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Ekinci and Ors and Civil Aviation Safety Authority [2014] AATA 424 (27 June 2014)

Last Updated: 30 July 2014

Administrative Appeals Tribunal

ADMINISTRATIVE APPEALS TRIBUNAL)
) No: 2014/0575
GENERAL ADMINISTRATIVE DIVISION)

Re: Reha Riza Ekinci
Applicant

And: Civil Aviation Safety Authority
Respondent

DIRECTION

TRIBUNAL: Mr Ronald Bartsch, Member

DATE: 29 July 2014

PLACE: Sydney

The Tribunal directs the Registrar, pursuant to [subsection 43AA\(1\)](#) of the [Administrative Appeals Tribunal Act 1975](#), to alter the text of the decision in this application as follows:

1. In the 3rd line of paragraph 2, the phrase “detailed expenses” should read “detailed responses”;
2. In the 4th line of paragraph 9, the sentence: “Under s 9A in exercising its powers and performing its functions” should read: “Under s 9A in exercising its powers and performing its functions,  CASA  must regard the safety of air navigation as the most important consideration.”;
3. In the 2nd line of paragraph 12, replace the word “Air” with the word “Aircraft”;
4. In the 1st line of paragraph 14, insert the word “was” before the word “that”;
5. In the 9th line of paragraph 22, the words “were not come into effect” should read “would not come into effect”;
6. In the 4th line of paragraph 34, replace the word “taken” with the word “take”;
7. In the 5th line of paragraph 35, insert the word “to” after the words “in respect”;
8. In the 1st line of paragraph 39, replace the word “Mr” with the word “Ms”;
9. In the 4th line of paragraph 41, delete the word “these” after the word “produce”;
10. In the 2nd line of paragraph 46, insert the word “the” before the words “other three witnesses”;
11. In the last line of paragraph 47, insert the words “on this point should be accepted”;
12. In the 2nd line of paragraph 50, substitute the words “either witness” with the words “these witnesses”;
13. In the 6th line of paragraph 52, delete the sentence, “The Tribunal considers it unlikely that a person as meticulous as Mr Ho would represent that non-compliance with the clear requirements of the maintenance regime is acceptable the transitional provisions relevantly changed the position”;

14. In the 11th line of paragraph 61, replace the words “the flight” with the words “any further flight”;
15. In the 3rd line of paragraph 64, replace the word “if” with “it”;
16. In the 4th line of paragraph 77, replace “CAR 269(I)” with “CAR 269(1);
17. In the 1st line of paragraph 79, replace the word “accept” with “accepts”;
18. In the 2nd line of paragraph 79, replace the word “but” with the words “it also”;
19. In the 1st line of paragraph 84, delete the word “a”;
20. In the 5th line of paragraph 93, replace the word “absent” with the word “absence”;
21. In sub-paragraph 3) of paragraph 99, replace the words “Right operations” with the words “Flight operations”;
22. In the 3rd line of paragraph 103, replace the word “Rights” with the word “flights”;
23. In the 4th line of paragraph 103, replace the word “fights” with the word “flights”;
24. In the 6th line of paragraph 103, replace the words “US provisions FARs” with the words “US FAR provisions”;
25. In the 5th line of paragraph 104, replace the word “recoding” with the word “recording”;
26. In the 3rd line of paragraph 106, replace the word “Right” with the word “flight”;
27. In the 3rd line of paragraph 107, replace the word “query” with the word “queried”;
28. In the 4th line of paragraph 112, replace the word “was” with the word “were”;
29. In the 2nd line of paragraph 114, replace the words “-built up” with the words “built up”;
30. In 1st line of paragraph 115, delete the word “a”;
31. In the 2nd line of paragraph 119, replace the word “willingness” with the word “unwillingness”;
32. In the 16th line of paragraph 122, replace the word “responsibly” with the word “responsibility”;

33. In the 3rd line of paragraph 131, replace the word “out” with the word “our”.

.....[sgd].....

Mr Ronald Bartsch, Member

[\[2014\] AATA 424](#)

Division **GENERAL ADMINISTRATIVE DIVISION**
File Numbers **2014/0575-0580**
Re **Reha Ekinci**
 APPLICANT
And **Civil Aviation Safety Authority**
 RESPONDENT

File Number **2014/0583**
Re **Cloud Nine Helicopters Pty Ltd**
 APPLICANT
And **Civil Aviation Safety Authority**
 RESPONDENT

File Numbers **2014/0595; 2014/0598**
Re **Air Combat Australia Pty Ltd**
 APPLICANT
And **Civil Aviation Safety Authority**
 RESPONDENT

DECISION

Tribunal **The Hon. Brian Tamberlin, QC, Deputy President and Mr R
 Bartsch, Member**

Date **27 June 2014**
Place **Sydney**

1. The Orders made by the Tribunal on 3 March 2014 on the stay application are set aside.
2. The Decisions under review made on 24 January 2014 by  **CASA**  are set aside, and in substitution therefore, the following decisions are made:
 - (a) Aircraft Engineer Licence L187910 is suspended for a period of one year;
 - (b) It is a condition of the Certificate of Approval pursuant to CAR 30(3) that the Company is to employ a suitably qualified LAME, other than Mr Ekinci, and who is acceptable to  **CASA** , to be responsible for the supervision and certification of all maintenance activities undertaken at Air Combat Australia Pty Ltd;
 - (c) It shall be a condition of the Air Operators' Certificates of both Air Combat Pty Ltd and Cloud Nine Helicopters Pty Ltd that the respective companies employ a person or persons to hold the positions of chief executive officer, other than Mr Ekinci, and who is acceptable to  **CASA** , for the purposes of satisfying the requirements of [ss 28\(1\)\(a\)](#) of the [Civil Aviation Act 1988](#);
 - (d) Chief Pilot Approvals 1-5G8V1 and SBAO/151/2004 are cancelled;
 - (e) Chief Flying Instructor appointments SBAO/150/2004 and 1-SDJTO are cancelled;
 - (f) ATO Delegation  **CASA**  64/06 is cancelled.

.....[sgd].....

The Hon. Brian Tamberlin, QC, Deputy President and Mr R Bartsch, Member

CATCHWORDS

CIVIL AVIATION – Cancellation and suspension of licences, certificates, approvals and permits - Certification of maintenance - Recording of flight times - Conducting flights in aircraft with outstanding maintenance - Flights over built-up areas - Effect of transitional provisions - Whether fit and proper person - Allegations of bribery – Responsibilities of supernumerary positions - Whether component required to be retired - Whether a failure to perform maintenance - Dual signatures upon certifications – Flight time and time in service – Classification of operations - Procedural fairness and natural justice - Conducting training flights under expired instructor rating - Mercy flight – Hire or reward – Commercial flights - Low level aerobatic flights upon expired approval - Applicant not a fit and proper person - Decision under review set aside and substituted

LEGISLATION

[Civil Aviation Act 1988](#) (Cth), [ss 3A](#), [9](#), [9A](#), [27](#), [28\(1\)\(a\)](#)

[Civil Aviation Orders 48.1](#), [100.5.2.1](#)

[Civil Aviation Regulations 1988](#) (Cth), [2](#), [2\(7\)\(d\)](#), [2\(7\)\(v\)](#), [2\(7\)\(va\)](#), [30\(3\)](#), [155](#), [206\(1\)\(a\)](#), [206\(1\)\(b\)](#), [206\(1\)\(c\)](#), [217](#), [269\(3\)](#)

[Civil Aviation Safety Regulations 1998](#) (Cth), [Part 66](#)

USA Federal Aviation Regulations, ss 61.51, 61.55

CASES

Australian Broadcasting Tribunal v Bond [\[1990\] HCA 33](#); [\(1990\) 94 ALR 11](#)

Brazier v Civil Aviation Safety Authority [\[2004\] AATA 313](#)

Civil Aviation Safety Authority v Boatmen [\[2006\] FCA 460](#)

Quadrio and Civil Aviation Safety Authority [\[2011\] AATA 709](#)

Re Griffiths and Civil Aviation Authority [\(1994\) 34 ALD 554](#)

Re Mulligan and Civil Aviation Safety Authority [\[2006\] AATA 652](#)

Repacholi v  **CASA**  [\[2003\] AATA 573](#)

Snook and Civil Aviation Safety Authority [\[2010\] AATA 582](#)

SECONDARY MATERIALS

Air Combat Procedure Manual, s 6-8(2)

Bartsch R I C, Aviation Law in Australia (Thomson Reuters, 4th ed, 2013), [7.6.5]-[7.85], [12.165-12.174] and [12.205-12.225]

Secretary & Legal Advisor's Office, Summary of the meaning of Commercial Air Transport (May 2010)

REASONS FOR DECISION

The Hon. Brian Tamberlin, QC, Deputy President and Mr R Bartsch, Member

27 June 2014

1. The Applicants seek review of decisions by a delegate of the Respondent ( **CASA** ) of 24 January 2014 to cancel and or suspend licences, certificates, approvals and permits held by the Applicants namely to:
 - (a) Cancel Aircraft maintenance engineer licence No. L187910 held by Reha Ekinci ('Ekinci').
 - (b) Suspend Certificate of Approval ('CofA') for aircraft maintenance No. 1-HCC69 issue 02 held by Air Combat Australia Pty Ltd ('Air

Combat’).

(c) Cancel Airline Transport (ATPL), commercial (CPL), private (PPL) and student pilot licences (aeroplane and helicopter) ARN 187910 held by Reha Ekinci.

