

FEDERAL COURT OF AUSTRALIA

Purvinas, in the matter of an application for an inquiry in relation to an election for offices in the Australian Licenced Aircraft Engineers Association [2010] FCA

672

Citation: Purvinas, in the matter of an application for an inquiry in relation to an election for offices in the Australian Licenced Aircraft Engineers Association [2010] FCA 672

Parties: **STEPHEN PURVINAS AND STEPHEN RE, IN THE MATTER OF AN APPLICATION FOR AN INQUIRY RELATING TO AN ELECTION FOR OFFICES IN THE AUSTRALIAN LICENCED AIRCRAFT ENGINEERS ASSOCIATION**

File number: NSD 578 of 2010

Judge: **MOORE J**

Date of judgment: 29 JUNE 2010

Catchwords: **INDUSTRIAL LAW** – inquiry into election for office of Federal Secretary and Trustee of the Australian Licenced Aircraft Engineers Association – whether nominees held qualifications as Licenced Aircraft Maintenance Engineers – where both nominees previously held valid licences – where both licences expired by effluxion of time – whether absence of current licence in circumstances where licence had previously been held meant a nominee did not 'hold qualifications' as required by electoral rules and was consequently ineligible to stand for election

Legislation: *Civil Aviation Act 1988* (Cth)
Civil Aviation Regulations 1988 (Cth)
Conciliation and Arbitration Act 1904 (Cth)
Fair Work (Registered Organisations) Act 2009 (Cth)

Cases cited: *Re Australian Licenced Aircraft Engineers Association* (1963) 105 CAR 565
Re Building Workers Industrial Union of Australia (1952) 74 CAR 53

Date of hearing: 16 June 2010

Date of last submissions: 18 June 2010

Place:	Sydney
Division:	FAIR WORK DIVISION
Category:	Catchwords
Number of paragraphs:	28
Counsel for the applicants:	Mr TJ Dixon
Counsel for an interested party, the Australian Licenced Aircraft Engineers Association:	Mr WL Friend
Counsel for an interested party, the Australian Electoral Commission:	Mr J Heard
An interested party, Mr Paras Parasram:	Self
Solicitor for the applicants:	Bob Whyburn Solicitor
Solicitor for an interested party, the Australian Licenced Aircraft Engineers Association:	Hall Payne Lawyers
Solicitor for an interested party, the Australian Electoral Commission:	Australian Government Solicitor

**IN THE FEDERAL COURT OF AUSTRALIA
NEW SOUTH WALES DISTRICT REGISTRY
FAIR WORK DIVISION**

NSD 578 of 2010

**STEPHEN PURVINAS AND STEPHEN RE, IN THE MATTER
OF AN APPLICATION FOR AN INQUIRY RELATING TO
AN ELECTION FOR OFFICES IN THE AUSTRALIAN
LICENCED AIRCRAFT ENGINEERS ASSOCIATION
Applicant**

**JUDGE: MOORE J
DATE OF ORDER: 29 JUNE 2010
WHERE MADE: SYDNEY**

THE COURT ORDERS THAT:

1. The parties bring in short minutes within 48 hours to give effect to these reasons.

Note: Settlement and entry of orders is dealt with in Order 36 of the Federal Court Rules.
The text of entered orders can be located using Federal Law Search on the Court's website.

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**JUDGE: MOORE J
DATE: 29 JUNE 2010
PLACE: SYDNEY**

REASONS FOR JUDGMENT

Introduction

1 The Australian Licenced Aircraft Engineers Association is a registered organisation of employees. When registered in 1964 its membership was made up only of Licenced Aircraft Maintenance Engineers. In 2001, a sub-rule (22(e)) was added to a rule dealing with eligibility for election to certain offices including the office of Federal Secretary and Trustee. That sub-rule required, as a precondition to election to those offices, that the candidate "must hold qualifications as a Licenced Aircraft Maintenance Engineer". Elections have recently been held for a number of offices including Federal Secretary and Trustee. On 18 May 2010, the Returning Officer rejected the nomination of Mr Purvinas for election to the office of Federal Secretary. He was the incumbent. The Returning Officer also rejected the nomination of Mr Re for election to the office of Trustee. Both individuals had held a licence to exercise the privileges of a Licenced Aircraft Maintenance Engineer but their licences were not current at the time of their nomination. The Returning Officer took the view that because they did not hold a current licence, neither "[held] qualifications" as the sub-rule required and were not eligible to stand in the election.

