



[\[Home\]](#) [\[Databases\]](#) [\[WorldLII\]](#) [\[Search\]](#) [\[Feedback\]](#)

# Administrative Appeals Tribunal of Australia

You are here: [AustLII](#) >> [Databases](#) >> [Administrative Appeals Tribunal of Australia](#) >> [2013](#) >> [2013] AATA 652

[\[Database Search\]](#) [\[Name Search\]](#) [\[Recent Decisions\]](#) [\[Noteup\]](#) [\[Download\]](#) [\[Context\]](#) [\[No Context\]](#)  
[\[Help\]](#)

## Green and Civil Aviation Safety Authority [2013] AATA 652 (12 September 2013)

Last Updated: 13 September 2013

[2013] AATA 652

Division	<b>GENERAL ADMINISTRATIVE DIVISION</b>
File Numbers	<b>2013/3722</b>
Re	<b>Richard Green</b>
	APPLICANT
And	<b>Civil Aviation Safety</b> <b>Authority</b>
	RESPONDENT

### DECISION

Tribunal	<b>Ms G Ettinger, Senior Member</b>
Date	<b>12 September 2013</b>
Place	<b>Sydney</b>

### Decision Summary

Pursuant to [section 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#), the Tribunal refuses to grant a stay of the decision of CASA of 31 July 2013 in regard to Richard Green’s pilot licences.

.....  
**Ms G Ettinger, Senior Member**

### CATCHWORDS

*CASA – six months suspension of Applicant’s private pilot helicopter licence – Applicant claims malice by CASA - usual principles in stay matters canvassed – hardship, the safety of air navigation, prospects of success of the substantive application – stay refused.*

### LEGISLATION

[Administrative Appeals Tribunal Act 1975 s 41\(2\)](#)

[Civil Aviation Act 1988 s 9A\(1\); 30DC](#)

## CASES

← **Civil Aviation Safety** → *Authority v Hotop* [2005] FCA 1023; (2005) 145 FCR 232

*Repatriation Commission and Delkou* [1985] AATA 297; (1985) 8 ALD 454

*Re Decanic and Tax Agents Board of New South Wales* (1982) 6 ALD 240

*Re Griffiths Grif-Air Helicopters Pty Ltd and Civil Aviation Authority* [1993] AATA 274; (1993) 31 ALD 380

*AMT Helicopters Pty Ltd v* ← **Civil Aviation Safety** → *Authority* [2006] AATA 314

**CLICK HERE TO ENTER TEXT.  
REASONS FOR DECISION**

**Ms G Ettinger, Senior Member**

**12 September 2013**

## BACKGROUND

1. Mr Richard Green holds a Private Pilot (Helicopter) Licence (PP(H)L), which the ← **Civil Aviation Safety** → *Authority* (CASA) on 31 July 2013, suspended for six months with the requirement that his licence can be restored after that period if he successfully passes an examination in the aeronautical knowledge and skills set and conducted by CASA relevant to the holder of a PPL. CASA similarly imposed a condition on Mr Green's Student Pilot Licence by stipulating that he must fly with a flying instructor until such time as the suspension of the PP(H)L is lifted by CASA.
2. The reviewable decision details the reasons and the incidents which have led to the suspension and conditions being imposed. Mr Green says that CASA has made the decision with malice, and that any transgressions he may have committed, have not been serious. He says that there are allegations made against him which are false, and that at the substantive hearing he intends to lead evidence to refute those.
3. In summary, Mr Green argued that the Tribunal should order a stay of the CASA decision because he has suffered, and will continue to suffer hardship if a stay is not granted, his prospects of success at the Tribunal are very good, and he does not pose a risk to the safety of air navigation.
4. For the sake of completeness, I note that CASA wrote to the Tribunal and to Mr Green on 13 August 2013 confirming that it would agree to a stay *provided the applicant does not exercise the privileges of his licence until such time as he sits and passes a Helicopter Flight Review to be set and supervised by CASA*. Mr Green refused the offer on the basis he might then be required to undergo a further review.
5. Not surprisingly Mr Shields of counsel who represented CASA at the stay hearing, then argued against a stay being granted.
6. I have refused to stay the decision of CASA. My reasons follow.