(d) Cancel Air Operations Certificate (‘AOC’) No. S594248-05 held by Air Combat.

(e) Cancel Air Operators Certificate (‘AOC’) No. S576371 held by Cloud Nine Helicopters Pty Ltd (‘Cloud Nine’).

(f) Cancel Chief Pilot Approval Nos. 1-5G8V1 & SBAO/151/2004 held by Reha Ekinci.

(g) Cancel Chief Flying Instructor (‘CFI’) Approval Nos. SBAO/150/2004 & 1-SDJTO held by Reha Ekinci.

(h) Cancel the Endorsement training approval No. SYDR/177/2007 held by Reha Ekinci.

2. The cancellation notice was based on issues raised in Notices of proposed action issued by  CASA  on 26 November 2012, 18 March 2013 and 4 July 2013 to which the Applicants had made detailed expenses.

ISSUES

3. Broadly, the issues alleged and relied on by  CASA  in making the reviewable decisions include the following:
- The carrying out of the certification, administration and the performance of maintenance by Mr Ekinci pursuant to the Licence and Certificate of Approval held by Air Combat;
 - The recording of flight times in relation to pilot flight times and maintenance;
 - Conducting flights in aircraft with outstanding maintenance;
 - An issue regarding the endorsement in a King Air aircraft; and
 - Flights over a built-up area at Camden without authority.
4. It is common ground that most of the central issues raised in the reviewable decisions relate to maintenance carried out on aircraft operated by the Applicants or the certification and supervision of maintenance work. These issues raise questions as to whether there are serious safety concerns or whether, as the Applicants submit, there are minor administrative or clerical errors or oversights perhaps worthy, at most, of counselling.

NEW MATTERS

5. After the Applicants filed their Statements of Facts and Contentions and Witness statements  CASA  raised a number of new matters (the New Matters) on which  CASA  also relies to support its decision to issue the notices. Namely paragraph (f) a flight to Germany by Mr Ekinci in a US registered aircraft allegedly without permission, paragraph (g) conducting flight training when Mr Ekinci’s instructors rating had expired, paragraph (h) conducting low level aerobatic flights when Mr Ekinci’s authority for low level aerobatics had expired and (i) conducting flights over built up areas in L39 aircraft when not authorised to do so. The Applicant objected to these matters being raised. However, the Tribunal considers they are relevant and we are satisfied that the applicants have had sufficient notice and opportunity to deal in detail with the matters. There is no lack of procedural fairness and the matters are clearly relevant to the issues before us.
6. On 3 March 2014 Deputy President Tamberlin QC, made orders granting a conditional stay of the decision until further order. The conditions were designed to enable Mr Ekinci to continue to earn his livelihood until the review has been finalised.
7. Mr Ekinci is the controlling mind of the corporate applications. He claims that if the cancellation notice is not set aside, then there will be serious adverse consequences to him and the Applicant companies, because authority to work and earn his livelihood as a licensed aircraft maintenance

engineer and Chief Pilot is essential to his business. He says that cancellation of his authorised maintenance engineer licence (LAME) will prevent him from being the Chief Engineer of Air Combat. His activities will be rendered inoperative until such time as a replacement Chief Engineer acceptable to ← CASA → can be located and approved. He says that this will take an undue time due to the specialised nature of the maintenance activities and will render his activities unviable. He also relies on the hardships arising from the suspension of his pilot licences in relation to aeroplanes and helicopters.

LEGAL PRINCIPLES

8. [Section 3A](#) of the [Civil Aviation Act 1988](#) (Cth) (CAA) provides that the main object of the CAA is to establish a framework for maintaining, enhancing and promoting the safety of civil aviation, with particular emphasis on preventing aviation accidents and incidents.
9. The function of ← CASA → is stated in [s 9](#) to be the conduct of the safety regime in accordance with the CAA and regulations by developing effective enforcement standards to secure compliance with aviation safety standards and by issuing certification licences, registrations and permits. Under [s 9A](#) in exercising its powers and performing its functions. It is clear from this function that effective compliance with standards is essential to proper performance of its functions. ← CASA → must regard the safety of air navigation as the most important consideration.
10. In the case of *Repacholi v ← CASA →* [\[2003\] AATA 573](#) the Tribunal emphasised the necessity to consider the licence holder's past record of compliance during the currency of their licence as indicative of the likelihood of their complying or not complying with the regulations in the future, and their respect or lack of respect for the regulations in civil aviation legislation generally. It includes the Applicant's conduct in dealings with ← CASA → officers in their professional capacities insofar as such conduct is indicative of the degree of the applicant's respect or lack thereof for the civil aviation laws and for those persons whose professional responsibility is to enforce them [at 89]. The conduct must not indicate a scant regard for the aviation laws or an inability or unwillingness to relate professionally and constructively with ← CASA → and its officers in future.
11. In relation to the authorisation carrying out and recording of maintenance records the remarks of Member Fice in *Brazier v Civil Aviation Safety Authority* [\[2004\] AATA 313](#) [at 187] are apposite to the present circumstances. The Member said:

“The system of certification of completion of maintenance is a central plank in the Regulations dealing with the maintenance and repair of aircraft. It is essential to the safe operation of aircraft, as it is the only means by which it is possible to determine whether all maintenance required to be performed on an aircraft has been performed in accordance with the requirements of the Act and the Regulations. Without accurate certification of the completion of stages of maintenance by a licenced aircraft maintenance engineer, in accordance with Schedule 6 of the Regulations or a system of certification approved by ← CASA →, there can be no certainty that, when a maintenance release is issued for a particular aircraft, its state of unworthiness is accurately described in that document. The breakdown in a maintenance organisation of the system of certification of completion of maintenance is a very serious matter indeed. Maintenance releases for a particular aircraft issued by Mr Brazier on numerous occasions did not reflect the true airworthiness of those aircraft.”

12. The audits conducted of the Applicants identified serious airworthiness deficiencies which necessitated the issue of Class A Air Survey Reports (ASR) on repeat occasions. The frequency and extent of the deficiencies highlighted the risks for aviation safety, and since the Applicants were engaged in commercial operations involving payment for services the potential risks to the public generally are further emphasised.
13. Member Fice in *Brazier v Civil Aviation Safety Authority* [\[2004\] AATA 313](#) [at 19] further commented that:

Mr Brazier had so consistently breached the Regulations as to indicate a culture of noncompliance; and as a consequence, he was not a fit and proper person to exercise the privileges of an aircraft maintenance engineer licence. The ← CASA → delegate found there was a serious risk to aviation safety if Mr Brazier's aircraft maintenance engineer licence was not cancelled.

14. As noted earlier, the attitude of the applicants evinced by Mr Ekinci that many of the breaches were administrative, clerical oversights. This is directly contrary to the principles expressed above.
15. As to fitness and propriety, the High Court in *Bond* has emphasised that the expression ‘fit and proper person’ itself has no precise meaning, but takes its meaning from its context and from the activities in which the person is or will be engaged and the purposes to be served by those activities. Questions which arise may be whether the improper conduct has occurred, whether it is likely to occur or whether it can be assumed it will not occur, whether there is a sufficient confidence in the general community that it will not occur. See *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 94 ALR 11. In the case of *Re Griffiths and Civil Aviation Authority* (1994) 34 ALD 554 the Tribunal applied the principles in *Bond* and said it was necessary to take into account the responsibilities, functions and duties of the holder of a licence, privilege or permit.
16. In that case the Tribunal [at 321] considered that enquiry directed to fitness and propriety was to be focused on the fitness of the applicant exercising responsibilities and performing the functions and duties of the holder of a licence. In that case it was a commercial pilot’s licence. The Tribunal considered it was not simply a question of competence to fly an aircraft which must be considered. The Tribunal added:

“In our view, what the regulation requires is a consideration of the applicant’s conduct measured against the responsibilities, functions and duties of a holder of a commercial pilot licence as they emerge from the provisions of the Air Navigation Regulations. Whilst it would be inappropriate to endeavour to catalogue those responsibilities, functions and duties in any exhaustive fashion, it is clear that they include observing the interests of the safety of air navigation – not only the interests of the pilots, passengers and the owners of aircraft, but also the interests of the public at large.”

17. In *Quadrio and Civil Aviation Safety Authority* [2011] AATA 709 the Tribunal observed that it is possible to say that a fit and proper pilot is one who has an appreciation of the statutory responsibilities and one who discharges them. The Tribunal observed that:

“It is not open to a pilot, a fortiori a commercial pilot, to determine which rules ought to be obeyed. And it is not open to a pilot to ignore the manufacturer’s recommendations regarding performance. ...”

18. In *Quadrio* the Tribunal [at 69] stated: “In determining whether [the applicant] is a fit and proper person we are not concerned to enquire into [the applicant’s] competence. On the evidence it would appear that [the applicant] is a technically competent pilot.” The Tribunal found there, as does the Tribunal in this matter, that what is most important is the applicant’s attitude to compliance with the civil aviation regulatory regime.
19. In the present case it is demonstrated that Mr Ekinci evinced or demonstrated an ability or unwillingness to acknowledge his breaches of aviation law or alter his approval particularly in relation to the important question of maintenance and certification. In *Brazier* Member Fice noted [at 187] that: “The breakdown in a maintenance organisation of the system of certification of completion of maintenance is a very serious matter indeed”. In reaching our conclusions in this case we have also had regard to principles and authorities referred to in *Aviation Law in Australia* (Thomson Reuters, 4th ed, 2013) by Ronald Bartsch (particularly [7.6.5]-[7.85], [12.165-12.174] and [12.205-12.225]).
20. We now turn to consider the substantive issues raised by the parties.