2 This election inquiry concerns a narrow point of construction. It is whether the requirement that a candidate "hold qualifications" is satisfied only if the candidate holds a current licence. The position of the Returning Officer and the only candidate to successfully

nominate to the position of Federal Secretary (and the holder of the office if Mr Purvinas' challenge fails), Mr Parasram, is that this is the effect of the rule. The position of Mr Purvinas, Mr Re and the Association is that the precondition is satisfied if the candidate has undertaken the necessary training to obtain a licence, at some stage has held a licence but does not hold a licence (but equally if the candidate does) at the time the candidate nominates for election to an office to which the sub- rule applies.

The licensing of Aircraft Maintenance Engineers

3 It is desirable at an early stage in these reasons to explain in a summary way the system for licensing aircraft mechanical engineers. I will use the acronym LAME from time to time to describe a person who holds a licence (in the sense of having a licence which is current and authorises a person to perform and certify maintenance of an aircraft at the requisite standard) unless the context indicates it is being used differently. The *Civil Aviation Regulations 1988* (Cth) is delegated legislation authorised by the *Civil Aviation Act 1988* (Cth). Regulation 31 provides that a qualified person can apply to the Civil Aviation Safety Authority (CASA) for the issue of an aircraft maintenance engineer licence in one or more of several categories (airframes, engines, radio, electrical and instruments). The regulation provides that CASA can issue a licence in the category specified in the application, and must endorse such a licence with the category in which it is issued. It also provides that the licence can at any time, by endorsement, specify limits of the work to which the licence relates. It also prohibits a person carrying out work that exceeds such limits. The regulation contains related provisions and also defines "qualified person" in the following way:

- (4) In this regulation, **qualified person** means a person who:
 - (a) has attained the age of 21 years; and
 - (b) satisfies CASA that he or she possesses such knowledge as CASA requires of:
 - (i) the principles of flight of aircraft;
 - (ii) the assembly, functioning and principles of construction of, and the methods and procedures for the maintenance of, those parts of an aircraft that CASA considers relevant having regard to the licence sought; and
 - (iii) these regulations and the Civil Aviation Orders; and
 - (c) satisfies CASA that he or she has had such practical experience of the duties performed by a holder of the licence sought as CASA requires and directs in Civil Aviation Orders; and
 - (d) satisfies CASA that he or she is not suffering from any disability likely to affect his technical skill or judgment; and

- (da) satisfies CASA that he or she possesses sufficient knowledge of the English language to carry out safely the duties required to be performed by a holder of the licence; and
- (e) has passed such examinations as CASA requires to be passed by an applicant for the licence sought.

4 Regulation 32 authorises CASA to specify in any aircraft maintenance engineer licence the period during which the licence remains in force. In practice it is two years. Regulation 32A provides:

- (1) If a period is specified in an aircraft maintenance engineer licence under regulation 32, the holder of the licence may, before the licence expires, apply to CASA for renewal of the licence.
- (2) An applicant must return the licence to CASA.
- (3) Subject to regulation 32B, CASA may renew the licence by endorsing on the licence the period during which the renewal has effect.

5 Regulation 5 authorises the publication of Civil Aviation Orders (CAOs) which are described in a Licensing Procedures Manual published by CASA as instruments which "specify requirements that are too detailed to include in the [Regulations] - for example, orders listing the group type ratings a licence holder may apply for and orders specifying the requirements of each rating.". Another class of instrument published by CASA is Airworthiness Advisory Circulars (AACs - which appear to have no direct legislative foundation) and are described in the same Manual as documents which "provide guidance to Licensed Aircraft Maintenance Engineers and aircraft maintenance organisations. AAC Part 9 details AME Licensing procedures and examination sitting dates."