## ISSUE BEFORE THE TRIBUNAL

7. The only issue before the Tribunal is whether the discretion to grant a stay of the decision of CASA of 31 July 2013 should be exercised in Mr Green's favour.

## POWER TO GRANT A STAY

8. The relevant legislation in regard to a stay is [section 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#) (AAT Act) which relevantly provides:

*The Tribunal or a presidential member may, on request being made, as prescribed, by a party to a proceeding before the Tribunal (in this section referred to as the relevant proceeding), if the Tribunal or presidential member is of the opinion that it is desirable to do so after taking into account the interests of any persons who may be affected by the review, make such order or orders staying or otherwise affecting the operation or implementation of the decision to which the relevant proceeding relates or a part of that decision as the Tribunal or presidential member considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the application for review.*

9. Siopis J explained in [Civil Aviation Safety Authority v Hotop](#) [2005] FCA 1023; (2005) 145 FCR 232 at 240:

*The powers conferred on the Tribunal by [s 41\(2\)](#) are to be exercised for the purpose of securing the effective hearing and determination of the review application.*

10. The power to stay pursuant to section 41(2) of the AAT Act is quite a separate exercise to the stay granted pursuant to section 31 of the CAA. The appropriate approach to stay applications in the AAT has been raised on many occasions. It was dealt with, for example, in *Repatriation Commission and Delkou* [1985] AATA 297; (1985) 8 ALD 454 in a repatriation setting, and in *Re Decanic and Tax Agents Board of New South Wales* (1982) 6 ALD 240 in regard to the registration of a tax agent, and was raised with particular reference to civil aviation matters comprehensively in *Re Griffiths Grif-Air Helicopters Pty Ltd and Civil Aviation Authority* [1993] AATA 274; (1993) 31 ALD 380. Deputy President Forgie suggested in that case that the Tribunal consider at least the following matters:

- The prospects of success of the applications for review of the decisions;
- The hardship to the applicant and other parties affected by the decision if the stay orders are not made; and
- Whether public safety is likely to be imperilled if the stay orders are made
- Whether the review application, if successful, would be rendered nugatory or pointless if the stay was not granted.

11. The power to grant a stay pursuant to section 41(2) of the AAT Act is to be exercised for the purpose of securing the effective hearing and determination of the review application. Ultimately, the discretion may be exercised if it is found to be desirable to do so after taking into account the interests of any persons who may be affected by the review.
12. The parties in the matter before me made written as well as oral submissions which addressed the main areas for consideration by me. Mr Green's submissions were Exhibit A1 before the Tribunal.

## **HARDSHIP OR PREJUDICE TO THE APPLICANTS OR OTHER PARTIES AFFECTED BY THE CANCELLATIONS**

13. Mr Green stated that he suffered hardship because as a result of the suspension of his licences, he could not keep appointments to which he would normally fly. An upcoming trip to Moree, he said would take an hour by helicopter and two days by car. He also said that the helicopter required regular use in order to be maintained in good order.
14. Mr Shields characterised the issues for Mr Green as inconvenience rather than hardship. He also tendered a 'Flight Crew Licence' for Mrs Carolyn Green, Mr Green's wife (Exhibit R2), in response to Mr Green stating that he could get no one else to fly his helicopter. Mr Green told

me that notwithstanding the licence, his wife had not undertaken the requisite recent medical tests, and was not endorsed to fly.

15. Mr Green also submitted that if the stay were not to be granted, it would render the hearing nugatory as the six month period may have passed by the time the substantive matter was set down for hearing.
16. I am satisfied from the evidence that Mr Green does not fly his helicopter for reward or carry passengers for reward, and that, whilst not having a licence may be inconvenient, he is unlikely to suffer financial loss as a result. He does not make out the test for hardship, even though that would not of itself be the only consideration.

