recently appointed Director of Aviation Safety, Mr Toller, immediately suspended the SPS AOC "until it is no longer necessary, in the interests of the safety of air navigation, for this suspension to remain in effect".

13 THE "MISSING" CASA FILES

- 13.1 The conduct of both this review and of the preliminary review conducted earlier by the Assistant Director Aviation Safety Compliance was significantly dependent on access to CASA files. Such records were not, of course, the only resource necessary for and available to, both reviews. Interviews with relevant personnel were also an important source of fact and elaboration. But the utility of those interviews was often, in turn, dependent on access to the files to allow the interviewee to refresh his or her memory.
- 13.2 I have already commented at a number of points in the Regulatory Chronology set out in this report on the quality of CASA record keeping in relation to SPS, and particularly about the failure to create any contemporaneous statement of the reasons for key decisions made in the course of that regulation. The failure to ever create those documents is a significant administrative oversight that has hindered both reviews.
- 13.3 But a potentially far more significant hindrance would have arisen if contemporaneous CASA documents that had in fact been created had "gone missing" so that they were not available for examination by either review or, alternatively, if they had been changed or "doctored" to distort and misrepresent the official record of CASA's regulation of SPS.
- 13.4 In these contexts, two matters of concern must be recorded.
- 13.5 First, when all CASA files identified as relevant to SPS were sought almost immediately after the accident of 26 July 1998, five of them could not be located. These files had been in the possession of Mr Bob Hoy in the Coffs Harbour Office in the course of the special audit led by him, but later forwarded by that Office to the Bankstown District Office by air courier in an irregular and undocumented manner. They were subsequently located in a locked cupboard in the office of the DAM (North) at Bankstown District Office, Mr Richard Best, on 29 July 1998. They were only found when an Administration Officer "picked" the lock on that cupboard. Mr Best was absent on an interstate course at the time, having left his office on the Friday before the accident. Notwithstanding that he had had some dealings with SPS during the course of its regulation of SPS, as recorded in the Regulatory Chronology set out in this report, Mr Best had at that time no official purpose that would have required him to have access to those files. Moreover, he insisted that they had not been in his cupboard when he left his office on the Friday.
- 13.6 These circumstances clearly gave rise to a possible implication that, very soon after the accident, someone had sought to hide the files in a place where they would not be found in order that matters contained on them would be unable to be examined by any subsequent inquiry.
- 13.7 In light of that possibility, the Assistant Director Aviation Safety Compliance commissioned Mr Allan Joyce, CASA's Canberra-based Fraud and Security Adviser. As events transpired, Mr Joyce provided his progress and final reports to me rather than to the Assistant Director.

- 13.8 In my view, Mr Joyce's investigation was as thorough as the circumstances warranted. After receiving his progress report, I asked that he pursue some additional lines of inquiry, which he did. None of the inquiries he undertook allowed he or I to ascertain quite how the files in question had come to be placed in Mr Best's cupboard, who had placed them there, or when they had been placed there.
- 13.9 For his part Mr Best was concerned that he was being "set up" and that may indeed have been the case. He had certain suspicions that he voiced to me in that regard, attributable to interpersonal tensions in the workplace. However he had no proof to substantiate those suspicions and Mr Joyce and I concluded that no reasonable investigation that we might commission would confirm or deny those suspicions.
- 13.10 Mr Joyce has set out his detailed findings and conclusions in his two reports and I have passed these to the Director of Aviation Safety. Amongst his conclusions he says that "the handling of files by staff at Bankstown and Coffs Harbour was lax and not in accordance with CASA procedures". He makes a number of recommendations for reinforcing and improving those procedures. It is appropriate that the Director consider and act on those recommendations.
- 13.11 In the net result, the following points of relevance to this review should be made in relation to this incident:
- (a) it is not possible to conclusively ascertain who placed the files in Mr Best's cupboard, or when, or why;
 - (b) there is in my view, however, no reason to suspect that the files were placed there by Mr Best or at his direction or request, or to otherwise entertain any criticism of him in this regard;
 - (c) in any event, the files were in fact located and they were apparently intact; and
 - (d) while there is no way to be completely sure, there is no sustained reason to believe that documents on those files were altered or removed.
- 13.12 The second matter of concern that must be recorded is an anonymous letter received by the Minister for Transport and Regional Development on 16 October 1998 and claiming to be from a CASA officer not prepared to disclose his or her identity for fear of retaliation in relation to their continued employment.
- 13.13 That letter was in the following terms:

I ... believe the following information should be brought to your notice. You may be already aware of these events however I doubt it as there is nothing being done about it that I know of.

It is common knowledge in some sectors of the Authority that some underhand and deceitful tactics have taken place in relation to the Aquatic Air incident. The minutes of the Safety Committee meeting that consider Aquatic Air prior to the accident have been changed to reflect a desired position for the Committee rather than what actually took place and was recorded at the time. I'm sure that if you investigate this on an independent basis this will be proven. It is doubtful that the current investigation/report soon to be released will reveal any of this because pressures are being applied to conceal the facts.

Obviously this has major ramifications for the Authority and steps need to be taken to look into these events. I hope you see fit to investigate the matter fully and reveal the findings. If no action is taken I feel it is my duty to then reveal this information to both the media and the Shadow Minister.

13.14 The Minister's Office passed that letter to the Department of Transport and Regional Development for appropriate action. A senior officer of the Department copied it to me on 16 October 1998.

13.15 On 20 October 1998 I replied to the Department in the following terms:

I refer to your fax of 16 October 1998 with which you enclosed a copy of an anonymous letter sent to the former Minister for Transport and Regional Development alleging that the minutes of the Civil Aviation Safety Authority's Safety Committee "have been changed to reflect a desired position for the Committee rather than what actually took place and was recorded at the time".

That letter, allegedly from a current CASA employee, also says that "It is doubtful that the current investigation/report soon to be released will reveal any of this because pressures are being applied to conceal the facts". I assume this is a reference to the inquiry I have been commissioned to undertake.

As to the first matter I note that, in the course of my inquiry, I have requested and received copies of relevant records of the CASA Board and of its Safety Committee of relevance to Aquatic Pty Ltd. I have no reason to believe that there are records relevant to the accident which led to the establishment of my inquiry that I have requested and that have not been provided. My examination of those records has given me no reason to believe that the records provided to me are other than the contemporaneous records created from time to time in accordance with the processes ordinarily followed by the Board and the Committee. In particular, I have seen no evidence that these records were amended after the accident.

As to the second matter, I categorically deny that any pressure has been applied to me to conceal any fact. In my view the Director of Aviation Safety and the senior officers of the Authority with whom I have dealt have behaved with the utmost propriety in their dealings with me in relation to this inquiry.

I would be pleased if you would brief the Minister accordingly.

13.16 There is nothing further that I can add in relation to this second incident.

INDIVIDUAL ASSESSMENTS

13.17 In this chapter I set out the assessment I have made of the role played by each of the various individuals and groups who had a part in CASA's regulation of SPS. In each case the assessment set out below represents a personal view, based on the material contained in the preceding chapters of this report. While I have made every attempt to form my judgments by reference to the facts as I have found them to be, it is of course open to others to come to different views.