6 The Manual deals with the renewal of a licence both before and after it has expired. A person is eligible to renew a licence before it expires if, amongst other things, they have "[e]xercised the privileges of their licences for periods totalling not less than six months in the 24 months immediately preceding the licence expiry date". In certain circumstances, a person who has been engaged in comparable work for the same period in the same time frame is also eligible. If a LAME fails to renew a licence before it expires, then steps can be taken to obtain a new licence. What steps need to be taken depend on whether the licence is sought to be renewed (strictly speaking a renewal involves the issue of a fresh licence) within two years of the expiry of the previous licence. If it is within two years then the person must pass the Airworthiness Administration (AA) examination which might be taken orally or in a written format. If it is beyond two years then that examination is to be taken in the written

format and, additionally, a letter must be sent detailing most recent aircraft maintenance work. The applicants and the Association point out that the Manual, in the context of discussing the renewal of an expired licence, refers to the holder of the expired licence as a LAME. Mr Purvinas' evidence was that this is common in the airline industry. In evidence are the forms used for renewal before or after expiry but it is unnecessary to detail their contents. Also in evidence is AAC Part 9 (referred to earlier) which notes that as the holder of an expired licence has previously been assessed as being a "qualified person" by virtue of previously holding a licence, it can be assumed that he/she is still a "qualified person". This appears to me to be important.

7 It is convenient, at this point, to deal with one submission of the Returning Officer. The definition of "qualified person" set out earlier contains, as one element (par (e)), that the person has passed such examinations as CASA requires to be passed by an applicant for a licence sought. As noted in the preceding paragraph, a person who seeks to renew a licence after it has expired must pass the AA examination. Also as noted in the preceding paragraph, CASA will treat as a "qualified person" a person who has earlier been a "qualified person" and a licence holder even though the licence has expired. There is an apparent tension between the approach of CASA and the definition. Read literally, the definition in the regulation could not be satisfied if it was necessary for a person seeking to renew a licence, to pass an examination and specifically the AA examination. However par (e) of the definition speaks of "such examination as CASA requires to be passed" and I rather apprehend the definition is directed to examinations other than the AA examination. Even if this is wrong the views of CASA as the regulator must be given great weight and even if what is said in AAC Part 9 is, as a matter of strict legal analysis, incorrect nonetheless the regulator treats someone who has held a licence as having a particular status for the purposes of renewal. CASA treats them as a "qualified person".

The composition of the Association

8 When the Association was registered in 1964, its Constitution rule was in the following terms:

3 – Constitution

The Association shall consist of an unlimited number of persons employed or usually employed as engineers licensed to undertake, supervise and certify the maintenance of any one or more of the components, items of equipment, and/or systems (including

associated equipment) in the airframes, engines, electrical systems, radio systems, and/or instrument systems on aircraft operating within the Commonwealth of Australia, its Territories and/or overseas from the Commonwealth of Australia.

Section 132(1)(c) of the *Conciliation and Arbitration Act 1904* (Cth) then provided (as the Act had since 1914) that an Association of employees could include not only employees employed in an industrial pursuit(s) but, additionally, officers of the Association who had been admitted as members whether or not they were engaged in the industrial pursuit(s). The Association did not contain a provision in its Constitution rule for officers to be members. In other contexts, that could have legal significance: see *Re Building Workers Industrial Union of Australia* (1952) 74 CAR 53. Also at the time of registration the rule dealing with resignation and cessation of membership (rule 6) provided that a member could resign by giving three months notice (and paying any outstanding dues) or resign without giving notice if the member accepted employment in industry other than the industry represented by the Association (rule 2 - "... the employment of engineers in the aircraft industry.") Additionally the rule provided for cessation of membership if resignation was effected in accordance with the rule.

9 However the rule also provided (in r 6(2)(c)) that membership would cease if the member was notified in writing by the General Secretary "that he is no longer eligible to be a member of the Association under the conditions of eligibility thereof". It is tolerably clear that this was a qualified purging rule. By that I mean that, under the rules, a member who no longer satisfied the conditions of eligibility could be stripped of their membership (irrespective of the member's wishes) by a notice from the General Secretary. The membership did not cease automatically when the person no longer satisfied the conditions of eligibility. The sub-rule required, as a condition precedent to the membership ceasing, that notice be given. However that condition precedent probably can be described as a procedural formality. The substance of the sub-rule was that membership ceased when a member ceased to be eligible for membership.