MAINTENANCE OF AIRCRAFT AND CERTIFICATION

21.  CASA  claims that Mr Ekinci, who at all relevant times held a subcategory B1.2 licence, restricted to piston engine aircraft, breached the regulations in carrying out work supervising and certifying maintenance that he was not entitled to certify or perform in relation to work on non-piston engine aircraft, including an L-39 airframe turbine engine and Enstrom Helicopters which are outside the category of piston engine aircraft.  CASA 's case is that Mr Ekinci was not entitled to rely on the legislative regime, in force at relevant times including the application of transitional provisions, which had not yet come into operation, as a ground for his supervision or certification of the L-39 aircraft or the helicopters. Under [Part 66](#) of the *Civil Aviation Safety Regulations* (Cth) (CASR) a B1.1 licence is required to work on non-piston engine aircraft and Mr Ekinci did not, at any relevant time after 2007, hold such a licence.
22. Although Mr Ekinci had previously held an Aircraft Maintenance Authority Licence in relation to a MIG-15 non-piston aircraft, this had expired in 2007 and had not been renewed. However, after the expiry of the MIG aircraft licence, Mr Ekinci had considered it necessary to apply for maintenance authorities in respect of the MIG-15 aircraft and, in addition, the L-39 aircraft which were not granted. These applications were not pursued any further by Mr Ekinci.  CASA  relies on these later applications to indicate that Mr Ekinci was well aware after 2007 that he was required to hold a relevant maintenance licence under Group B1.1 in respect of non-piston engine aircraft, and that he was also aware that the transitional provisions were not come into effect until 2014 and that those provisions did not exempt him from the requirement to be licenced in respect of the non-piston aircraft and the helicopters. The Tribunal accepts this submission. Even if he had a subjective doubt he took no appropriate steps to clarify his position with respect to such an important requirement.
23. The position of Mr Ekinci was explained to him in detail by Mr Paul Simpson of  CASA  in an email of 4 May 2012 which correctly, in our view, sets out the legislative regime and relevant provisions in operation at all relevant times in relation to Mr Ekinci concerning the certification and maintenance of the L-39 aircraft and helicopters. Relevantly, that email reads as follows: (Emphasis added)

Hi Ray,

Thanks for the consideration of the licensing matters. To help clarify I provide the following info.

As a group 1 engine licence holder under the 1988 regulations you are permitted to carry out maintenance under the CAR 30 utilising the [part 66](#) transition arrangements. Basically whatever you could do before you can do now with some minor additional privileges under [part 66](#).

You were issued a group 1 licence with a rating described in CAO 100.92. Please note CAO 100.91, CAO 100.93, CAO 100.94 and CAO 100.95 do not apply to engine ratings. CAO 100.92 1.1 states:

1.1 Except where otherwise approved or directed by the Authority, this section of CAO's applies to the requirements for the grant of an aircraft maintenance engineer licence in category engines and for the grant of additional ratings to a licence in the category.

The CAO then lists the ratings group 1 through to group 22. The L-39 engine does not fit in to any rating and therefore as you have stated is not a licence and must be administered through Maintenance Authorities. CAO 100.90.3 describes the engine rating and privileges you have associated with the category's electrical, instrument, radio and airframe. At the beginning of each category privilege there is statements similar to:

“Certification of maintenance within the..... category may be made by persons holding the appropriate engine rating(s).”

You do not hold a rating on the L-39 engine. Additionally ← CASA → records indicate you are aware of this as you applied for a Maintenance Authority for both the L-39 engine and airframe in September 2009. That application was rejected by AME licencing. The fact that you held a Group 1 engine licence at the time of application for the Maintenance Authority indicates to ← CASA → that you were aware that your group 1 engine licence did not cover the L-39. This matter is of great concern to ← CASA →.

Turning to the [part 66](#) transitional regulations it is clear that you can utilise your [part 66](#) licence for any privileges that your old group 1 engine licence permitted. It clearly states in the transitional regulations that its application relates to maintenance certifications and issue of certificates of release to service to which the licence and rating applied. Clearly you cannot apply you group 1 engine licence to the L-39 and therefore the transitional does not apply in relation to the L-39.

Under [Part 66](#) you hold a category B1 licence with a subcategory B1.2 - aeroplane piston engines with a number of exclusions. As you do not have a subcategory B1.1-Aeroplanes turbine licence you are excluded from the privileges listed in [Part 66.A.20.4](#) and [Part 66.A.20.4](#). You are therefore unable to certify for any maintenance, coordination or make any certification for either the L-39 aircraft and the Enstrom helicopters.

As just discussed with you, as a result of the preliminary findings ← CASA → will be issuing class "A" ASR's on the L-39's and the Enstrom helicopters. Acquittal of the ASR's will require completion of fresh Maintenance Release inspections on the L-39's. Once completed and certified appropriately ← CASA → will accept they can be returned to service. A copy of the maintenance work packages and maintenance release issued for the Maintenance Release inspection are to be submitted to ← CASA → on completion.

As we are still reviewing the log books for the Enstrom helicopters it appears at this stage acquittal of the ASR's will require either final certifications completed for the last maintenance release inspection by a person that was authorised to do so, or alternatively fresh Maintenance Release inspections will be required.

Regards

Paul Simpson

Airworthiness Team Leader Sydney Region

24. This email makes it clear that Mr Ekinci was not entitled at any relevant time to certify or coordinate maintenance in L-39 aircraft or helicopters. Mr Ekinci now accepts that the email of Mr Simpson accurately sets out the true position with respect to his authority.
25. Mr Ekinci, however, contends that in carrying out the work and certifying maintenance work on the L-39 and helicopters he was acting on a reasonable and honest interpretation and belief that he was entitled to do so, based on a fair interpretation of the relevant provisions. In other words, that he made an honest mistake of law.
26. Mr Ekinci also claims to have relied on oral advice said to have been given to him by Mr Ho, a ← CASA → maintenance inspector, responsible for inspecting the maintenance operations of Mr Ekinci, to the effect that Mr Ekinci was entitled to carry out, supervise and certify maintenance work in respect of the L-39 jet and aircraft generally. Specifically, Mr Ekinci alleges that Mr Ho stated to him on 4 April 2011 that:

“← CASA → is amalgamating the licences such that if a LAME who has an endorsement for piston engines in fixed wing aircraft, that LAME can also sign for the same engine in a helicopter.”

“Under the new regulations you can sign of (sic) any engine you are licensed on as long as you have experience working on them, what you can't sign for is by exclusion whether it is an aeroplane or a helicopter”

27. Mr Ekinici and four other witnesses, Mr Singh, Mr Grima, Mr Jay Ekinici (his son) and Mr Manley, an acquaintance, have given statements that on 18 April 2011 Mr Ho made a statement to the effect that under the new regulations Mr Ekinici could sign a helicopter engine out if it is the same as the aeroplane engine he is approved on.
28. In support of his allegation as to the statement on 4 April 2011 of Mr Ho, Mr Ekinici also relies on some notes and a statement made by a then casual employee, Ms McWilliams, to the effect that as chief engineer Mr Ekinici could “fill out all log books out, even for aircraft he was not licensed for”. Mr Ho is alleged to have said that even a maintenance controller with no licence can fill the log books out, and that recent ← CASA → changes were in place which allowed a LAME to sign for the same engines whether they are in a helicopter or an aeroplane.
29. Mr Ho denies making any such statements on any occasion, or any similar statement. The denial by Mr Ho in relation to the statements, said to have been made on 18 April 2011, is substantiated by the evidence of another senior officer of ← CASA → who was present at the time, namely Mr Barkway.
30. For reasons given in [32] to [52], concerning the credit and credibility of witnesses, we accept the evidence of Mr Ho and Mr Barkway in relation to the alleged statements and find that no such statements or anything like them were ever made by Mr Ho.
31. In any event, reliance by Mr Ekinici on the alleged statements by Mr Ho cannot provide any ground to justify or excuse the undertaking of the performance, supervision, coordination and certification of work carried out by him prior to April 2011. Nor could it provide any defence to the claim that he failed to comply with essential requirements of the legislative regime in force, because there was no evidence that Mr Ho had any authority to waive or vary the requirements. These contraventions cannot be excused on the basis of subjective belief or intent. The requirements to satisfy the requirements of having a Group B1.1 licence are strict and critical.
32. Mr Ho presented as an objective, careful and reliable witness and he was not shaken in cross-examination. Ms McWilliams said in evidence that he appeared to be conscientious and meticulous. Mr Ray Ekinici regarded him as honest. It is in our view highly unlikely that he would make the statements attributed to him which are contrary to the relevant maintenance regime in force in April 2011, as set out in the later email of Mr Simpson stating ← CASA →'s position on 4 May 2012. The transitional provisions made no material difference to the requirement that the piston engine licence could not authorise maintenance on the L-39 aircraft or the helicopters. Indeed, Mr Ho stated, and we accept, that he was unaware of the effect of the transitional provisions and their content as at April 2011.
33. In view of the fact that Mr Ekinici had held a licence in respect of the MIG 15 aircraft, which expired in 2007, coupled with the fact that he had made an application for renewal of the MIG licence and addition of the L-39 licence, which he did not pursue demonstrates that it was his understanding that there was a need for B1.1 licence.
34. Moreover, the evidence of Ms McWilliams was to the effect that Mr Ekinici on 4 April 2011 entertained real and serious doubts as to whether he had the capacity to be qualified for a final sign off in relation to jet aircraft and helicopters. He did not, prior to that time, even on his own version, taken any proper steps to clarify any doubts which he may have had. The Tribunal therefore finds that at no material time did Mr Ekinici have any reasonable belief that he had authority or the necessary licences to carry out and certify maintenance in respect of the L-39 aircraft and the helicopters, and that he was therefore in contravention of the Act and Regulations over a substantive period of time in respect of the maintenance

regime.