Mr Mike Nolan

- 13.18 From the time of its first AOC application to the date of this report, Mr Nolan was the FOI assigned to SPS.
- 13.19 It is apparent from the Regulatory Chronology set out in this report that he was active in this role and that he consistently held and voiced concerns about the adequacy of SPS operations. Certain of those concerns were either not shared by the senior management of the Bankstown District Office or of the South East Regional Office or, when shared, not always followed through to the conclusion urged by Mr Nolan and which I would regard as warranted.
- 13.20 For example, while Mr Grover as Acting DFOM agreed with Mr Nolan's concerns about the inadequacy of the SPS Operations manual and issued a CAR 215 direction in that regard, the then RM SER did not support that action and, the direction allegedly being withdrawn, did not put a satisfactory compliance process in its place.
- 13.21 Moreover, Mr Nolan was largely excluded from the processes which were adopted in taking the most important decisions taken by CASA in respect of its regulation of SPS. His non-attendance at the various Informal Conferences was in my view undesirable. But it was not of itself critical. However, the failure of those involved to seek full briefing from him prior to those conferences or to test their proposed decisions with him after those conferences was, in my view, inappropriate in the circumstances.
- 13.22 I accept immediately that an FOI will not always be in the best position to make a decisive assessment of the best action to be taken in such situations. Were it otherwise, senior management would not have a role to play in these decisions. But an FOI should usually be able to bring a desirable insight and perspective and should usually be consulted by senior decision-makers before they take major decisions such as those to which I refer. At the end of the day there may be good reasons to reject the recommendation or views of an FOI, but one cannot be satisfied that such is the case if the FOI is not consulted.
- 13.23 In light of the way in which Mr Nolan was excluded from these processes, his persistence in seeking to improve the quality of SPS operations over time is noteworthy. So too is his preparedness to continue in his duties in relation to SPS despite serious accusations of impropriety made against him by SPS which I consider were not adequately dealt with by the then RM SER.

- 13.24 It is appropriate that I record my impression that those accusations were without substance. I have no doubt that Mr Nolan had a negative and cynical attitude to SPS management and some of its flying personnel from time to time. But I have seen nothing that leads me to believe that those views on his part were not justified or stemmed from improper bias. In the course of my inquiries I spent many hours in interviews with Mr Nolan, and I formed the view that his attitude to SPS and its staff was balanced and justified.
- 13.25 It is notable that, whatever else they may have thought of him, Mr Diamond, Mr Burns and Ms O'Brien did not regard him as biased against SPS. This makes his exclusion from the decision-making processes at key times all the more surprising and inappropriate, in my view.
- 13.26 Of course, Mr Nolan did not always have to accept the decisions of his superior officers. He was Acting DFOM for three periods and at various times could have taken decisive action in exercise of delegated power to ground SPS. Of course, he did not do so. He informed me that this was because he believed he would not be supported by senior management and that he should follow the lead already set by them in their dealings with his recommendations in relation to SPS. In the circumstances I regard that position on his part as understandable although it would be speculative to conclude that he would not have received support. I note, of course, that as delegate he did not renew the SPS AOC for a full 12 month period, but only for a period of months in order to pressure them to address outstanding issues which he notified to them.
- 13.27 Further, even when he was not in a position to take decisions, he did recommend renewal of the SPS AOC despite the concerns he held, for example about the adequacy of the SPS Operations Manual. It may have been preferable for him to attempt to bring matters to a head by recommending against renewal on some of these occasions. But I find it understandable that he did not do so in the circumstances, particularly having regard to the ambiguous nature of CASA's role in relation to monitoring the content of an Operations Manual and his belief (right or wrong, but I am sure *bona fide*) that such recommendations would not be supported by his senior officers.
- 13.28 I do not say that Mr Nolan was without fault in his dealings with, and recommendations in relation to, SPS. No doubt, as he acknowledged to me, some things could have been done differently. And of course I have specifically drawn attention to the fact that he did not record for file all of his dealings with SPS, including some in which serious concerns were expressed to him by SPS Chief Pilots about the safety attitude of SPS management.
- 13.29 However, on balance I believe he undertook his relevant duties in a professional, dedicated and efficient manner and that it would have been appropriate for greater weight to have been given to his views and experience in relation to SPS.

Mr Bob Hoy

- 13.30 As Manager, Safety Audits, Coffs Harbour, Mr Hoy led the special audit team. That team, once convened, produced its report quickly and that report did highlight what I regard as the key deficiencies apparent from the history of CASA's regulation of SPS.
- 13.31 Mr Hoy also followed up on the recommendations of his teams' report, and pressed his views with Mr Burns as far as I believe he reasonably could.

- 13.32 In my view, the special audit team undertook its role professionally and efficiently under his leadership.
- 13.33 There is no reasonable criticism that I believe should be made of Mr Hoy for the undocumented and irregular manner in which the Coffs Harbour Office returned SPS files to the Bankstown Office, as recorded in Chapter 13.

Mr Herb McFarlane

- 13.34 Mr McFarlane played a number of roles in relation to the regulation of SPS.
- 13.35 First, as a SAWI, he undertook inquiries in relation to the maintenance of SPS aircraft at the direction of the then DAM, Mr Dick Best. Those functions are detailed in the Regulatory Chronology and appear to me to have been carried out properly and appropriately.
- 13.36 Second, as Acting DAM, he directed other investigations of SPS airworthiness issues, largely carried out by Mr Paul Simpson. Once again, those investigations are detailed in the Regulatory Chronology and were in my view properly and appropriately undertaken.
- 13.37 Third, and again as Acting DAM, he was involved in the decisions taken by Mr Burns in relation to the suspension of the SPS AOC and the subsequent stay of it.
- 13.38 He attended the briefing provided by the special audit team when it had concluded its exit interview with SPS and was thus aware of, and I understand supported, the mood of that meeting that action should be taken against SPS on the basis of the findings of the special audit. There is no criticism that should be made of him in that regard.
- 13.39 Next, he attended the Informal Conference convened by Mr Burns after the SPS AOC had been suspended and the initial application for stay of that decision had been rejected by the AAT. I understand he also participated in the post-conference discussion at which Mr Burns resolved to consent to a further stay application if SPS agreed to certain conditions.
- 13.40 But it seems to me that he should not be unduly criticised for this participation despite the criticisms I make of Mr Burns' decision and Ms O'Brien's participation.
- 13.41 This is because the condition imposed in relation to the maintenance program, if met, was in principle adequate to resolve the outstanding airworthiness issues as he then understood them although I consider that it would have been preferable for him to urge that the condition requiring lodgment of a maintenance program be met before the stay became effective. While I consider that the other conditions were not adequate to resolve all issues outstanding with SPS, these were flying operations issues on which it would be understandable and appropriate for him to defer to the judgment of Ms O'Brien and Mr Burns.