10 The rules structured in this way suggested that the Association was intended to be, on registration, an organisation made up of LAMEs and no other membership and, it would follow, that officers of the Association would, like the general membership, also be LAMEs (that is, actually licensed). That the Association was structured this way appears to have been foundational to the decision to approve its registration (a decision made on appeal reversing the decision of the Industrial Registrar to refuse registration). The decision to approve

registration was made by Wright J on 20 February 1964. In his reasons for decision (105 CAR 565), his Honour said at 567 – 568:

The appellant is an association whose constitution authorises it to admit to membership persons employed or usually employed as engineers licensed to undertake, supervise and certify the maintenance of any one or more of the components, items of equipment, and/or systems (including associated equipment) in the airframes, engines, electrical systems, and/or instrument systems on aircraft operating within the Commonwealth of Australia, its Territories and/or overseas from the Commonwealth of Australia. **As appears later I have attached very great importance and significance to the fact that the holding of a licence is a prerequisite to membership of the Association.** (Emphasis added)

And further at 572:

On the question whether the privileges of a licence holder and the responsibilities that go with it indicate a significant distinction between these men and unlicensed engineers I take a view more favourable to the Association than the Registrar apparently did. The need for a licence and the mere possession of one of course cannot of themselves be decisive of the question, otherwise any class of licensed employees, or employers for that matter, would be entitled to separate registration simply on that account; but study of the licensing system, the qualifications for obtaining a licence and the responsibilities carried by a licence holder in exercising its privileges has convinced me that they are factors of substantial industrial significance.

There is, I think, every justification for describing these licensees as *sui generis*; at least they are so within my experience and reading. The Registrar has amply described the licensing system, its machinery, requirements and objective. The point made by the objectors was that a licence holder is not responsible to his employer in respect of the powers bestowed upon him by the licence, but that the licensing system was introduced as a means of requiring persons to observe their obligations to the Department of Civil Aviation and to securing an acknowledgment of responsibility for work performed on aircraft by engineers. This does not appear to me an inapt description of the situation. In its "Guide to Aircraft Maintenance Engineer Examinations" (Publication No. 35) the Department of Civil Aviation states that air worthy requirements are-

"implemented by means of a licensing system whereby aircraft maintenance engineers are authorised by the Director-General to exercise stated privileges and accept responsibilities directly related to this airworthiness. These engineers act on behalf of the Director-General in ensuring that establishment of approved airworthiness standards are continuously maintained during the operation of every aircraft",

and refers to licensed aircraft maintenance engineers as "in fact representative of the Director-General in maintaining the airworthiness of aircraft". It should perhaps be added that they are not employed by the Department but by aircraft operators.

11 The original rule which I earlier described as a qualified purging rule (r 6(2)(c)) is no longer part of the registered rules of the Association. On the material in evidence (which I understand to be the documentation held by what historically has been described as the Australian Industrial Registry concerning all changes to the rules since 1964) it is not clear

when this qualified purging rule was removed. Having regard to this material, the first alteration to r 6 was made in 1967 which appears not to have altered sub-rules (1) or (2). The second alteration of this rule was in 1990 and the documentation set out the pre-existing rule and the altered rule. The 1990 amendment introduced the present form of rule 6. As set out in the documentation, the pre-existing rule did not contain the qualified purging sub-rule which one would have expected unless either the documentation in evidence is incomplete or the Association purported to alter a rule (the form of the rule identified as the pre-existing rule) which had not been earlier approved. The fact that this may have occurred and also its legal significance was not raised at the hearing and it may be the validating provisions of the *Fair Work (Registered Organisations) Act 2009* (Cth) (s 320 in particular) would deal with any irregularity (if there was one) in procedures adopted to effect the 1990 alteration.