35. Furthermore, we do not consider that Mr Ekinici was in any way entitled to rely on any reasonable interpretation of the transitional provisions to justify his assertion that he was entitled to certify and perform maintenance work. This is because the relevant requirements relied on in the [Part 66](#) transitional CASR only permit engine and airframe maintenance privileges that an engineer had under the old scheme, namely, in respect groups one or two for engines and frames, to which his licence applied. Mr Ekinici relies on the extended privileges under MOS 66.A20.1(ii). However, these extended privileges only apply to an aircraft for which the maintenance engineer holds the appropriate licence. Mr Ekinici did not hold such a licence.
36. Mr Ekinici seeks to rely on the provisions of the Air Combat Procedure Manual accepted by . The Tribunal notes that the relevant provision (s 6-8(2)) requires that the approved person must be an “appropriately licenced aircraft maintenance engineer”. Mr Ekinici was not “appropriately licenced”.

THE HO STATEMENT – CREDIT CONSIDERATIONS

37. There is a clear conflict in the evidence as to whether the statements attributed to Mr Ho were in fact ever made, and it is therefore necessary to make findings as to the relative credibility of the several witnesses.
38. The Tribunal prefers the evidence of Messrs Ho, Simpson and Barkway to that of Mr Ekinici and his witnesses on this aspect and also in relation to the alleged “bribery issue” raised by the Applicants against Mr Barkway. Our conclusions as to credibility and reasoning are as follows:

Ms McWilliams – Recollection and Notes

39. The evidence of Mr McWilliams was entirely based on notes she claims were made by her on 4 April 2011 as to the conversation between Mr Ekinici and Mr Ho. She was only present during part of the conversation. She has no technical qualifications, experience or knowledge of the regulations of the aircraft industry, and could not be expected to have understood many of the expressions or concepts alleged to have been discussed in the conversation. She has no relevant recollection apart from her notes as to the effect of words used three years ago.
40. She produced two versions of the notes which she made. The most important notes are missing. The first and incomplete version was said to have been made on 4 April 2011. The second more elaborate notes she says were made the following day. She has produced a part of the notes made on 4 April, the other notes are missing. She does not know where they are.
41. The first notes were not produced until the stay proceedings in February 2014. On her evidence, these notes were incomplete and there were said to be some further notes which she says she made, but which neither she nor Mr Ekinici have been able to produce these. This is important because it is from these “missing” notes that she says she constructed and elaborated the version of 4 April, and filed the more detailed version of notes the following day. The versions in evidence were said to have been discovered and produced by Mr Ekinici. The second set of notes was only produced after the questioning by  counsel of Ms McWilliams on the stay application. There is no satisfactory evidence as to how these notes came to be discovered. None of the notes were produced or referred to during the Show Cause proceedings.
42. On their face, the later version of the notes made on 5 April are more favourable to Mr Ekinici’s version than the former, which had been subject to close cross-examination in the stay proceedings in which the authenticity of the notes was questioned. The belated discovery and production of these notes in our view casts doubt on their provenance, accuracy and reliability.
43. By way of illustration as to the extent of the elaboration in the later notes, the position is that in the earlier notes said to have been made on 4 April

2011, the relevant entry reads:

“LOG BOOKS – CHIEF ENG – CAN SIGN ALL – PISTON PLUS JET

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SGL ENG VFR – RADIO + ELEC COVERAGE

** WARBIRDS NOT CERTIFIED A/C”*

The elaborated version produced on the hearing before this Tribunal in April (Exhibit AF) relevantly reads:

Ray (Ekinci) questioned signing of coord sheets for L39 →heli – John (Ho) advised new regs – recent exp on type = ok to sign for →A/C with A/C and heli engine same and have single gen system – cannot sign for multi – moving to FAA (American) system.”

44. For the above reasons, The Tribunal prefers the unshaken evidence of Mr Ho to that of Ms McWilliams as to what occurred and as to the conversation of April 2011.

Mr Ray Ekinci

45. Mr Ekinci’s evidence could not be described as objective. The Tribunal does not accept evidence of Mr Ekinci which is not reliably corroborated by independent and credible objective evidence. The Tribunal prefers the evidence of ← CASA → witnesses as to conversations in dispute. His evidence was to a large extent partial, inconsistent and non-responsive in important respects. He made a number of extremely serious and unfounded allegations of misconduct against ← CASA → officials; for example, allegations against Messrs Simpson, Barkway, Chambers and Miller, in the course of his evidence. His evidence was given to direct his case, rather than the answering questions by counsel. By way of example, his initial evidence as to the content of a telephone conversation with Mr Miller was inconsistent with the transcript. He made unfounded claims against ← CASA → officers of attempts at bribery. The Tribunal finds that the bribery allegations were made without any reasonable basis, and reinforce the manifest hostility of Mr Ekinci towards certain ← CASA → officers.

Mr Jay Ekinci

46. He is the son of Mr Ekinci and his evidence was not impartial. This evidence and that of other three witnesses, namely Messrs Manley, Singh and Mr Grima, was expressed in almost identical terms to that of the other witnesses, even to the extent of containing the identical typographical and grammatical errors which, on their face, indicate that there must have been a degree of consultation and collaboration. The witnesses denied any consultation in the preparation of their evidence. In our view the evidence points to consultation in the preparation of evidence.

Mr Grima, Mr Manley, Mr Singh

47. Mr Grima was a client of Mr Ekinci. Mr Manley was an acquaintance of Mr Ekinci. Mr Singh had been engaged by Mr Ekinci as a co-pilot. Their versions of the conversation of 18 April 2011 are subject to the same findings made in respect of Mr Jay Ekinci in relation to consultation and collaboration, and contain identical grammatical and spelling errors. The suggestion that Mr Barkway said that “you (Mr Ekinci) are making too much easy money out of the planes and we are not seeing any of it”, and that Mr Barkway said he had a “young Ukrainian wife to look after and that she is expensive to keep”, are clearly incorrect. For example, the reference to a Ukrainian wife on their version came completely out of context. Moreover the fact is Mr Barkway’s wife cannot be described as young (she is 60 years old), and some wording appears in the statements. Versions of the Ekinci witnesses as explained in the statement of Mr Barkway.
48. It is interesting to note that in several of the statements as to what happened on 18 April Mr Ray Ekinci is said to have stated that Mr Ho was “honest”.

Mr Pascoe

49. Mr Pascoe was called by Mr Ekinci ostensibly to provide adverse evidence as to the credibility and conduct of Mr Paul Simpson. Mr Pascoe was a client of Mr Ekinci undertaking training to obtain a private pilot helicopter license. He had a disagreement with Mr Peter Holstein, a chief flying instructor of another business at Camden Airport. The thrust of his evidence disclosed an attempt to show that Mr Simpson was biased in relation to Mr Ekinci. His evidence was denied by Mr Simpson whose evidence we prefer on this point. The Tribunal gives Mr Pascoe’s evidence no weight having regard to its irrelevance and his manifest hostility, and the intemperate terms in which he expressed his evidence. Mr Pascoe made extremely serious allegations of criminal corrupt conduct in respect of which he had no corroboration or substantiation whatsoever. We reject his evidence as unreliable, irrelevant and untruthful. In his oral testimony there was evidence as to his use of the telecommunications system to repeatedly harass and intimidate Mr Holstein, Mr Simpson and other persons. His conduct in this respect, and the irresponsible nature of his allegations is reprehensible in the extreme and worthy of censure.

Mr Ho, Mr Barkway, Mr Simpson

50. The Tribunal finds that the evidence of these witnesses was reliable, careful and clear and do not find the evidence of either witness was shaken in any significant way in cross-examination.
51. It is to be noted that none of the Ekinci witnesses produced any note of the conversation. No one took any immediate or later steps to bring the alleged statements to the attention of the police or other authorities, and the statements were made in October 2013, which was 18 months after the alleged conversation took place.
52. Further, The Tribunal considers it highly improbable that any experienced officer of , such as Mr Barkway, or Mr Simpson would openly, and, in what must have been quite loud terms, elicit an explicit bribe in front of fellow officers and five other persons, four of whom were strangers who happened to be on the premises. The Tribunal does not accept the evidence of any of these witnesses in relation to the statements attributed to Mr Ho or the suggestion of bribery. The Tribunal considers it unlikely that a person as meticulous as Mr Ho would represent that non-compliance with the clear requirements of the maintenance regime is acceptable the transitional provisions relevantly changed the position. In particular the Tribunal does not accept the allegations of bribery made by Mr Jay Ekinci and Mr Ray Ekinci. We prefer the evidence of Mr Barkway and Mr Ho on this point, bearing in mind the strong antipathy by Mr Ekinci and his son to Messrs Barkway and Simpson and the inconsistencies in their evidence.

BRIBERY ALLEGATIONS

53. For the reasons and on the evidence given above the Tribunal does not consider there is any substance in any of the bribery allegations raised against any ← CASA → officer or employee.