- 13.42 At Mr Burns' direction or request he undertook the brief examination of the maintenance program eventually submitted by SPS. It would have been desirable if Mr McFarlane had arranged in advance for a SAWI to undertake a more detailed examination of the program as soon as it was lodged, but equally he was not asked to do so. Following his examination, he advised Mr Burns that his areas of concern appeared to have been addressed and that he did not expect the more detailed assessment that would be undertaken to reveal anomalies. As it transpired, Mr Simpson's later detailed examination supported that judgment on Mr McFarlane's part. Accordingly, I do not consider that there is any real basis for criticism of him on this point.
- 13.43 Finally, I note the assertion that has been put to me that Mr McFarlane was remiss in not formally recording his concerns about the safety of SPS operations based on his personal and private observations while yachting. As noted in the body of the report, he says that he conveyed these concerns orally to Ms O'Brien who was the most relevant officer in relation to these matters and that has not been denied. In these circumstances I am not prepared to make any real criticism of him in this regard.
- 13.44 Accordingly, for all the above reasons and notwithstanding the significant criticism I make of the decisions in which he had some participation, I consider that there is no real criticism that should appropriately be made of Mr McFarlane in the light of all the evidence as it has appeared as a result of this inquiry.

Ms O'Brien

- 13.45 In seeking to assess Ms O'Brien's role and performance in CASA's regulation of SPS, I am mindful of the very difficult and onerous nature of the duties she had as DFOM. The Bankstown office is the busiest in Australia and presents many regulatory problems. At any one time, there will be multiple serious issues for the DFOM to confront. Ms O'Brien informed me that she had a larger number of FOIs reporting to her than the accepted standard.
- 13.46 At the same time, it is notable that SPS was an ongoing regulatory concern within the Bankstown office from its inception - indeed, from before the grant of its initial AOC. And, from October 1997, CASA's regulation of SPS was a matter of some public interest and controversy following the broadcast of the *Witness* program.
- 13.47 A perusal of the SPS files discloses little of Ms O'Brien's role in this matter. While her name appears on many documents as a recipient of them, or by reference, there are few documents initiated by her. Generally but certainly not exclusively, the documents initiated by her are generated in the course of her formal execution of her delegated authority.

- 13.48 These files do not give me an impression of an active management by her of CASA's regulation of SPS. No doubt there was much that she did in her management role that is not documented and which it would be unreasonable of me to expect to see documented. Mr Nolan has informed me that he kept Ms O'Brien well informed of the regulatory issues that arose from time to time in relation to SPS, and her own advice to me was that there was frequent discussion on operational matters amongst those involved. She certainly informed me that the files should not be a basis for inferring that she was not able to provide the degree of technical and detailed input necessary for her role in decision-making in relation to SPS, and I am prepared to accept her advice in this regard.
- 13.49 Accordingly, I proceed on the basis that she was in a position of at least general if not detailed knowledge that should have been adequate to allow her to undertake her broad management responsibilities in relation to SPS.
- 13.50 In the course of the regulatory chronology set out in the previous chapter of this report, there are a number of Regulatory Transactions of which I am critical and which involved Ms O'Brien. These include:
- (a) her failure to record reasons for not proceeding with the show cause action initiated against Mr Davies;
 - (b) her failure to follow up on the investigation she asked Mr Shannon to undertake; and
 - (c) her failure to schedule additional surveillance following Mr Diamond's decision not to proceed with the show cause action initiated against SPS.
- 13.51 There are also, of course, a large number of Regulatory Transactions on which I offer no criticism at all and which were undertaken under Ms O'Brien's stewardship, albeit by the direct action of Mr Nolan or another FOI.
- 13.52 It is also pertinent to note that Ms O'Brien was not on duty as DFOM through the period reviewed in this Report. In addition to her ordinary absences on leave, there were periods when she was assigned to other duties. There are thus events in the history of CASA regulation of SPS for which it would be quite wrong to assign responsibility to her, or of which it would be unreasonable to expect her to have a detailed knowledge. More specifically, Ms O'Brien was not on duty as DFOM during the following periods of relevance to the Regulatory Chronology:
- (a) 26 March 1994 to late September 1994 - when Mr John McQueen acted as DFOM;
 - (b) February 1995 to 28 August 1995 - when Mr Howard McGillivray and then Mr Sanjeev Grover acted as DFOM;
 - (c) 25 March 1996 to 26 April 1996- when Mr Grover acted as DFOM;
 - (d) 2 May to 15 May 1996;
 - (e) 20 September 1996 - 1 October 1996 - when Mr Grover acted as DFOM;

- (f) 14 April 1997 to 4 May 1997 - when Mr Nolan acted as DFOM;
- (g) 10 June 1997 to 27 June 1997 - when Ms Kerry Hilsberg acted as DFOM;
- (h) 6 August 1997 to 29 August 1997 - when Mr Nolan acted as DFOM;
- (i) 8 September 1997 to 7 October 1997 - when Ms Hilsberg acted as DFOM;
- (j) 6 April 1998 to 17 April 1998 - when Mr Nolan acted as DFOM;
- (k) 25 May 1998 to 2 June 1998 - when Mr Howard McGillivray acted as DFOM;
- (l) 27 July 1998 to 3 August 1998 - when Ms Hilsberg acted as DFOM.

13.53 It is in the overall context of these comments that I set out the following assessment.

13.54 First, as to Ms O'Brien's management of Mr Nolan as the assigned FOI. She informed me that she did not view Mr Nolan as having a bias either against or for SPS. She also advised me that she did not believe that Mr Nolan had been "marginalised" or "sidelined" in his regulatory role in relation to SPS.

13.55 Having regard to these views expressed by her, I find it all the more surprising that she did not put greater reliance on his intimate and detailed knowledge of SPS operations. She did not ensure that he was allowed to exercise a role of influence in the key decisions that were taken in relation to SPS - that is, the various show cause and associated transactions. She did not appear to take detailed briefing from him before she herself participated in those transactions; she did not consult him in detail about the decisions proposed to be taken as a result of Informal Conferences; and she did not provide him with detailed feedback on what transpired at those Conferences. She apparently considered that she had an adequately detailed understanding of the relevant facts. If that be so, the real question is whether her judgment in relation to key decisions was sound.

13.56 Second, I am not satisfied that she responded appropriately to the various incidents that occurred during the period and which should, in my view, have prompted a heightened level of concern on her part as to the adequacy of SPS operations. For example, she appears not to have acted on Mr McFarlane's direct expressions of concern based on his own personal observations of SPS operations; she does not appear to have reacted to the increasing trend for SPS Chief Pilots to leave SPS on bad terms and making serious allegations against the management of the company.

13.57 Third, she does not appear to have appreciated Mr Diamond's expectation that she would implement a heightened level of surveillance activity after he decided not to proceed with suspension or cancellation of the SPS AOC. This may be because he did not express it unequivocally. However, I consider that as a matter of good management and good sense it would have been appropriate for her to have scheduled additional surveillance in any event. The fact that, over the following six months or so, more surveillance was undertaken than called for by the ASSP programme resulted from happenstance and in response to emerging and unforeseen circumstances such as the resignation of a Chief Pilot after less than three weeks in the position.