12 However what was argued at the hearing was whether the existing r 6 contains, in part, a purging rule. The rule provides:

6 – Resignation and Cessation of Membership

- (1) A member of the Association may resign from membership by written notice addressed and delivered to the Federal Secretary, or addressed and delivered to the officer performing the duties of the Federal Secretary at the Registered Office of the Association.
- (2) **A member ceases to be eligible for membership if he ceases to be employed:**
 - (a) **in or in connection with an industry or industrial pursuit in respect of which the Association has constitutional coverage.**
- (3) A notice of resignation from membership of the Association takes effect:
 - (a) where the member ceases to be eligible to become a member of the Association:
 - (i) on the day on which the notice is received by the Association; or
 - (ii) on the day specified in the notice, which is a day not earlier than the day when the member ceases to be eligible to become a member.whichever is later.
 - (b) in any other cases, a member's notice of resignation shall take effect:
 - (i) at the end of two weeks after the notice is received by the Association;
 - (ii) or on the day specified in the notice;whichever is later.
- (4) Any dues payable but not paid by the former member, in relation to a period before the member's resignation from the Association took effect, may be sued for and recovered in the name of the Association, in a court of competent jurisdiction, as a debt due to the Association.
- (5) A notice delivered to the person mentioned in (1) above shall be taken to have been received by the Association when it was delivered.
- (6) A notice of resignation that has been received by the Association is not invalid because it was not addressed and delivered in accordance with (1) above.

- (7) A resignation from membership is valid even if it is not effected in accordance with this Rule if the member is informed in writing by or on behalf of the Association that his resignation has been accepted. (Emphasis added)

13 The Returning Officer advanced an argument (with quite appropriate and proper qualifications and reservations) that sub-rule (2) might be viewed as a purging rule which brought about a situation where a person who ceased to be eligible for membership also ceased to be a member. For my part, I do not think the rule is intended to operate in this way. It is true that the remainder of the rule (that is, the rule apart from sub-rule (2)) broadly mirrors the legislative provisions concerning resignation from membership and that, in this respect, sub-rule (2) might be viewed as anomalous and serving a different purpose. However it is tolerably clear that sub-rule (2) serves the purpose of identifying, for the effective operation of other parts of the rule, what "ceas(ing) to be eligible for membership" comprehends. The sub-rule is, in substance, definitional.

14 It follows from this analysis that notwithstanding the composition of the Association when it was first registered, it is now the position that if a person ceases to be eligible for membership (by ceasing to be a LAME (that is, licensed) or otherwise being comprehended by the Constitution rule (a matter I discuss shortly in relation to the expansion of the Constitution following a decision under s 118A)) that person may nonetheless remain a member unless they choose to resign.

The nature of the offices

15 In this discussion I focus primarily on the office of General Secretary. When the Association was registered the powers and duties of the General Secretary were specified in rule 25. They were limited. The rule provided:

25. GENERAL SECRETARY

The powers and duties of the General Secretary shall be:-

- (a) To attend zealously to all correspondence and answer such questions that may be asked in accordance with the Rules of the Association and generally act according to the Direction of the Committee of Management.
- (b) To attend all meetings of the Committee of Management and to take minutes of same.
- (c) To keep copies of correspondence signed and dated.
- (d) To keep a Register of the members of the Association arranged according to territories or States and containing the name and postal address of each member and the date upon which each member became a member.
- (e) To prepare and file any of the returns required under the Commonwealth

Conciliation and Arbitration Act.

The time taken to attend to these duties would probably have been limited and certainly would not have required the General Secretary to be a full-time employee of the Association.