DOCUMENTS

54. Mr Ekinci stated that ← CASA → had deliberately lost or retained certain maintenance records obtained by ← CASA → after formal demands. Mr Ekinci claims that he received an anonymous ← CASA → envelope containing a bundle of documents from some unknown source with a post it sticker that reads “Not to be returned to Ekinci”. These documents are comprised in Exhibit C. They are incomplete. The documents were not produced at any earlier stage of proceedings in relation to Mr Ekinci, and there is real doubt as to their provenance. Mr Ekinci asserts that these documents exculpate some of the allegations in the reviewable decision. They were referred to as the “exculpatory documents”. They relate to the matters in some of the Show Cause notices. These documents appear to be only a small sample and do not provide any satisfactory rebuttal or exculpation from the claims made by ← CASA →. The Tribunal does not consider that the documents in question provide any answer to the claims of ← CASA → in relation to maintenance or other matters, having particular regard to ← CASA →’s comprehensive responses set out in paragraphs 42 to 54 of their Submissions in Reply to the Applicant’s submission in Chief at the close of proceedings.
55. There is also a claim by Mr Ekinci that some records were “lost” by ← CASA →. These relate to the period 2005 to 2007 and they are of no significance or relevance to the substantive issues in the present hearing.
56. We now turn to a consideration of other specific issues.

DISCRETE MAINTENANCE ISSUES

Enstrom helicopter mast: VH-CLI

57. There is a disagreement between the parties concerning the Enstrom Helicopter Mast (Shaft) on VH-CLI namely, whether the component was required to be retired. The evidence provided by the applicant was that the mast was of the larger radius type, as determined using the ‘dime radius inspection, and therefore was not required to be retired at 300 hours and had a service life of 76,000 hours. ← CASA → did not provide conclusive evidence that the mast on aircraft VH-CLI was of the type that required retirement at 300 hours. Mr Ekinci gave evidence that the Enstrom log book entry states that AD instrument 9.2 relating to the rotor mast in VH-CLI had been complied with. The evidence provided by Mr Ekinci in this regard was largely unchallenged and the Tribunal finds this issue in favour of Mr Ekinci.

Failure to perform maintenance: VH-CLI

58. The respondent alleged that the applicants had failed to perform scheduled engine maintenance in helicopter VH-CLI. The respondent alleged that an Airworthiness Directive relating to the engine was due at 938 +/- 5 hours TTIS and that as the TTIS in the MR was recorded as 943 hours, the aircraft had operated past the time when the maintenance was due in breach of CAR 43. As the TTIS of the aircraft had not exceeded 943 hours, the maintenance required by AD Lye 110 was not overdue. The respondents agreed that the time in service was 943 hours and 40 minutes but did

not provide evidence that the +/- 0.5 hours did not apply. The Tribunal is not satisfied that this ground has been made out.

Dual inspections of controls pursuant to CAR 42G

59. Certain vital aircraft components, such as aircraft primary controls, because of their correct operation being paramount to air safety, require dual inspection and certification. Evidence shows that in relation to a vertical fin inspection on aircraft VH-CMV LAME Caldwell had omitted to countersign Mr Ekinci's signature in the logbooks for a dual inspection. The evidence as to why this had occurred was not readily apparent from the statements or from the oral evidence provided by Mr Caldwell via tele-conferencing. Mr Caldwell said in evidence that the inspections had been done "otherwise I wouldn't sign for it" but said that  CASA 's Mr Paul Simpson directed him not to sign the certifications which had been overlooked.
60. Irrespective of the reason why this was not countersigned the fact remains that with such vital aircraft components appropriate systems should be in place within the operation of Mr Ekinci as the Certificate of Approval holder to ensure that such oversights do not occur otherwise the safeguard of requiring dual inspections on such critical maintenance is eroded. In our view, requirements for dual signatures are important requirements, and are clearly not optional or insignificant requirements. This oversight reflects a failure on the part of Mr Ekinci to properly carry out his duty to ensure that robust systems are in place to prevent such occurrences. Dual certification is an important requirement to ensure the safety and integrity of the airworthiness regulatory regime.
61. In the Tribunal's view the significance of this incident is that it demonstrates that Mr Ekinci considered omissions to obtain signatures as an "inadvertent technical or clerical omission". This conclusion is reinforced by the attitude shown in Paragraphs 76 and 77 of the Applicants' submissions which states that because there is no evidence of any accidents or safety related incidents arising from any aircraft maintenance carried out by the Applicants, Aircraft Survey Reports and Requests for Corrective Action were concerned with "administrative and clerical discrepancies in the maintenance records". Insofar as it is suggested that the requirements were merely clerical we cannot agree. The Tribunal notes that a substantial number of the ASR's were of sufficient seriousness to warrant grounding of the aircraft. Mr Ekinci asserts that these had all been rectified and cleared by the Respondent prior to the flight and that these clerical and administrative deficiencies did not involve any unsafe operation by the Applicants of aircraft, or constitute a failure by the Applicants with respect to any matter affecting the safe or efficient navigation or operation of an aircraft.
62. The Tribunal notes that this attitude to compliance by Mr Ekinci is inconsistent with the emphasis in the case law which stresses the importance of air safety considerations, and the need for strict compliance with the Act and Regulations, particularly with respect to verification of the completion of maintenance, because these matters go directly to the question of confidence and reliance upon the airworthiness regime. They are also indicative as to whether the person whose operations or engineering approach is under consideration has an adequate appreciation of the particular statutory duties, responsibilities and requirements attaching to their functions.
63. The Tribunal notes parallels with the case of *Snook and Civil Aviation Safety Authority* [2010] AATA 582 in which [at 457] the Presiding Member stated that the applicant's history indicates that; "irrespective of anything which is said to him about the maintenance of aircraft, if he holds a contrary view, he will not be persuaded. The fact that his views are frequently demonstrated to be erroneous appears to make no difference at all. *In our opinion, these traits are unacceptable in a person who bears the responsibility for the safety of others.* Accordingly, the Tribunal finds that [the applicant] is not a fit and proper person to hold and AME licence or a CoA" (emphasis added).

Other maintenance issues

64. Mr Ekinci gave evidence [see para 54] that a bundle of documents containing maintenance records of the Applicant had been retained by the Respondent. During oral evidence it was stated that these documents were returned to Mr Ekinci by post in a ← CASA → envelope with no covering letter, which contained a hand-written yellow "post-it" note stuck on the top of the bundle with the words: "Not to be returned to Ekinci" (Exhibit C). According to Mr Ekinci the significance of the documents in Exhibit C is that they are said to comprise aircraft maintenance records which directly relate to issues raised in the reviewable decision, and that these maintenance documents, according to the applicant, provide a rebuttal of allegations in the reviewable decision.
65. No evidence was provided to explain the reason for this apparent occurrence or the identity of the person who had written the hand written note. The respondent in its reply to the applicant's submissions questioned the fact that the issue of the envelope with the bundle of documents containing maintenance records had only arisen during oral evidence given by Mr Ekinci.
66. The Tribunal finds that in the absence of persuasive evidence either way, and the circumstances relating to their appearance, there is doubt as to the significance of these documents. The Tribunal notes that the Respondents in their Final Reply to the Applicant's submissions, submit that they provided extensive explanations as to the limited weight to be given to these records. Accordingly, we do not attribute any significance to the issue raised by the Applicants in these documents. We consider that the evidence referred to in ← CASA →'s submissions satisfactorily addresses these documents. The Tribunal finds that they provide no significant answer to the case brought by ← CASA →.

FLYING OPERATIONS

Flight times for helicopters VH-CLI and VH-KZY

67. As part of the reason for the decision ← CASA → queried the recording of flight times and time in service (TIS). ← CASA → submits that records of pilot log book times and maintenance release time (TIS) in relation to the flights allegedly carried out between 28 February 2010 and 12 April 2012 show that Mr Ekinci has either over-recorded his flight times or under-recorded the maintenance release time in respect of these aircraft.
68. "Flight time" is defined in the legislation (CAR 2 and CAO 48.1) as being the total time from the moment when the aircraft first moves under its own power for the purpose of taking off until the moment it comes to rest at the end of the flight. For helicopters, it is from engine start to engine shut-down.
69. "Time in service" (TIS), in relation to an aircraft, is defined in the legislation (CAR 2 and CAO 100.5.2.1) as being the time when the aircraft leaves the ground on a flight until it touches the ground for the purpose of landing at the end of the flight". For helicopters this is commonly and conveniently referred to as the time from "skids off to skids on".
70. Mr Ekinci gave evidence that it was not uncommon in helicopter training exercises to "spend a whole day just sitting there hovering or trying to hover light on the skids, without actually getting airborne". In the opinion of the Tribunal this is perhaps somewhat overstated but nevertheless Mr Ekinci provided further evidence regarding the details of a typical helicopter training flight (transcript pp 205-208) and produced a three page document and SD card in support (exhibit T) which showed only 22 minutes of air time (that is TIS) during a 60 minute lesson (i.e. 60 min of flight time).
71. Mr Ekinci provided further evidence in a letter dated 24 April 2014 from the US aircraft manufacturer Enstrom Helicopters (Exhibit U) regarding the typical variance in times between flight time and TIS for training flights in Enstrom helicopters and that took account of typical time to warm

up, and to shut down. It also provided information of the variance of times that could be expected with varying ambient conditions and for training flights of students.