## ISSUE OF PUBLIC SAFETY

17. The issue of the safety of air navigation as prescribed by [section 9A\(1\)](#) of the [Civil Aviation Act 1988](#) (CAA), must be the most important in the consideration of whether it is desirable to exercise the discretion to grant a stay (*Re Griffiths Grif-Air Helicopters Pty Ltd and Civil Aviation Authority* [1993] AATA 274; (1993) 31 ALD 380).
18. [Section 3A](#) of the CAA provides that:

*The main object of this Act is to establish a regulatory framework for maintaining, enhancing and promoting the safety of civil aviation, with a particular emphasis on preventing aviation accidents and incidents.*

19. Mr Green in his submissions, referred to the power of CASA, to take immediate action to cancel his licence, ([section 30DC](#) of the CAA) in the case of an imminent threat to safety. He emphasised that CASA had not taken that action in his case, and submitted that the decision to suspend his licence was made with malice, which he would prove at the substantive hearing. Mr Green also submitted that certain of the items raised by CASA had been events occurring many years previously.
20. I have noted that CASA has given details of earlier incidents, but that it provided details in the reviewable decision of incidents which occurred in 2012, in particular at paragraph 28 of CASA's written submissions as follows:
  - a. *During the period 4 May - 15 May 2012, the applicant was involved in 4 incidents during which there was a risk of a collision with other aircraft;*
  - b. *During the first incident, on or around 9 May 2012, the applicant was the pilot in command of aircraft VH-GKK when he flew directly over another helicopter, registration VH-RPQ, at approximately 30 feet or less. The down wash from the applicant's helicopter caused the main rotor on helicopter VH-RPQ to bounce. The pilot in command of aircraft VH-RPQ had to operate the rotor brake harder to prevent a tail boom strike;*
  - c. *During a second incident, on or about 10 May 2012, the applicant was pilot in command of aircraft VH-GKK when he flew the aircraft sufficiently close to another aircraft, registration VH-JIF, that the tail rotor wash generated by VH-GKK moved aircraft VH-JIF causing it to turn through approximately 30 to 40 degrees. The pilots of aircraft VH-JIF had to physically hold the aircraft down in fear of it being blown into the fuel bowser;*
  - d. *During a third incident, on or about 10 May 2012, the applicant was the pilot in command of aircraft VH-GKK when he operated the aircraft in close proximity to a Cessna Caravan aircraft, causing a very real risk of a collision with that aircraft;*
  - e. *During a fourth incident, on or about 15 May 2012, the applicant was the pilot in command of aircraft VH-GKK when he operated it close to two Airvan aircraft in an unnecessary manoeuvre, creating risk of damage to those aircraft, or injury to persons in the vicinity of the aircraft, generated by his downdraft;*
  - f. *On 28 November 2012, the applicant was pilot in command of aircraft VH-GKK when it struck overhead power lines approximately 105m from the point of take off. The power line snagged on the fenestron of the helicopter and pulled the power line until it tore the*

*top portion of the fenestron off VH-GKK, The applicant flew the aircraft a further 200m across the gully before landing and inspecting the damage. The damage was significant, and the aircraft was unsafe for further flight, however, despite this, the applicant then proceeded to fly the aircraft approximately 250 metres in breach of [subsection 20AA\(4\)](#) of the CAAAct;*

- g. The applicant has previously, in 2007, been subject to Counselling (sic) by CASA, following an incident where the applicant was pilot in command of VH-GKK when the main rotor blades struck a tree while landing. The four main rotor blades sustained extensive damage, however, the damage was not recorded on the maintenance release, the applicant carried out unauthorised repairs, and the applicant undertook flights in the aircraft after carrying out the unauthorised repairs.;*
- h. The applicant has been involved in the past in 6 incidents which have resulted in Airservices Australia advising CASA of safety incidents.*

....

- 21. My primary concern, as CASA's must be, is to consider uppermost, the safety of air navigation. I note that CASA did not exercise its discretion to cancel Mr Green's licences pursuant to [section 30DC](#) of the CAA as it could have in appropriate circumstances such as where the Applicant was an imminent danger to safety. However, as noted in the reviewable decision and the Respondent's submissions, there has been a pattern of non-compliance over some years.
- 22. In considering whether to grant a stay in regard to Mr Green's licence, I must consider the impact on safety of the non-compliance on which CASA has based its suspension decision. Taking into account the discussion of the non-compliance issues in the reviewable decision, I am satisfied that the incidents were far from being able to be characterised as trivial, and am satisfied that they posed a risk to aviation safety. That mitigates against a stay being granted.