16 Currently, the powers and duties of the Federal Secretary are found in rule 27 which provides:

27 – The Powers and Duties of the Federal Secretary

1. The Federal Secretary shall be the Chief Administrative Officer, shall be subject to the direction of the Federal Executive, and shall –
 - (a) Attend all meetings of the Federal Executive and generally act according to the direction of the Federal Executive and the Rules of the Association.
 - (b) Cause to be kept Minutes of all meetings or any business transacted by the Federal Executive.
 - (c) Summon members of the Federal Executive to all meetings thereof. Such summons shall be given personally, or in writing or by facsimile, e-mail or telephone.
 - (d) Be ex-officio a member of, and summon personally or by delegated authority, all meetings of committees appointed by the Federal Executive. Such summons shall be given personally, or in writing, or by facsimile, e-mail or telephone.
 - (e) Cause to be kept a register of all members of the Federal Executive and members of the Association.
 - (f) Control and manage the office and employees of the Association.
 - (g) Have charge of the records of the Association and be responsible for the records, filing and safekeeping thereof.
 - (h) See that the accounts of the Association are kept and presented for audit in accordance with these Rules.
 - (i) See that receipts are made out for moneys received.
 - (j) See that moneys received for and on behalf of the Association are deposited in the Association's name with the Commonwealth Savings Bank or such other bank as may be decided by the Federal Executive, from time to time.
 - (k) Cause to be kept a Petty Cash Account to which such amount shall be advanced as the Federal Executive may determine.
 - (l) Submit to the Federal Executive the financial statements received from the auditors.
 - (m) Have authority to represent the Association before tribunals under the Workplace Relations Act or successor legislation or any other Act.
 - (n) Have authority to represent the Association at negotiations, and/or discussions with Employers and/or their agents and with other Industrial Organisations.
 - (o) Submit a report to meetings of the Federal Executive setting out the activities of the Association since the immediately preceding report, and the financial position of the Association as of that date.
 - (p) In accordance with the Workplace Relations Act or successor legislation submit to the Federal Executive annually a duly audited financial statement and duly setting out the financial dealings of the Association since the immediately preceding report, and the financial position of the

Association as at the date of the report.

- (q) Deliver up all books, papers, or other property belonging to the Association if called upon to do so by the Federal Executive.
2. The Federal Secretary shall, if required by the Federal Executive, enter into a fidelity bond, the premium of which shall be paid by the Association.

The range of duties of the Federal Secretary is now more extensive. In particular the authority (at least if exercised) to represent the Association before industrial tribunals and in negotiations and discussions with employers as well as the control and management of the office and Association employees would be potentially quite time-consuming. The range of duties does not immediately suggest that the office of Federal Secretary is necessarily a part-time office. This rule, with minor irrelevant differences, was introduced by amendments made in 1967.

17 In 1970 the rules were amended to introduce a rule concerning, in part, eligibility to nominate for the office of Federal Secretary. One of the conditions of eligibility was contained in a proviso. It was that the candidate for that particular office was a person who "holds or who has held an Australian Aircraft Maintenance Engineer's licence whether a member of the Association". This appears to me to be significant. Quite unambiguously the Association accepted that the Federal Secretary need not hold a current licence. It was sufficient that the Federal Secretary had at some stage in the past held a licence. It is not clear from the documents in evidence why this change was made. The proviso and therefore the reference to "holds or who has held", was removed by alterations made in 1984. Again it is not clear from the documents in evidence why this change was made.

18 The next event of relevance concerning the rules and the office of Federal Secretary was when alterations were made to the rules in 2001. To understand these alterations it is necessary to refer briefly to a demarcation order made by Munro J in 2001 under what was then s 118A. It appears from documents in evidence that the demarcation order was in favour of the Association and entitled it to represent the industrial interests of a group of employees employed by a particular company (Forstaff Pty Ltd) at Avalon airport in Victoria. Those employees (or some of them) were not LAMEs. As a consequence, the Association sought to modify its rules to accommodate the situation. One issue appeared to be how the expanded membership should be involved in the government of the Association. It is not clear how the s 118A order then operated on the Association's capacity to enrol as members employees of

Forstaff Pty Ltd because the eligibility rules were not amended to include this expanded membership until 2005. However the 2001 alterations allowed the expanded membership employed by Forstaff Pty Ltd to participate in the government of the Association but with significant limitations. One such limitation concerned eligibility to stand for the national offices. This was when sub-rule 22(e), central to these proceedings, was introduced.

19 The following appears in a letter from the then Federal Secretary and Federal President to the Industrial Registrar dated 4 September 2001 seeking the approval for the 2001 alterations and explaining them:

The Australian Licenced Aircraft Engineers association represents members in:

- industrial matters
- legislative and regulatory matters in regard to the Civil Aviation Act
- safety investigation and inquiries
- technical training, competency development and career paths matters
- Government matters

In regard to industrial representation the ALAEA Executive delegates that function to full time employees and employs the appropriately competent people to do so.

In regard to the other headings above the technical competence to perform those functions lies with the Licenced Aircraft Maintenance Engineers who are in fact members who have completed training as an aircraft maintenance engineer (AME) and the further training so as to meet the appropriate technical and legislative competency requirements to be issued with a Licence. On average it takes approximately ten years of aviation industry experience to obtain a Licence.