72.  CASA  called Flight Training Examiner Mr Patrick Tan to give evidence as to the likelihood of such variation between the flight time and TIS in respect to these flights. His evidence did not establish that these relative times were significantly excessive. The fact is that Mr Tan did not have any significant experience in training abinitio civilian student pilots and this did not assist the weight of his evidence.
73. The evidence provided by  CASA  does not establish that for those flights, where there were variances, the times were excessive in light of the uncontested evidence provided by Enstrom.
74. In respect to other alleged discrepancies Mr Ekinci contends that the dates of some flights may have been recorded in error and that they may have been recorded erroneously the next day. The fact, however, that for the three flights on the 25 February 2010, 23 July 2011 and 24 July 2011 Mr Ekinci recorded a cumulative total of 21.2 hours flight time with zero TIS recorded on the maintenance release is difficult to reconcile with all the evidence provided. On balance, the Tribunal finds that this ground advanced by  CASA  is not proven.

Flight in VH-JEN without valid MR

75. The respondent alleged that the first applicant operated an aircraft VH-JEN without having a valid maintenance release. Mr Ekinci gave evidence that aircraft VH-JEN did not fly during the period as alleged, and states that the flights were conducted in another aircraft, namely VH-VHV. A student pilot Mr Higgins logbook entry for 11 February 2007 records a flight in aircraft VH-VHV on that date. Mr Ekinci's logbook entry for 11 February 2007 shows a flight in aircraft VH-VHV without any entry for aircraft VH-JEN. On balance the Tribunal finds that there was an incorrect recording of aircraft VH-JEN and a failure to identify the correct aircraft VH-VHV.

BE-90 Beechcraft King Air Endorsement

76. This issue related to the apparent failure of Mr Ekinci to sign the maintenance release in respect of a Beechcraft King Air (BE-90) aircraft on the day he was obtaining an endorsement from the aircraft owner. Mr Ekinci gave evidence that the owner of the aircraft, who took the aircraft flying before and after the endorsement flight, had not signed the maintenance release, and that AWI Mr Paul Simpson alleged that Mr Ekinci had failed to sign the maintenance release. In evidence Mr Ekinci said he would not be able to sign the maintenance release before he obtained the endorsement, as he was not yet the pilot in command of that type of aircraft and that the matter of signing the maintenance release was a matter between the owner of the aircraft and  CASA  in this instance. The Tribunal considers that on balance there is no evidence to contradict Mr Ekinci's account of the matter.

NEW MATTERS RAISED BY THE RESPONDENT

77. The Applicants stated in their submission of 26 May 2014 that the "new issues" raised by the Respondent in support of its decision to issue the Cancellation Notice fall within the ambit of [Regulation 269\(3\)](#) of the [Civil Aviation Regulations 1988](#) (Cth) which requires that, prior to taking any action under CAR 269(I) to vary, suspend or cancel an authorisation, it must issue a "show cause" notice.
78. Furthermore, according to the Applicants,  CASA  is required to give notice in writing to the holder of the authorisation and to allow the holder time to show why the authorisation should not be varied, suspended or cancelled. There was no "show cause" Notice for the new matters.

79. While the Tribunal accept the above as being a normal course for providing procedural fairness and natural justice to the applicant but recognises that these proceedings between the parties have been on foot for considerable time and that in the interests of ensuring all relevant issues are considered during this hearing has accepted that these “new issues” ought to be considered concurrently. The Applicants have had ample opportunity to and have in fact produced evidence and made submissions in relation to these matters and no question of lack of procedural fairness arises.
80. Notwithstanding the above the Tribunal also recognises that this is not the ideal way in which to deal with new issues. The Tribunal has taken account of this fact and has weighed the evidence accordingly.

Training flights

81.  CASA  alleged that Mr Ekinci conducted training flights when his Grade 1 flight instructor rating had expired. Mr Ekinci agreed that his Grade 1 flight instructor rating had lapsed at this time but his helicopter ‘check pilot’ approval was current. Mr Ekinci alleges that he had conducted no ‘training flights’ during this period but says he conducted a ‘mandatory’ check flight on employee pilot Mr Julian Miller in Mr Ekinci’s capacity as Chief Pilot of Cloud Nine Helicopters.
82. The performance of ‘check flights’ is normally restricted to organisations that have a  CASA  approved ‘Training and Checking’ organisation pursuant to CAR 217. Cloud Nine Helicopters has no such CAR 217 approval. Evidence was given by Mr Simpson who said that Mr Miller’s logbook had indicated that he had conducted an endorsement and a ‘Trial Instructional Flight’ (TIF). Mr Ekinci has held both Chief Pilot and Chief Flying Instructor approvals for some considerable time and accordingly ought have known the scope and extent of the privileges that attach to these respective approvals. At very least if he had any doubt whatsoever as to whether or not such flights could be conducted legally it was incumbent upon him to make such inquiry to become reasonably satisfied.
83. The Tribunal notes that in *Re Mulligan and Civil Aviation Safety Authority* [2006] AATA 652, the Applicant undertook flights in breach of his license condition, taking a chance that he would not be detected and in so doing demonstrated a flagrant disregard for compliance with the regulatory scheme. As Deputy President Hack observed [at 90] in that case:

“It is not to the point that these flights of themselves were short and were not a threat to safety. Pilots are not free to choose which regulations they will obey”.

There the Tribunal found that the Applicant had demonstrated a “poor attitude to his breaches, advancing far-fetched justifications and seeking to blame  CASA ”. The Tribunal considers there are similar conclusions that can be drawn in this case in respect to the Applicant’s attitude to whether or not there was strict adherence to air legislation and his attitude toward the regulator. The fact that in this present case the Applicant held supernumerary positions makes this attitude all the more divergent from what could be considered acceptable behaviour.

84. The Tribunal finds that the flights in question were correctly classified as a ‘training flights’ and therefore ought not to have taken place in a period when his Grade 1 flight instructor rating had lapsed. The Tribunal finds that the evidence provided by Mr Simpson that he did undertake flight training ought to be accepted.

Private flight to Germany in US registered Citation C-650 aircraft

85. This issue concerns an alleged ‘private flight’ conducted from Australia to Germany in a United States registered (N-692BE) Cessna Citation III (C-650) aircraft flown by Mr Ekinci with Mr Singh as co-pilot. The flight departed Sydney on 14 March 2014 for the purpose of transporting a terminally ill person, Ms Nicky Gazis, to a hospital in Germany for treatment that was not available in Australia.
86. Mr Ekinci gave evidence that Qantas Airways and Emirates airlines had each refused Ms Gazis carriage, and that the flight to Germany was "a last ditch effort to keep her alive". Mr Ekinci gave further evidence that the flight was classified as a private flight, that the use of the C-650 aircraft had been donated, and that the services of the aircrew and the on-board nurse travelling with Ms Gazis had all been volunteered. Ms Gazis' family paid only for the fuel, landing fees and over-flight clearances.
87. Passenger transport may be classified as either a “private” operation (CAR 2(7)(v), (va)); commercial charter operations (CAR 206(1)(b)); or commercial Regular Public Transport operations (‘RPT’) (CAR 206(1)(c)). Charter operations may be one of two types of operations; ‘ad-hoc charter’ (CAR 206(1)(b)(i)) or ‘closed charter’ (CAR 206(1)(b)(ii)). Ad-hoc charter is the carriage for ‘hire or reward’ in circumstances where the aircraft is not on a fixed schedule operating between fixed terminals. Closed charter is the carriage made between fixed terminals and on fixed schedules, made available to a specific group of persons, with or without remuneration.
88. CAR 206 prescribes, for the purposes of [section 27](#) of the [Civil Aviation Act 1988](#), relating to operations for which an AOC is required, a number of commercial purposes for aerial work, charter and regular public transport operations. The common factor in each commercial purpose prescribed in CAR 206 is that the flights are for hire and reward.
89. In evidence Mr Simpson suggested the mercy flight was similar to an “ambulance function”, which is included in the list of aerial work purposes in CAR 206(1)(a)(vii). The Applicants contention was that the distinguishing factors between the “mercy flight” and an "ambulance function" is that unlike an aerial ambulance service, the mercy flight had no charge for the aircraft or aircrew “they were all donated”.
90. Notwithstanding the jurisdictional variances it is worthy of note the approach of the Civil Aviation Authority of the United Kingdom on the issue. The UK CAA has a similar connection between payment of monies and the defining of aerial work flights. In a legal advisory paper entitled *Summary of the meaning of commercial air transport* prepared by the Secretary & Legal Advisor’s Office (May 2010) it states [at para 5.4] that:

“Even if . . . no payment for the carriage of the passenger (and the operator is not an AOC holder) . . . it may be aerial work if *any* payment has been made in respect to the flight for the purpose of the flight.”
91. In our submission the fact that the mercy flight was not conducted for ‘hire or reward’ is not sufficient in itself to preclude the flight from being considered to have been for the purposes of ‘an ambulance’ function.
92. No relevant Australian definition of ‘air ambulance’ is available. Air ambulance is listed as an aerial work operation in CAR 206(1)(a)(vii) together with several other specific operations such as aerial photography (CAR 206(1)(a)(iv)) and aerial spotting (CAR 206(1)(a)(ii)). CAR 2(7)(d) provides a list of operations that are by definition private operations. This list includes operations that ‘but for’ the inclusion in the list would be classified as aerial work activities using the delaminating criteria of revenue for the flights. Significantly air ambulance operations are not listed as private operations by definition. The absence of specific reference to listing the term “air ambulance” where other operations are listed is significant. On this basis, it is a significantly interpretive consideration that Air Ambulance operations can only correctly be classified as an aerial work operation.
93. Review of the relevant legislation also suggests that a flight can be of a ‘commercial’ nature even in the absence of remuneration or ‘hire or reward’. Pursuant to CAR 2(7)(v), where carriage of a person is without charge the operation will be private. However, the caveat to this is in the case of closed charter operations whereby an operation deemed to be commercial even in the absence of any remuneration for the flights. The basis

of this interpretation of CAR 206(1)(b)(ii) (closed charter) is that other types of commercial passenger transport operations listed under CAR 206 specifically and explicitly include reference to ‘hire and reward’. Again, the absence of specifically including ‘for hire or reward’ under closed charter where other passenger transport operations include the term is important when interpreting the provision.