- 13.58 Fourth, she does not appear to have acted on, or informed Mr Burns of, Mr Diamond's resolve that immediate action would be taken against SPS on the first default after his decision to not cancel or suspend the SPS AOC. However, Ms O'Brien says this is because Mr Diamond never expressed that resolve to her. It is certainly not contained in his letter to SPS and there is no file record of it. Mr Diamond informed me that he believed he had left Mr Handel in no doubt at the Informal Conference that such a consequence would flow. If that was correct, I would have expected Ms O'Brien to have been equally aware of that resolve. But, in light of the absence of a contemporaneous record, I consider that her denial should not be rejected.
- 13.59 Fifth, on the occasion on which she herself took a substantive and important decision, she did not prepare any written reasons to explain the reasoning which led her not to suspend or cancel Mr Davies' Chief Pilot approval. While Ms O'Brien notes that there was no formal requirement for her to prepare such a written statement, it is my view that simple good management practices dictate that a record of the reasons for such a significant decision should be created, despite the fact that the decision was favourable to Mr Davies.
- 13.60 Sixth, she appears to have considered that the conditions on which it was agreed that a subsequent stay application would not be resisted were adequate to address all matters revealed by the special audit report. In my view, those conditions did not make any or due allowance for all the various issues of concern found in the special audit or entertained on an on-going basis by Mr Nolan, and of which she should have been fully aware.
- 13.61 Finally, in relation to Mr Burns' decision to consent to that stay, it seems that Ms O'Brien agreed with that decision and the reasons for it. In her submissions to me, and in her interview with me, she indicated no difference of opinion in relation to that decision or the reasons for it. Given the view I have taken as to the merits of that decision, this judgment on her part appears to me to reflect an inadequate analysis of the facts of the matter and the history of CASA regulation of SPS.
- 13.62 Despite this however, primary responsibility for this decision must rest with Mr Burns. It was he who took that decision as delegate.
- 13.63 By reference to the judgmental standards adopted in this report as outlined in Chapter 7, I do not believe that Ms O'Brien conducted her regulation of SPS with any lack of propriety (that is, for an improper purpose, with a casual disregard for the truth, or recklessly). I certainly regard the lack of any adequate explanation as raising a doubt as to whether her decision in relation to the show cause action against Mr Davies was the preferable decision. I also regard a number of her actions, as outlined above, as not the preferable actions that should have been taken in the circumstances. And I disagree with her judgment in assessing the appropriate action that CASA should have taken in response to SPS, particularly in light of the special audit report.
- 13.64 I note however that these are necessarily subjective judgments on my part and with which Ms O'Brien disagrees.

Mr Barry Diamond

- 13.65 Mr Diamond came to the position of RM SER as an experienced senior manager with a significant history of working for CASA in technical (rather than general managerial) positions. He had also been previously employed in the private aviation sector and was endorsed to fly multiple aircraft types.
- 13.66 Mr Diamond's first dealing with SPS appears to have been within a few weeks of assuming the position of RM SER in August 1995, when I understand that he attended a meeting as a result of which Ms O'Brien decided not to take further action in respect of the show cause letter she had issued to Mr Davies concerning his Chief Pilot approval. If that is correct, however, it would appear that his involvement in that decision was minimal and I attach no criticism to him in that regard.
- 13.67 Over the following period of around two years, he came to have his own substantive dealings with SPS and these are examined in some detail in the preceding chapter of this report. It is important, however, that these dealings be seen in their proper context.
- 13.68 I have been consistently informed that the position of RM SER is a busy, demanding and stressful position, responsible for a geographically diverse group of District Officers, and with multiple managers in each of those District Officers reporting directly to that position. Accordingly, I accept that at any one time the problems presented by SPS would have been just one of the pressing issues for which Mr Diamond had a responsibility.
- 13.69 The ordinary pressure of that position during his tenure would, I am sure, have been compounded by the pressures of change impacting on CASA more broadly, following the events of recent years.
- 13.70 In the course of the regulatory chronology set out in the previous chapter of this report, there are a number of Regulatory Transactions of which I am critical and which involved Mr Diamond. These include:
- (a) the disposal of the CAR 215 Direction issued to SPS;
 - (b) the handling of the serious complaints of bias and impropriety made against Mr Nolan;
 - (c) the process followed in respect of the Informal Conference in relation to the show cause action he initiated in relation to the SPS AOC; and
 - (d) the decision he made following that Informal Conference.
- 13.71 There are also, of course, a large number of Regulatory Transactions on which I offer no criticism at all and which were undertaken during Mr Diamond's period as RM SER, albeit by the direct action of Mr Nolan or others.
- 13.72 It is against the background of these comments that I record this assessment of Mr Diamond's role in the regulation of SPS.

- 13.73 First, I consider that he failed to ensure that Mr Nolan's very detailed and intimate knowledge of the day-to-day operations of SPS was brought to bear in forming his own views of the SPS matters with which he dealt. In particular, he did not seek detailed briefing from Mr Nolan prior to the Informal Conference he convened, and he did not test his proposed decision with Mr Nolan after that meeting.
- 13.74 Mr Diamond informed me that he regarded the suggestion that he needed Mr Nolan's input as "ridiculous". He said that he had attained a considerable insight into the SPS operation by the time of the Informal Conference, although he did not inform me how he had done this other than in reliance on input from Ms O'Brien.
- 13.75 If it is correct that Mr Nolan could not have provided any useful additional briefing, then I find the exercise of judgment reflected in Mr Diamond's decision to take no further action on the show cause to be all the more surprising. In my view, and as noted below, it was clearly preferable that action be taken to address the issues then outstanding in relation to SPS as recorded in the Regulatory Chronology.
- 13.76 Second, I do not regard his disposal of the serious complaints against Mr Nolan as adequate. In my view, it was incumbent on him, in the best interests of both CASA and Mr Nolan, to provide SPS with a firm and formal rebuttal of their allegations in the absence of any substantiation for them. There is no evidence that he did so. He informed me that, while he did not regard Mr Nolan as amongst the best of the various FOIs under his direction, he did not regard Mr Nolan as biased against SPS. Thus there was nothing to prevent that formal rebuttal being issued. Mr Diamond says that he would have signed an appropriate letter to SPS if asked to do so by the DFOM. At the same time he told me that he had been presented with a draft letter but did not like its style; it appears from Ms O'Brien's advice to me that she drafted that letter. Whether that is correct or not, I consider that he should have followed the matter up and had the letter re-drafted to fit with a style he was prepared to adopt.
- 13.77 Third, for the reasons outlined in the preceding chapter, I do not regard his disposal of the matter of the CAR 215 Direction as adequate. He may have had good reasons for believing that the wording included in that Direction by Mr Grover was less than optimal - although, if he did, these do not appear on the papers. But it seems clear that he did regard the SPS Operations Manual as inadequate. I thus regard it as having been incumbent on him to set in place a definite process designed to ensure that the SPS Operations Manual was improved to a point where CASA could be satisfied that it provided proper and adequate guidance to SPS pilots in the course of their flying duties.
- 13.78 Fourth, Mr Diamond's decision not to suspend or cancel the SPS AOC after the Informal Conference was not, in my view, the preferable decision that should have been made on the facts that would have been before him if he had ensured that he was properly briefed. In my view, those facts, many of which were known to him in any event, make it clear that, at the least, the SPS AOC should have been suspended until such time as CASA could be properly satisfied that it was able to operate under the guidance of a fully qualified and empowered Chief Pilot. By the time he came to make this decision, Mr Diamond was well aware that Mr Gorman was to resign and that he was expressing serious reservations about the extent to which Mr Handel was intruding into the safety responsibilities of the SPS Chief Pilot.