It is the intent of Rule 22(e) to ensure that the organisation is managed and represented by people with the appropriate competency and aviation industry experience for the job.

The proposed rule is not a condition, obligation or restriction that is oppressive, unreasonable or unjust and complies with s.3(g), s.196 and s.197 (d)(i) of the WRA 1996. **To prescribe a level of competency for an office does not restrict the opportunity for a member as any member of the ALAEA has the opportunity at large to become a Licenced Aircraft Maintenance Engineer should they wish to do the training, be assessed independently and be endorsed by the Civil Aviation Safety Authority.**

All members have the opportunity to nominate an appropriately competent person and/or vote for the appropriately competent person for an executive position.

Our current eligibility Rules '3 – Constitution" restricts membership to "engineers licenced", however in AIRC matter C No.24806 of 1999 PR900044 Munro J. issued s.118A orders that "the ALAEA shall have the right to the exclusion of the AMWU to represent under the Act the industrial interests of employees of Forstaff who perform refurbishment, reconfiguration or heavy maintenance work on aircraft at Avalon Airport in the State of Victoria." Some of those employees are not "Licenced" but are within a structure where there is opportunity for them to progress to obtaining a

Licence and there are always Licenced people on that site who would be eligible for nomination. They all have the opportunity to nominate an appropriately competent person and/or vote for the appropriately competent person for an executive position. (Emphasis added)

20 The duties of Trustee are set out in rule 29. That rule provides that the Association's property and moneys are vested in the two Trustees whose duties are to control and invest the property and moneys subject to direction by the Federal Executive. It is not apparent that these duties would need to be performed full-time.

21 I should briefly mention three other matters. The first is that at least some employers of LAMEs will from time to time allow Association members involved in "work(ing) for the union" to take unpaid leave for that purpose. The second is that apart from Mr Purvinas, some of his predecessors in the office of General or Federal Secretary may have been employed by the Association though the evidence is equivocal as to the terms and duration of this employment. The third is that it has been Mr Re's experience since he commenced working with the Association in 2007 (initially part-time later full-time) of being involved in a range of activities mainly with CASA entailing consideration of technical issues relating to the work of LAMEs.

The construction of the rules

22 A logical starting point in construing sub-rule 22(e) is the language used in the context in which the sub-rule appears. The first thing to be noticed is that the sub-rule speaks of holding "qualifications *as a* Licenced Aircraft Maintenance Engineer". The words "as a" point, in my opinion, to qualifications held by a person who is a Licenced Aircraft Maintenance Engineer rather than qualifications held by a person who might become a Licenced Aircraft Maintenance Engineer. If the rules were directed to qualifications of someone who might become a Licenced Aircraft Maintenance Engineer then words such as "to become" or "to be" would be more appropriate than the words "as a" which suggest qualifications which have actually brought about a situation where the person was a Licenced Aircraft Maintenance Engineer at the time of nomination. However this analysis leads to the more fundamental question of whether the expression "Licenced Aircraft Maintenance Engineer" refers, on the one hand, to someone who is actually licensed or, on the other, someone who has been licensed and might readily become licensed again or, perhaps and more remotely, someone who has reached a point in their career when they could become

licensed for the first time. One feature of the rules of the Association which suggests this expression concerns someone who is actually licensed was that, until the demarcation order was made 2001, the Association was an organisation representing "engineers licenced to undertake" maintenance work. I have little doubt, as discussed earlier, that the Constitution rule was directed to, and only comprehended, engineers who held licences.

23 An aspect of the rules which points the other way arises from the nature of the office of Federal Secretary. The sub-rule operates on certain offices for which people are elected for a four year term (rule 21). If the sub-rule restricts nomination to people who actually hold a licence then, in relation to any office which is full-time (by that I mean a situation where the occupant holds the office but is also employed full-time by the Association) it is almost certain in many instances (having regard to existing legislative and other arrangements concerning licensing) that during the period of incumbency, the occupant of the office will be unable to renew his or her licence. That will flow from the fact that the occupant of the office will not have exercised the privileges of the licence (worked "on the tools" as a LAME) for six months in the two year period preceding the renewal of the licence at least if the time for renewal arises more than 18 months into the term of the office. The occupant will have been engaged full-time as a union official to the exclusion of working as a LAME. This would mean that this hypothetical office holder would be ineligible to nominate for election to the office after the expiry of the first term. This would obviously be an extremely curious and probably unintended result. It would mean that the holders of full-time offices could, in many instances, only occupy the office for one term.