94. It is the Tribunal’s view that in situations in which the nature and circumstances of the flight do not clearly align to the defined operational classifications within the context of the relevant legislative provisions then the ordinary and common meaning of what constitutes ‘commercial’ ought to be considered, namely, whether the activity in question is “concerned with or engaged in commerce”. (Oxford Dictionary)

Mercy flight

95. Evidence was presented in the form of extracts from the regulations and relevant provisions that regardless of any AOC requirement, the Mercy flight regime under *Civil Aviation Regulation* 91.170 will facilitate any of these types of operations in a situation where “the flight is made for the purpose of relieving a person from grave and imminent danger arising out of an urgent medical, flood, fire relief or similar situation, at a time where failure to make the flight is likely to result in serious or permanent disability or loss of life”.
96. Declaration of a mercy flight allows the breaching of necessary legislation in order to complete a task so long as the doing so is not reckless. In other words the ‘evil’ committed must not present a greater risk than the ‘evil’ being served. The breaching of a legislative requirement authorising an ‘air ambulance’ type operation in an urgent situation whereby no other viable option of transport is available would almost certainly be a permitted activity: *Civil Aviation Safety Authority v Boatmen* [2006] FCA 460 [at 151].
97. The first Applicant has gone to great lengths to demonstrate that the flight was conducted in accordance with all applicable civil aviation law but nevertheless contends that the flight was a private ‘mercy flight’. The fact that a mercy flight only applies if some legislation or regulation cannot be complied with seems to be anomalous and contradictory on the face of the evidence. With such an important international flight, it is incumbent upon the pilot in command to be absolutely certain that the flight is compliant with all relevant legislation. As an experienced Chief Pilot, Mr Ekinci should have urgently sought a determination as to the regularity of the flight if he really had any doubt of any aspects of the flight in question.

Private operation Co pilot

98.  CASA  also queried whether the co-pilot of the mercy flight, Mr Abhijeet Singh held an appropriate co-pilot endorsement for the Cessna Citation III (C-650) aircraft. Mr Ekinci gave evidence that Mr Singh was appropriately licenced and authorised to endorse Singh as a co-pilot on the aircraft type by virtue of Mr Singh's Indian commercial pilot licence and also his Australian commercial pilot licence. Mr Ekinci held a USA pilot licences and instructor/check pilot qualifications (Exhibit AR).
99. Section 61.55 of the *USA Federal Aviation Regulations* (FARs) provides the power and authority for the endorsement of a co-pilot. Mr Ekinci's evidence was that Section 61.55(a) of the FAR applies and provides that a person may serve as second-in-command if that person holds:
1. *At least a private pilot licence with the appropriate category and class rating,*
 2. *An instrument rating if the aircraft is to be operated under the IFR (Instrument Flight Rules), and*
 3. *The appropriate pilot type rating for the aircraft unless the flight will be conducted as domestic Right operations within United States airspace.*
100. Mr Ekinci gave evidence that Mr Singh met all of these requirements.
101. Although  CASA  gave evidence from the Indian Regulatory authorities that Mr Singh’s licence records did not indicate that he had a C-650

endorsement the applicant produced evidence that an endorsement was certified in his logbook. Upon review of the relevant legislation and consideration of the evidence the Tribunal finds that if the flight was not properly classified as a private operation then the co-pilot was therefore not appropriately licensed.

Maintenance on the C-650

102. On the evidence the Tribunal makes no determination on whether or not the aircraft was properly maintained at the time of the flight.

Logging of private flight time in US registered aircraft

103. The Respondent queried the requirements for logging of flight times for private flights in US registered aircraft. Mr Ekinici referred to US provision FAR 61.51 which states that the types of Rights which must be documented are limited to training and aeronautical experience flights used to meet requirements for a certificate rating or flight review, and the aeronautical experience required for meeting the recency of the flight experience requirement. According to the applicant's interpretation of the US provisions FARs apart from these requirements, there is no other requirement to record flight hours.

104. The respondents provided evidence in Exhibit AJ that appears to contradict the position advocated by the applicants. Although on the state of the evidence presented the Tribunal is unable to make a final determination on this issue the fact that Mr Ekinici chose not to log this particular flight raises questions as to a possible alternative reason for not recording flight time, especially considering he states that he believed there was nothing irregular with this flight. The Tribunal does not give great weight to the flight to Germany.

Low level aerobatic Flight

105. The respondent alleged that Mr Ekinici conducted low level aerobatic flight at a time when his approval had expired. This allegation was raised by the respondent for the first time during the cross examination of Mr Ekinici. It did not form part of the reviewable decision, but is now relied upon by the respondent in support of its determination to have the reviewable decision affirmed.

106. CAR 155 prohibits a pilot from conducting aerobatic flight below 3000 feet above ground level (AGL) unless ← CASA → has granted written permission for aerobatics to be conducted at a lower height. The term "low level aerobatics" means aerobatic Right at any level below 3000 feet AGL. The lower limit of any such permission will vary depending upon the skill and experience of the pilot. Mr Ekinici gave evidence that a person obtaining a low level aerobatics endorsement would start at 3000 feet and that gradually, for safety's sake, the pilot would (if appropriate) be brought down to lower levels.

107. The respondent referred to a ← CASA → Instrument of approval (No. SYDR/138/2005) which had expired in April 2007 and asserted that this instrument cancelled previous approvals and it had not been renewed. The Tribunal query why Mr Ekinici did not challenge this with ← CASA → particularly when on the face of it, would seem to contradict what the ← CASA → computer print-out of his license and approvals showed.

108. Mr Ekinici produced a letter from ← CASA → dated 23 August 1999 which referred to a different ← CASA → file number which granted a perpetual permission for Mr Ekinici to conduct low level aerobatics in the most complex of the aircraft types- in jet aircraft.

109. Mr Ekinici produced a ← CASA → computer print-out of all of the pilot licences, aircraft endorsement, appointments and approvals which was effective as at 31 October 2013. Entries for low level aerobatics permissions appear 9 times in the print-out. There are three columns associated

with these entries, which refer in turn to the "issue date", "expiry date" and any "limitation imposed by the instrument".

110. CASA's argument that instrument SBAO/138/2005 post-dated and cancelled the earlier permissions which remain listed as "current" cannot be reconciled with the corresponding entries on Mr Ekinci's Australian pilot licences. Mr Ekinci's licence is a public document produced by CASA on 10 May 2010, and he is entitled to rely on it for accuracy. The Tribunal agrees that at best the information provided by CASA is misleading in that the issued instruments to Mr Ekinci are in conflict with what is stated on the CASA computer generated print out of his various licences and ratings.
111. The Tribunal has some doubt as to Mr Ekinci's alleged understanding of the situation and of the current status of his low level aerobatics and low flying approvals especially as someone who is intimately familiar with CASA's current licensing regime and the formal system by which CASA issues approvals. Nevertheless in view of the contradictory state of the evidence the Tribunal does not find that this claim by CASA has been made out.

Flights over -built up' areas in L-39 aircraft

112. The evidence presented by Respondent on this issue does not satisfy the Tribunal that the applicant had either deliberately or unintentionally breached the relevant regulations relating to flights over -built up' areas in L-39 aircraft. Furthermore there had been no evidence to suggest that there was widespread complaints in fact it seems that only one phone recorded complaint had been received by CASA in respect to such operations.
113. The Tribunal found that Mr Binskin, who was an employee of Airservices Australia and an ATC operational controller at Camden Airport, was a credible witness. Mr Binskin agreed with Mr Lithgow that the genesis of the matter concerning flights in L-39 aircraft over a built-up area appeared to be a one-off decision by CASA affecting only Air Combat Australia aircraft, and that it didn't seem to apply to anybody else.
114. The Tribunal finds that there was no significant, relevant or intentional breach committed by Mr Ekinci or any of the other applicants in respect to flights over -built up' areas in L-39 aircraft.

FIT AND PROPER PERSON

115. CASA contends that the Applicants are not a fit and proper to have the responsibilities and exercise and perform the functions and duties of licensee authorisation holders. The Tribunal considers that the past conduct of the Applicants, so far as it reflects on the unwillingness and inability to accept and comply with the statutory obligations and rulings of CASA, is an indication as to likely future conduct. (See also Bartsch, *Aviation Law in Australia* at [7.65]-[7.69] where there is a discussion of "fit and proper person".)
116. Under CAR 269, CASA may after issuing a notice in writing served on the holder of an approval authority certificate or licence (an authorisation), vary, suspend or cancel the authorisation if CASA is satisfied that one or more of the following grounds exist, namely:

...