- 13.79 Mr Diamond does not share this assessment. He says that:

Gorman was fully qualified and empowered as Chief Pilot. He, more than any CP I knew at that time, had been repeatedly briefed on his responsibilities as Chief Pilot. He elected to remain as CP and on that basis, the regulator had every right to assume that the job was being done. If he had resigned the operation would have stopped. I reminded Handel at the Informal Conference that in those circumstances, the appointment of a new Chief Pilot would be a very thorough affair. Gorman was not the first CP to work with a demanding and financially focused "Aviation Manager". The Company was not unsafe and therefore the AOC was not suspended.

- 13.80 I cannot accept that this is an adequate justification for the decision not to proceed with the show cause. Mr Gorman's own assessment was that he was not fully empowered and, in light of his direct statements, I do not believe it was open to assume that he would and could run SPS safely simply because he had not yet resigned. Further, I do not believe that the suggestion that a future Chief Pilot appointment process would be rigorous was sufficient to ensure that the immediate problems were addressed. CASA had a clear power to intervene and in my view Mr Diamond should not have placed the onus of regularising SPS' problems on Mr Gorman in the prevailing circumstances.
- 13.81 Fifth, even if (contrary to my view) the decision not to cancel or suspend could be justified, it seems to be clear that he did not give Ms O'Brien specific instructions that she should increase the level of surveillance of SPS. Instead, he simply says that he expected her to do this, and that his expectations were appropriate and justified. Her understanding of his expectations seems to demonstrate that this was not correct.
- 13.82 Sixth, he did not act to ensure that the reasons for his decision not to proceed were properly reduced to written form and included on the relevant file. The letter he wrote to SPS reflects his decision but, in my opinion, does not adequately reflect his reasons for it. In this regard he says that he relied on the regional Legal Counsel to prepare the necessary documentation. I have recommended in the body of the report that the Informal Conference procedures should be amended in this regard. In any event, I would have thought it wise for the reasons for such a significant decision to have been recorded on file without the need for a specific direction in that regard.
- 13.83 By reference to the judgmental standards adopted in this report as set out in Chapter 7, I do not believe that Mr Diamond conducted his regulation of SPS with any lack of propriety (that is, for an improper purpose, with a casual disregard for the truth, or recklessly). However, I certainly regard a number of his decisions, as outlined above, as not the preferable decisions that should have been made in the circumstances, and I am critical of the process by which certain of those decisions were taken.

Mr Trevor Burns

- 13.84 Mr Burns had not held the position of RM SER for an extended period when he first had to take responsibility for matters to do with SPS. He cannot be reasonably expected to have had a detailed knowledge of the intricacies of SPS operations and of the issues that had arisen in relation to CASA's regulation of SPS in the preceding years.
- 13.85 Moreover, as RM SER he had, what I am consistently informed is, a busy, demanding and stressful position. He was responsible for a geographically diverse group of District Officers, and had multiple managers in each of those District Officers reporting directly to him. At any one time, the problems presented by SPS would have been just one of the pressing issues for which he had a responsibility.
- 13.86 In this regard, I note that the period in which the SPS suspension and AAT stay was dealt with was an extremely busy one for Mr Burns. He had Informal Conferences for various show cause actions not only on 18 May 1998 in relation to SPS, but also on 13 and 15 May and four separate matters on 20 May 1998.
- 13.87 Additionally, Mr Burns accepted the position of RM SER for only a limited period while the organisation moved from one structure to another in which Regional Offices were to be disbanded. No doubt the preparation for and expectation of this change added additional pressures to his job over and above those inherent in its normal duties.
- 13.88 Importantly, this change process had introduced an element of ambiguity and difficulty specifically affecting Mr Burns own position. The creation of the transitional position of General Manager, Aviation Safety Compliance, generated considerable disquiet and uncertainty as to the role of that position and its interrelationship with and effect on the duties of Regional Managers.
- 13.89 That pressure of these changes would, I am sure, have been compounded by the other pressures of change impacting on CASA more broadly, following the events of recent years.
- 13.90 At the same time, Mr Burns was a very experienced senior officer of CASA and its predecessors. He had spent an extended period in Canberra and should have been well aware of the heightened political and public interest environment in which the organisation was required to operate. That environment, of course, became extremely focussed on SPS following broadcast of the *Witness* program on 14 October 1997.
- 13.91 His long experience as a senior manager would no doubt have given him a solid base on which to intuitively assess the type of issues presented by SPS. At the same time, however, that experience should in my view have highlighted for him the importance of ensuring that he was cognisant of all relevant details before he took key decisions. Mr Burns, throughout his 24 year career as a safety regulator, had gained a wide variety of technical aviation qualifications and experience that equipped him for the duties of RM SER. He has stressed to me that the technical issues in the SPS regulatory action were not complex or challenging. However, the facts of SPS' operational history are involved and complicated and a clear understanding of them was necessary to inform the subjective judgments that needed to be made at key times in the Regulatory Chronology.

- 13.92 In the course of the Regulatory Chronology set out in the previous chapter of this report, there are a number of Regulatory Transactions of which I am critical and which involved Mr Burns. These are:
- (a) the process followed during (but not the outcome of) the Informal Conference in relation to the show cause action taken with respect to Mr Kennington;
 - (b) his various reports and briefs for senior CASA management which formed the basis of advice to the CASA Board;
 - (c) the decision he made to agree to an AAT stay of his earlier decision to suspend the SPS AOC;
 - (d) his assessment of whether or not SPS had met the conditions on which he had agreed to consent to that stay order; and
 - (e) his failure to promptly subject SPS to an increased level of scrutiny and monitoring of SPS as requested by the CASA Board after that stay had become operative.
- 13.93 There are also, of course, a large number of Regulatory Transactions on which I offer no criticism at all and which were undertaken under Mr Burns' stewardship, albeit by the direct action of Mr Nolan or others.
- 13.94 It is against the background of these comments that I record this assessment of Mr Burns' role in the regulation of SPS.
- 13.95 First, Mr Burns provided a number of reports and briefs which he should reasonably have expected would form the basis of briefing for the CASA Board or its Safety Committee and these are set out as Attachments to this report. Having regard to the full facts relating to SPS and its history over time, in my view these reports are generally shallow and incomplete, and written at such a high level of generality as to be potentially if not actually misleading. In my view they fail to convey the level of concern which I believe was warranted by a detailed analysis of the files. In preparing these reports and briefs, he appears to have done little other than to acquaint himself generally, and provide the Board with summaries of, the ongoing activities of Mr Nolan and others in the Flying Operations Branch. The "action plan" and "strategic plan" to which he referred in his briefings were nothing more than a name he gave to a list of outstanding matters that had been sent to SPS by Mr Nolan. Further, there is nothing to suggest that he checked to see that that "plan" had been met by SPS by the due date to which he referred in his briefings - in fact, it was not so met.
- 13.96 Second, particularly following Mr Gorman's letter and the broadcast of the *Witness* program, it is not apparent that Mr Burns sought to involve or consult with Canberra-based CASA officers in the detailed administration of SPS that followed, to the extent that I would have thought it appropriate to do.