24 However the analysis in the preceding paragraph assumes that the office in question is a full-time office. The rules do not establish any of the offices on which the sub-rule operates as full-time offices. While, as I discussed earlier, the duties of a Federal Secretary could, if exercised in a particular way, point to the office being full-time, it seems to me that exercised another way they may well be capable of being exercised part-time. In particular, that would be so if the Federal Secretary did not exercise the authority to represent the Association before tribunals and in negotiations. Of significance, that appears to have been the context (in the sense of the factual context) in which the 2001 alterations introducing the sub-rule occurred. It might be recalled that in the 4 September 2001 letter arguing in support of the introduction of the sub-rule, the Federal Secretary and Federal President said that in relation

to industrial representation of the Association, the Executive delegated that function to full-time employees and employed the appropriately competent people to do so.

25 It must be accepted that, in relation to Mr Purvinas, a decision was made in 2007 by the Federal Executive that he be employed by the Association full-time to perform the duties of Federal Secretary. It may well be that a point has been reached in the history of the Association that this is desirable. The Federal Executive certainly thought so. Whether it was necessary is an entirely different question. However the fact that Mr Purvinas took up the duties of Federal Secretary full-time cannot dictate a particular construction of the sub-rule. Probably all the possible tension between one construction of the rule and the personal situation of Mr Purvinas indicates is that neither he nor the Federal Executive addressed or adequately addressed the implications of the arrangements being entered into at the time. Rule 22(e) could have been altered to put beyond doubt that Mr Purvinas or any one in his position in the future could nominate again for the office of Federal Secretary. This tension certainly does not bring about a situation where the rule, if construed as it has been by the Returning Officer, is harsh, oppressive or unjust in its operation as the Association has submitted.

26 Another important consideration in determining the proper construction of the sub-rule is the purpose for which it was introduced in 2001. It was intended to limit the class of members occupying certain high offices within the Association. This occurred at a time when the Association was about to commence representing the industrial interests of people engaged in aircraft maintenance at Avalon airport who were not licensed (and fairly obviously never had been) but who might in the future "progress to obtaining a Licence" (to use the language of the 4 September 2001 letter). The sub-rule was intended to draw a distinction between members who had not attained the professional training and skills to work as a LAME (but might in the future) and those who had. On this approach the purpose of the sub-rule was to limit occupation of these high offices to members with that professional training and skill. While actually holding a current licence would be an obvious manifestation of having that professional training and skill, it could equally be manifest by a person having recently held a licence readily capable of being renewed. This construction of the sub-rule accords with the use in the industry and, in particular, in documents published by CASA, of the expression Licensed Aircraft Maintenance Engineer to describe a person who either held a current licence or had held a licence which was readily capable of being

renewed. This construction of the sub-rule is consistent with the earlier acceptance by the Association that the Federal Secretary might be someone who "holds or has held" a licence. There were in evidence working drafts of the alterations which were ultimately submitted for approval in 2001. However the evidence says nothing about when and in what circumstances the drafts were made and formulations abandoned or modified and is really of no assistance.

27 The sub-rule demands that a person nominating for the offices of Federal Secretary and the Trustee (amongst others) must either hold a licence or have held a licence which is readily capable of being renewed. As a matter of fact, that was the position of both Mr Purvinas and Mr Re.

Conclusion and orders

28 It follows from this construction of the sub-rule that the Returning Officer wrongly (though understandably) rejected the nomination of Mr Purvinas and Mr Re. These are irregularities. There should be an election for the office of Federal Secretary though I understand that Mr Re was the only nominee for the position of Trustee. What flows from that is a matter I will consider when considering what orders should be made. More generally, I will hear the parties on what orders should be made and, in particular, what orders should be made about the occupation of the office of Federal Secretary until the results of the election are known.

I certify that the preceding twenty-seven (28) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Moore.

Associate:

Dated: 29 June 2010