(c) that the holder of the authorisation has failed in his or her duty with respect to any matter affecting the safe navigation and operation of an aircraft;

that the holder of the authorisation is not a fit and proper person to have a responsibility to exercise and perform the functions and duties of the holder of such an authorisation;

that the holder of the authorisation has contravened a direction or instruction with respect to a matter affecting the safe navigation and operation of an aircraft.

117. The Tribunal considers that Mr Ekinci has failed in his duty with respect to ensuring the safe operation of the aircraft, particularly in relation to the carrying out of maintenance and verification in relation to the L-39 and helicopter aircraft, and that he has failed to act in accordance with permissions and licences conferred on him. In our view these important failures by Mr Ekinci in these respects could materially affect the security and safe operation of the aircraft leading to an increased risk that those maintenance activities may not be performed in a safe and satisfactory manner. Clearly the keeping of accurate records in accordance with the prescribed regulations goes to the heart of ensuring reliable and safe operation of an aircraft so far as maintenance is concerned. It is unacceptable for an individual operator such as Mr Ekinci to depart from the requirements of the aviation safety standards on the basis that in his or her opinion the safety of the aircraft will not be affected. To permit any significant departures from the regulatory regime established for ensuring and regulating air safety is capable of adversely impacting in a serious way on the integrity of the regime by undermining the reliability and confidence that can be placed on records and compliance procedures which form an integral part of such standards.
118. As indicated earlier, the current decision of  CASA  arises from the conduct of the Applicants in adopting and acting upon their own subjective views as to whether there is sufficient compliance with the elements of the scheme as to entitle them to disobey the restrictive requirements of the regulations and controls.
119. As noted earlier, since at least 2007, the Applicants have demonstrated on numerous occasions their willingness to comply with the provisions of the scheme and have elected to judge for themselves the particular requirements they will comply with. For example as to dual certification requirements, Mr Ekinci has treated this as an administrative, formal or clerical matter which can be ignored, provided that in his assessment there is no impediment to safety. However, the provisions as to certification and compliance with formal and substantive requirements of the regime are essential to air safety. The attitude of Mr Ekinci is reflected in his submission that there is no evidence of accidents or safety related incidents, and therefore this failure to comply with requirements can be placed in the category of administrative or clerical discrepancies. The absence of past incidents or accidents does not necessarily show that the person or organisation has the appropriate appreciation of the need for a culture of compliance.
120. The Tribunal notes in relation to the Medivac flight to Germany in March 2014, that the Applicants contended throughout the hearing that its actions were completely regular and compliant with all requirements. However, at the conclusion of the hearing the Applicants fell back to rely on the provision of the regulations concerning urgent mercy flights which is only available on the basis that it was not reasonably practical for them to comply with all the relevant requirements (Exhibit AR).
121. The evidence in this case is that over a period of about 14 years, dating back to 1999, there have been significant hostilities and difficulties in the relationships between  CASA  officers and Mr Ekinci and the Applicants. The Tribunal has taken into account that it can be reasonably anticipated, and considered not uncommon, that in a long-standing relationship between a regulatory body and those subject to regulation, differences will arise from time to time and relationships may at times be difficult. However, for a regulatory regime to function effectively there must remain between the parties mutual respect as the underlying basis of a professional relationship.
122. It is clear that the hostilities on the part of the Applicants are so deeply entrenched over a period of 14 years as to make it extremely difficult for the

Applicants to liaise and cooperate with officers of the Authority. There is no justification for attributing to Mr Ho, for example, the statements that had been made by him. Nor has any basis for allegations of bribery and misconduct on the part of a number of senior  CASA  officials been made out. The Applicants submit that the personal difficulties in relationships between the Applicants and the regulator are capable of resolution and that they will be able to co-operate in the interest of safety in the future. However, the past history of the relationship indicates there will be very serious difficulties in the way of that degree of effective communication and co-operation which is at the heart of effective regulation. The failure to co-operate could pose a danger to the safety of aircraft operations as such problems impede communication and co-operation. As emphasised by the *Rapacholi* principles there has in the present case been a lack of respect for objective compliance with the regulations and civil aviation regulatory legislation generally. In dealings with  CASA  officers in their professional capacities, the Applicants have demonstrated a lack of respect for the civil aviation laws and those whose professional responsibly it is to enforce them.

123. Whilst entertaining doubts as to his entitlement to certify and perform maintenance work on non-piston engine aircraft, Mr Ekinci has taken it upon himself to act for several years upon his own understanding as to what is required to satisfy the regulatory scheme rather than seeking to clarify any differences or interpretation in an appropriate and timely manner.
124. With respect to Mr Ekinci's abilities and performance as a commercial charter pilot and flight instructor there has been no question raised as to his competence. However those charged with the higher responsibility of supervision and oversight of other pilots and instructors must ensure they satisfactorily undertake their duties, responsibilities and obligations that arise under relevant legislation to provide for the safety of air navigation. The role and responsibilities of such supernumerary positions as Chief Pilot and Chief Flying Instructor are necessarily of a much higher order than other persons in the aviation industry.
125. In *Quadrio and Civil Aviation Safety Authority* [\[2011\] AATA 709](#) the Tribunal [at 73] found:

Mr Quadrio's inability or unwillingness to acknowledge his demonstrated shortcomings only reinforces our view that he is not a fit and proper person to have the responsibilities and to exercise and perform the functions and duties of a commercial pilot. [74] It is undoubtedly the case that pilots will from time to time, fall into error. In our view a pilot who does so and who has a proper appreciation of the importance of air safety will acknowledge the error and reflect upon it in order to prevent a recurrence. Mr Quadrio had done none of that. On the contrary he sees himself as the persecuted victim of an "overly protected bureaucracy".

126. The standard of fitness and propriety must be measured against the duties, responsibilities and obligations entrusted to operators by the Authority and it is incumbent upon those to whom these privileges are entrusted that they behave in such a manner that the safety of the air navigation system is not jeopardised and indeed is enhanced.
127. Having regard to the above considerations the Tribunal considers that Mr Ekinci does not satisfy us that he is presently a fit and proper person to perform his duties and responsibilities as a LAME, Chief Engineer, Chief Pilot and Chief Flying Instructor in relation to the operations being conducted by the Applicants.

CONSIDERATIONS AS TO ORDERS

128. In relation to the terms of our decision the following matters should be taken into account:
129. First, the positions of aircraft maintenance engineer, Chief Engineer, Chief Pilot and Chief Flying instructor are positions of great importance, and the proper performance of the functions performed by persons in those positions are of great significance to air safety. Accordingly, where there

had been a series of significant and important failures to perform those functions and comply with the regulatory designed to ensure safety of air operations, the orders should take into account the need to have those functions carried out in a proper, reliable and consistent manner. The safety consequences which flow from a failure to comply by such officers can be very serious if not catastrophic.

130. Second, in the present case the principal difficulties arise from the actions and conduct of Mr Ekinci over a substantial period of time, and it is appropriate in our view that the orders should relate to the problems which have been raised and established by  CASA  and the findings we have made in the reasons for decision.
131. Third, the disruption, hardship and difficulties which will flow to the Applicants if adverse orders are made have been taken into account in the submissions advanced on behalf of Mr Ekinci and the other Applicants in this matter in reaching out conclusions as to the appropriate orders to be made in the light of our findings. However, primary emphasis must be given to compliance in the interests of safety.
132. The Tribunal does not consider that cancellation is necessary, although, if that course were to be taken it would be open to Mr Ekinci to apply for new licences and approvals and it would be necessary for him to establish, to the satisfaction of  CASA , that it was appropriate for such authorities to be granted. In the circumstances of this case the Tribunal considers that suspension is the correct course. The Tribunal considers that a term of one year of suspension is appropriate.

DECISIONS

133. The Orders made by the Tribunal on 3 March 2014 on the stay application are set aside.
134. The Decisions under review made on 24 January 2014 by  CASA  are set aside, and in substitution therefor, the following decisions are made:
- Aircraft Engineer Licence L187910 is suspended for a period of one year;
 - It shall be a condition of the Certificate of Approval pursuant to CAR 30(3) that the Company is to employ a suitably qualified LAME, other than Mr Ekinci, and who is acceptable to  CASA , to be responsible for the supervision and certification of all maintenance activities undertaken at Air Combat Australia Pty Ltd;
 - It shall be a condition of the Air Operators' Certificates of both Air Combat Pty Ltd and Cloud Nine Helicopters Pty Ltd that the respective companies employ a person or persons to hold the positions of chief executive officer (however described), other than Mr Ekinci, and who is acceptable to CASA, for the purposes of satisfying the requirements of [ss 28\(1\)\(a\)](#) of the [Civil Aviation Act 1988](#).
 - Chief Pilot Approvals 1-5G8V1 and SBAO/151/2004 are cancelled;
 - Chief Flying Instructor appointments SBAO/150/2004 and 1-SDJTO are cancelled;
 - ATO Delegation  CASA  64/06 is cancelled.

I certify that the preceding 134 (one hundred and thirty-four) paragraphs are a true copy of the reasons for the decision herein of The Hon. Brian Tamberlin, QC, Deputy President and Mr R Bartsch, Member

.....

Associate

Dated 27 June 2014

Dates of hearing	28, 29 and 30 April; 1, 2, 5 and 6 May; 13 June 2014
Date final submissions received	6 June 2014
Counsel for the Applicant	Mr P Lithgow
Solicitors for the Applicant	Maitland Lawyers
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Solicitors for the Respondent	Civil Aviation Safety Authority

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