- 13.97 Third, Mr Burns seems to have been resistant to involving Canberra-based officers and specifically Dr Aleck at the time of the consent to the stay and the assessment of SPS compliance with the conditions then imposed. While I accept that Mr Burns was the delegate with primary responsibility for taking major decisions in respect of SPS, and that he disagreed with and disputed the role that Dr Aleck was perceived to be asserting for the position of General Manager, Aviation Safety Compliance, nevertheless he did not bear ultimate responsibility for those decisions. As a delegate, that ultimate responsibility vested in the Director. And the Director and the CASA Board had, and should have been known to him to have had, a heightened interest in and concern for CASA's relationship with SPS and key decisions taken in connection with it.
- 13.98 Fourth, Mr Burns in common with other CASA officers involved in show cause actions in relation to SPS, did not act to ensure that adequate records of the Informal Conferences and of the reasons for his decisions were placed on file. As already noted, I do not regard the various show cause and related letters as meeting that purpose.
- 13.99 Fifth, I do not believe that Mr Burns consulted with relevant staff as he should have done. It is indeed true that he met with the full special audit team and that he had Mr Nolan and Mr McFarlane present at that time and gave them an opportunity to present their views. Having done so, he would have been well aware that the view of the audit team was uniformly adverse to SPS, and that at least Mr Nolan was of the same view. If that meeting had left him in any doubt, that should have disappeared when the final report of the audit reached him.
- 13.100 Given this knowledge of the views of those in the best position to make an informed detailed judgment about SPS, I believe that it was a significant error of judgment on his part to consider agreeing to a stay without testing that view with those people. The decision to consent to a stay was at complete odds with the views of those people and, in my view, with an assessment of the material on file.
- 13.101 If such a reversal was to be undertaken, in my view Mr Burns should have felt it necessary to consult those people and test his decision with them. Moreover, if having done so he was still of the view that agreeing to a stay was appropriate, then I believe he should have further tested with them the adequacy of his proposed conditions.
- 13.102 I note of course that Mr Burns did involve Ms O'Brien and Mr McFarlane in the Informal Conference and that Ms O'Brien in particular had a longstanding and detailed (but generally second-hand) knowledge of the history of SPS operations. Their involvement was certainly appropriate, but I do not believe it was sufficient. Key issues following the Informal Conference were the adequacy of the conditions and the reliability of SPS' undertakings. In my view, Mr Nolan and Mr Hoy were best placed to offer input on the former, and Mr Nolan on the latter.

13.103 I note that Mr Burns informed me that, in his opinion, Mr Nolan had a predisposed view against SPS (although he says this had no bearing on his decision to rely on Ms O'Brien and Mr McFarlane to advise him). In this he stands in contrast with both Ms O'Brien and Mr Diamond, who both informed me that they were not of the view that Mr Nolan was biased against SPS. But even if this view on his part could justify a failure to test the detail of his proposed decision with Mr Nolan, that reasoning would not apply to the special audit team, or at least to Mr Hoy who Mr Burns did not regard as having any bias.

13.104 Sixth, the conditions on which he agreed to the stay were not comprehensive. They did not address all of the issues highlighted in the special audit report. In this regard I consider that Mr Burns is incorrect in saying that, in light of the Operations Manual amendments that became effective on 30 April 1998, there were no outstanding issues following the audit. In my view, if it could ever have been deemed appropriate to agree to a stay, this could only have been on basis of a comprehensive set of conditions which gave some realistic assurance that SPS would not only meet but also continue to meet the undertakings they gave. The history of SPS is scattered with unhonoured undertakings.

13.105 Seventh, I consider that it was not reasonable to agree to a stay that would become operative before there was established compliance with at least key conditions amongst the comprehensive list that could have been developed to address all outstanding issues. Significant amongst these were:

- Mr Handel's preparedness to accept his responsibilities as an AOC holder and his resultant influence on the exercise by the Chief Pilot of his responsibilities, as highlighted by the special audit report;
- the capacity of the Chief Pilot, again highlighted by the special report;
- the satisfactory and tested acquittal of all outstanding Non-compliance notices - in respect of some of these Mr Simpson had advised that acquittals were not satisfactory, and in respect of others the action taken in purported acquittal had not been assessed;
- the adequacy of the maintenance program, about which CASA had concerns as evidenced by the imposition of the condition;
- the adequacy of the Operations Manual, which had been amended on 30 April 1998 but those amendments had not been assessed in detail and, for the reasons outlined elsewhere in this report, were not adequate; and
- the ALA Register - which was still outstanding because SPS had not lodged the final Register by 14 February 1998 as required by the condition on which its AOC was renewed on 30 January 1998 (and which was raised indirectly by the special audit in issuing NCN 506241).

In my view, the nature of the outstanding issues was so significant that SPS should not have been allowed to resume operations until those conditions were met. Allowing a period of three weeks to 8 June 1998 for compliance with the limited conditions that were settled was, in my opinion, far too great a risk. That assessment on my part is not diminished by the fact that SPS did not encounter major safety problems in that period.

- 13.106 Eighth, given that Mr Burns had agreed to a stay on the basis of the conditions he set, I do not believe that he took adequate steps to ensure that those conditions were properly met by the stipulated date, or at all. I have set out detailed reasons for that view in relation to Regulatory Transaction 82 in the preceding chapter.
- 13.107 Lastly, I consider that there is no evidence to suggest that Mr Burns arranged for an immediately effective increased level of monitoring and scrutiny of SPS as requested of him by the CASA Board.
- 13.108 By reference to the judgmental standards adopted in this report as set out in Chapter 7, I do not believe that Mr Burns conducted his regulation of SPS with any lack of propriety (that is, for an improper purpose, with a casual disregard for the truth, or recklessly). I certainly regard a number of his decisions, as outlined above, as not the preferable decisions that should have been made in the circumstances, and I regard the process by which certain of those decisions were taken as defective and less than preferable in certain respects.
- 13.109 I note however that these are necessarily subjective judgments on my part and with which Mr Burns disagrees.