## **PROSPECTS OF SUCCESS OF THE APPLICATIONS ON REVIEW**

- 23. Mr Green made lengthy submissions with regard to the prospects of success at hearing. He feels that he has been victimised by CASA, and that all will be vindicated when he produces the evidence on which he intends to rely at the substantive hearing. In his written submission, (Exhibit A1) at [3], Mr Green stated as follows:

*There is no safety investigation being conducted in this matter. Also the requirement for a flight review is not warranted on the allegations presented by the Respondent - and they are just that, allegations, which are not admitted. Most of the allegations come from one location with a clear inference of collusion and false testimony being unavoidable.*

- 24. I also noted that in Exhibit R2 which was Mr Green's application for the stay, he made several statements in regard to CASA, among them:

*The decision is based entirely on malice.*

...

*The decision has completely ignored my rebuttal of CASA's fanciful and erroneous claims and accusations.*

- 25. The Respondent's written submission, echoed by Mr Shields in his oral submission, relied on its view that there was nothing in the Applicant's application for a stay of CASA's decision to suspend his licence which demonstrated on a prima facie basis that the grounds for CASA's decision as explained in the reviewable decision were wholly without foundation as a matter of fact or law.
- 26. In coming to a decision regarding this aspect of considering whether a stay is desirable having regard to the interests of any persons who may be affected by the review, I am mindful of what Senior Member McCabe said in *AMT Helicopters Pty Ltd v*  **Civil Aviation Safety** 

Authority [2006] AATA 314 at [14]:

*It is not necessary that I conduct a mini-trial of the issues to determine whether or not the applicant is likely to succeed at the hearing.*

- 27. From the documents before me, and the submissions made, in particular Mr Green’s allegations of CASA’s malice, I am not satisfied that Mr Green’s prospects of success at hearing are high. On the other hand, I am not able to say his substantive application is without merit.

**CONCLUSIONS**

- 28. I have considered all the evidence and case law, and the factors relevant to exercise of the discretion to grant a stay pursuant to section 41(2) of the AAT Act.
- 29. The safety of air navigation and of the public must be of the utmost concern to this Tribunal. I have had to consider the impact on safety of the non-compliance by Mr Green on which CASA has based its suspension decision. As I have already noted, a threat to air safety was not so imminent that immediate suspension was desirable. However, CASA has referred to several incidents of non-compliance by Mr Green over a period of time, and several occurring recently, that is in 2012.
- 30. As to the issue of hardship to Mr Green and other parties; I am satisfied that hardship has not been made out, but that Mr Green may suffer some inconvenience at not being able to fly, and to keep his helicopter flying.
- 31. From the documents before me, and the submissions made, in particular Mr Green’s allegations of CASA’s malice, I am not satisfied that Mr Green’s prospects of success at hearing are high. On the other hand, I am not able to say his substantive application is without merit.
- 32. I am mindful that Mr Green submitted the application would be rendered nugatory if a stay were not to be granted. I am mindful the suspension was for a period of six months from 31 July 2013, and that Mr Green may not be listed for hearing at the AAT before the six months period elapses.
- 33. However, I have not heard argument which has persuaded me that it is desirable within the terms of section 41(2) of the AAT Act to exercise the discretion to order a stay of CASA’s decision to suspend Mr Green’s licences.

**DECISION**

- 34. Pursuant to [section 41\(2\)](#) of the [Administrative Appeals Tribunal Act 1975](#), the Tribunal refuses to grant a stay of the decision of CASA of 31 July 2013 in regard to Richard Green’s pilot licences.

I certify that the preceding 34 (thirty four) paragraphs are a true copy of the reasons for the decision herein of Ms G Ettinger, Senior Member.

.....  
Associate

Dated 12 September 2013

Date of hearing	<b>5 September 2013</b>
Applicant	<b>In person</b>
Counsel for the Respondent	<b>Mr B. Shields</b>
Solicitors for the Respondent	<b>← Civil Aviation Safety → Authority Legal Services Group</b>

**AustLII:** [Copyright Policy](#) | [Disclaimers](#) | [Privacy Policy](#) | [Feedback](#)  
URL: <http://www.austlii.edu.au/au/cases/cth/AATA/2013/652.html>