Dr Jonathan Aleck

- 13.110 Dr Aleck's involvement in the regulation of SPS arose because of his appointment to act in the position of General Manager Aviation Safety Compliance.
- 13.111 The history of the creation of that position and of the definition of its role and responsibilities is set out in Chapter 10 of this report. As there discussed, notwithstanding the implications of the organisation chart as it depicted that position and the staff circular issued in relation to it, it was not Dr Aleck's role to control or direct the enforcement action taken in relation to SPS. That remained primarily the responsibility of the RM SER and his subordinate staff.
- 13.112 Dr Aleck was required to be provided with copies of the final versions of show cause letters issued by Regional Offices or of decisions to cancel, vary or suspend AOCs. It appears that he did receive these in relation to SPS. There was no clear indication provided to Dr Aleck of what he was expected to do in response to the receipt of such materials.
- 13.113 It is apparent however that, whether or not he had a clear mandate to do so, he attempted to influence Mr Burns in his handling of both the proposal to agree to a further application to the AAT for a stay of the AOC suspension decision and the assessment of whether or not SPS had met the conditions on which that stay was agreed.
- 13.114 As to the first matter, it is apparent that Mr Burns did not engage in a dialogue with Dr Aleck. He did not respond to Dr Aleck's e-mail of 20 May 1998 asking for detail of the proposed conditions. Instead, he asked Mr Cartledge to inform Dr Aleck of the conditions on which he had already undertaken to consent to a stay order.

- 13.115 As to the second, it is apparent that Dr Aleck sought to have SPS' compliance with the maintenance program condition tested. Mr Burns rebuffed that intervention, saying that he did not intend to "split hairs". Dr Aleck nevertheless persisted and Mr Burns arranged for Mr McFarlane to undertake a brief examination of the maintenance program lodged by SPS. He later pressed on 16 June 1998 for an examination of the Operations Manual but, despite his understanding that Mr Burns had agreed to that, the examination was never undertaken. Eventually, Mr Burns informed Dr Aleck after the event that he had written to SPS advising that he would not cancel the AOC and that he had removed the suspension decision. [Of course, Mr Burns was not formally required to consult Dr Aleck before he took that decision.]
- 13.116 Dr Aleck's other involvement was to support the Board Safety Committee by obtaining and providing information in relation to SPS. In undertaking this role, he appears to me to have attempted to predict in advance what information the Committee might need and to obtain the same before Committee meetings; he also appears to have followed up after Committee meetings any requests made at those meetings. In seeking such information, whether before or after those meetings, Dr Aleck was necessarily dependent on Mr Burns for the factual basis of the information he conveyed to the Committee.
- 13.117 In light of the above, there is no criticism I would make of Dr Aleck's conduct in relation to the regulation of SPS. I consider that he was asked to play an extremely ambiguous role with exceptionally limited resources or authority and that it would be unreasonable to expect of him more than he did.

Other CASA Officers

- 13.118 In the course of my inquiries I also interviewed the following CASA officers (in alphabetical order):
- (a) Mr Richard Best, District Airworthiness Manager, Bankstown South
 - (b) Mr Garth Cartledge, Legal Counsel, Office of Legal Counsel, South East Region
 - (c) Mr Robert Dodd, General Manager, Aviation Safety Promotion
 - (d) Mr Sanjeev Grover, Flying Operations Inspector, Bankstown
 - (e) Ms Kerry Hilsberg, Flying Operations Inspector, Bankstown
 - (f) Mr Ian Kearsley, District Engineering Manager, Bankstown
 - (g) Mr Robert Paice, Legal Counsel, Office of Legal Counsel, Canberra
 - (h) Mr Mike Shannon, Investigator, South East Region
 - (i) Mr Paul Simpson, Senior Airworthiness Inspector, Bankstown North
 - (j) Mr Len Yates, Flying Operations Inspector, Bankstown
- 13.119 With the exception of Mr Dodd, the role played by each of the above in the regulation of SPS is detailed in the Regulatory Chronology. So far as Mr Dodd is concerned, I

interviewed him because I had noticed an e-mail document that indicated that he had submitted a report on various operators including SPS to the Safety Committee and I was concerned to ascertain the nature of the information it provided so that I could better assess the role of that Committee. As it transpired, that report was a statistical overview which provided the Committee with no identifiable information in relation to SPS.

- 13.120 In my view, having regard to the basis I have adopted for forming judgments expressed in this report as detailed in Chapter 7, there is no criticism that should reasonably be made of each of these officers.
- 13.121 There are, however, a few particular points that should be made.
- 13.122 First, I repeat the comment made in Chapter 13 that no criticism should attach to Mr Best in connection with the fact that various SPS files were found in a locked cupboard in his office.
- 13.123 Second, Mr Cartledge attended a number of Informal Conferences and other meetings in relation to SPS. To the extent that he took notes at these meetings, they were not formalised and filed on a contemporaneous basis. However, in doing this, I understand that he simply followed the standard procedure in such matters. While it would have been appropriate for him to have done otherwise, I do not believe he deserves criticism on this basis. I have made recommendations in the body of this report for change to those procedures.
- 13.124 Third, Mr Paice was integrally involved in the implementation of the decision to consent to the second SPS application for a stay. However, the role he was expected to play was that of a "solicitor" acting on the instructions of Mr Burns as his "client". It was not his identified role to seek to exercise an independent prevailing judgment or to interpose his own substantive decision. It appears to me that he performed his designated role properly, including seeking to test the basis for the decision proposed to be made by Mr Burns. I make recommendations in the body of the report for a review of the role of the Office of Legal Counsel in such matters.
- 13.125 While I am critical of the use of a conditional stay consent as a basis for allowing SPS to resume operations, rather than the issue of a conditional AOC or similar, that criticism is not because the mechanism was unlawful. Rather, it is because the stay mechanism did not give CASA a capacity to act unilaterally in the event of a breach of condition. As I note in the body of the report, Mr Burns' reasons for using this mechanism were not illogical or clearly wrong. I simply consider that such mechanism should not be used again. In these circumstances, Mr Paice deserves no criticism in this regard.
- 13.126 As noted in the body of the report, Mr Paice failed to notice that the AAT had amended the terms of the consent conditions that had been agreed between Mr Burns and SPS. However, as also explained in the body of the report, I regard that failure on his part as understandable and not unreasonable in the circumstances. In any event, I consider that nothing turned on that failure. This is because, in my view, even if the AAT had agreed to the conditions in the precise terms drafted by Mr Burns, an assessment of the revised Operations Manual lodged by SPS would still have been warranted.
- 13.127 Finally, both Mr Simpson and Mr Yates were involved in the addition of the Cessna on the SPS AOC. As noted in the body of the report, that process did not comply with the then newly issued AOCM. However, as also noted, there was much confusion about the status

and applicability of that Manual in the circumstances, and each of Mr Simpson and Mr Yates were at that time recently recruited and on probation during the period of their initial on-the-job training. Accordingly, I consider that their involvement in this matter warrants no criticism.

CASA Board and CASA Board Safety Committee

- 13.128 The CASA Board represents the most senior decision making organ of CASA. Ultimately it is accountable for the actions taken by CASA and in that regard the members of the Board owe duties of care and diligence which are now formalised in section 22 of the *Commonwealth Authorities and Companies Act 1997*. Importantly, those duties are not absolute but require instead that members “exercise the degree of care and diligence that a reasonable person in a like position in a Commonwealth authority would exercise in the authority’s circumstances”.
- 13.129 It is thus appropriate to contemplate “the authority’s circumstances” during the period under review.
- 13.130 It is a matter of public record that CASA has had a contentious and troubled history since it was first formed after the dissolution of the former CAA.
- 13.131 It is common knowledge that the organisation was undergoing significant restructuring of its staffing and management systems during the period covered by this review, and particularly during the last year or two.
- 13.132 It is also common knowledge that the organisation was seeking to realign its operational philosophy in striking appropriate balances between enforcement and industry facilitation and between bureaucratic prescription and industry self-regulation.
- 13.133 It is similarly a matter of record that there were significant changes in the composition of the Board and in the upper levels of management responsible to the Board during this period.
- 13.134 All of these factors arising from significant transition and change are pertinent to any general assessment that might be made of the Board and its subsidiary committees such as the Safety Committee, or of any member of the Board.
- 13.135 Those factors are similarly relevant to any more specific assessment that might be made of the role which the Board, the Safety Committee and their members played either directly in the regulation of SPS or indirectly in putting in place the framework in which CASA staff undertook that regulation on CASA’s behalf.
- 13.136 But in my view none of those factors relating to transition and change drove or influenced the decisions which were taken in relation to SPS of which I am critical. Those decisions were taken by properly delegated and qualified officers operating within an organisational structure in which the only ambiguity related to the role of the General Manager Aviation Safety Compliance which, in turn, did not cause these decisions to be made or generate delay in actions that should have been taken.
- 13.137 Against this background, I consider it appropriate to focus on the specific action taken by the Board and the Safety Committee in relation to SPS.

- 13.138 The Regulatory Chronology records the direct dealings which the CASA Board and its Safety Committee had in relation to the regulation of SPS. Because there is some commonality of membership between the Board and the Safety Committee, it is appropriate to look together at the way in which the two bodies dealt with this matter. Where the Board considered a matter at one meeting, the Safety Committee was able to follow up on it before the next meeting of the Board.
- 13.139 The first Board/Safety Committee involvement that I have detected in relation to SPS was simply to note the issuance of an NCN to SPS for operating an aircraft in excess of its maximum take-off weight. There is no basis in my view to assert that the Board/Safety Committee should have done more than it did on that occasion.
- 13.140 The next Board/Safety Committee involvement arose on receipt of Mr Gorman's letter making various allegations against SPS in August 1997. This led to the provision to the Board of a brief based on the report from the RM SER (see Attachments C1-C2 to this report) I am elsewhere critical of the nature of that report. But in my view the Board did not have any reason to suspect that it was less than a full and accurate report and there is nothing in that report that ought reasonably have motivated additional action on its part.
- 13.141 Following receipt of that report, SPS next came to the attention of the Board/Safety Committee with the airing of the *Witness* program in October 1997, on which a member of the Board stated that the allegations then made against SPS would be investigated. The Board was informed that a report on SPS was being prepared and would be provided to the Safety Committee out of session. It eventually received a copy of the report prepared by the RM SER that is set out at Attachment E to this report. Again I am elsewhere critical of the nature of that report. But in my view the Board still did not have any reason to suspect that it was less than a full and accurate report and there is nothing in it that ought reasonably have motivated additional action on its part.
- 13.142 In March 1998 the Board/Safety Committee became aware that show cause action had been taken against the SPS Chief Pilot. At that time I consider that the members were entitled to believe that appropriate action was in hand and that no intervention on their part was warranted.
- 13.143 In May 1998 the Board was informed that the SPS AOC had been suspended and soon thereafter both the Board and the Safety Committee were told that the stay application had been refused by the AAT. Once again at that time I consider that the members were entitled to believe that appropriate action was in hand and that no intervention on their part was warranted.
- 13.144 On 1 June 1998 the Safety Committee was informed out of session that a stay order had been made with CASA's consent. In the circumstances I understand that the Safety Committee felt there was little it could do, given that the stay had been agreed in CASA's name by a delegate acting within his express authority. Of course, neither the Board nor the Safety Committee was consulted before this was agreed, and Dr Aleck's attempts to influence the decision to be taken by the RM SER had not been accepted. I am elsewhere critical of the actions of the RM SER in this regard. The Safety Committee and the Board had effectively been presented with a *fait accompli*.
- 13.145 In the report prepared for the 12 June 1998 meeting the Safety Committee was told that, at the time of writing, it was not known whether SPS had complied with the conditions imposed. At the meeting itself the Safety Committee was informed that SPS had in fact

complied with the conditions. The Safety Committee expressed its concern at the process that had been followed in agreeing to a stay on condition and at the difficulty that Dr Aleck was apparently having in testing SPS' compliance with the conditions.

- 13.146 Arising from questions asked of him at that meeting, Dr Aleck followed up on SPS' stated compliance and sought to have the RM SER more fully assess the maintenance program and examine the Operations Manual before formally proceeding to vacate his suspension decision.
- 13.147 At its 19 June 1998 meeting the Board discussed the "unorthodox" approach followed in agreeing to a stay and directed that SPS' compliance with the conditions be closely monitored and more generally that SPS' activities be closely scrutinised.
- 13.148 On 24 July 1998 a report was prepared for the next meeting of the Safety Committee which informed the Safety Committee that the RM SER had assured Dr Aleck that SPS continued to be closely monitored both in accordance with the ASSP and in relation to the conditions on which the stay had been agreed. While I am elsewhere critical of the actions taken by the RM SER in response to the Board direction of 19 June 1998, in my view the Safety Committee had no reason not to accept the advice it received at this meeting.
- 13.149 Having regard to the information provided to the Board/Safety Committee from time to time and the circumstances in which it found itself (particularly in relation to the *fait accompli* of a stay being agreed without any consultation with the members), I do not believe there is any reasonable basis on which the Board, the Safety Committee or the members of either body can be criticised for the role they directly played in CASA's regulation of SPS.

Minister for Transport and Regional Development

- 13.150 Successive Ministers for Transport and Regional Development received correspondence making allegations against SPS from time to time. That correspondence, on its face, raised matters of significant concern. While my terms of reference are confined to a review of CASA's actions in respect of SPS, because reference has been made to Ministers and their offices in the course of the Regulatory Chronology set out in this report, I nevertheless believe it appropriate to record the following views in case some alternative inference might otherwise be drawn from a failure to do so.
- 13.151 As appears from the Regulatory Chronology, the Ministers' office staff forwarded correspondence received by the Ministers to CASA for advice and appropriate action. In my view, this was the proper course for the Ministers' staff to take. CASA is an independent statutory authority with the relevant powers and expertise to deal with the various matters raised in that correspondence. Having regard to the fact that Ministers in most portfolios frequently receive correspondence which makes extravagant and extraordinary allegations and claims that often prove to be unfounded, I consider that there was nothing on the face of the correspondence received in this case that should have suggested to the Ministers or their staff that any action other than referral to CASA was appropriate.
- 13.152 CASA provided briefing to the Ministers' offices in relation to the correspondence referred to it. In my view, the content of that briefing was such that it was appropriate for the Ministers and their advisers to conclude that there was no further action that should be taken by them. While I am elsewhere critical of the briefing papers prepared by the

RM SER which formed the basis for those briefings to the Minister, those deficiencies were not known to the Ministers' or their staff and thus they were entitled to rely upon the content of the briefing material they in fact received.