

Supplementary Submission 4

14 May 2001

To: the Transport & Industrial Relations Committee
on: the Civil Aviation Amendment Bill No 2

Confidentiality: - some of the attached material should be considered secret evidence, since it identifies individuals

Thank you for your invitation to respond to allegations which may seriously damage my reputation. This is in response to the documents #85A tabled in secret session by Scott & Gorman, on 11 April 2001, and their oral evidence presented in secret session (#85B). On the next page is an index to assist reference to these various items.

Please note that I also have particular concern regarding the way two people have been improperly identified via this process.

- One is that a particular airline pilot has been (perhaps inadvertently) identified via the release of a confidential document in the possession of Dr Callaghan (acting Principal Medical Officer, CAA) in which the pilot's name was blacked out in one instance but left revealed in a second instance. There appears to be no justification for revealing this pilot's name. It so happens that this person's name was probably not obvious to the Secretariat of the Select Committee, so that the public release of the document was made in all innocence. CAA, on the other hand knew better, but erred.
- Secondly, I am appalled that the name of a particular former AMA has been divulged by Dr Callaghan via revealing a document. Since this person is no longer an AMA, the purpose in revealing his identity appears to be self-serving and of dubious safety significance.

I discuss these concerns in the first Item which follows the index.

Yours sincerely



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NOTE 1 - Index: A number of separate and unrelated items were included via submissions #85A & B, and so I will refer to items using numbers in the list below. *I have highlighted those items to be discussed in subsequent pages:*

- 85 a-1 – memo from Dr Griffiths to Dr Dodwell giving exam results;
- 85 a-2 – draft proposal (ID number P14357) from director to minister;
- 85 a-3 – contract of Dr Griffiths (ID number P17432);
- 85 a-4 – letter of 17 February 1997 from Dr Daniels to Dr Dodwell, principal medical officer, and follow-up letter of from Dr Hochberg about the same case;
- 85 a-5 – two ECG tracings from Dr Daniels;
- 85 a-6a – e-mail message from Dr Ewing (28 March 2001);
- 85 a-6b – e-mail message from Dr Dodwell to PMO (31 May 1999);**
- 85 a-7 – two flow diagrams illustrating centralised and devolved systems.

85b – paragraph 19 regarding Dr Ewing;
85b – paragraph 20 regarding Dr Daniels.

NOTE 2: Some of the items above, although they may not appear to affect my own reputation directly, are clearly documents (particularly the first 4) about which I have intimate knowledge from my time as the Principal Medical Officer of CAA. I am very happy to answer questions from the committee about these items, and attach as an appendix some brief comments.

NOTE 3: In the course of his public evidence on 11 April 2001, Professor Gorman rebutted my earlier evidence about not having been allowed by the Scott-Gorman team to present a submission, by saying that I had been sent a letter of invitation. I **attach** a letter I wrote to them on 18 July 2000 which was in response to their invitation.

You will see from this letter that I left the initiative in their hands to contact me, having clearly indicated some important matters about which I was the only person who could help them. I challenge them to provide evidence that they ever responded to this.

1. E-mail from Dr Dodwell to PMO (31 May 1999) - 85 a-6b

You will note that the name of the pilot who suffered the brief psychosis was blacked out at paragraph 3, but appears in paragraph 4, line 4 (the ***** case). Being perhaps an unfamiliar surname, the Committee Secretariat might have thought this was a place name.

- Since the name was known to the person who blacked it out in the paragraph above it, this was an important error by that CAA staff member. Under the requirements of Civil Aviation Rule Part 67.21, the responsibility for confidentiality of medical records rests with the CAA medical officers, and ***ultimate responsibility is therefore that of the Principal Medical Officer of the time (Dr Callaghan).***
- Dr Callaghan also chose not to black out details which serve to identify the AMA whose performance was discussed in the document. In consequence, it is clear that the document refers to Dr Ross Ewing. As noted, I feel that the public disclosure of his identity which has resulted is unnecessary in terms of safety consequences and appears to have been entirely for self-serving reasons
- Although I was the author of the document in question, I wish to emphasise that because of its highly sensitive nature the document was only transmitted by me on a single occasion to the CAA Medical Officers of the time, for their action. I understand that no such action eventuated, and therefore I feel it is quite improper that the document has now been released more widely by the CAA. I wish to disassociate myself from this impropriety.

2. Paragraph 19 regarding Dr Ewing - 85b

'On 29 March 2001, Dodwell responded to this committee's inquiry about his any concern about AMA performance, by first denying, and then agreeing that perhaps he had concerns about one AMA...'

This appears to be typical of the Professors' style, that they misquote material to give it a more sinister appearance.

- In this instance, it should be completely evident to the Committee since they have misquoted evidence given by me to this very Committee (for which an accurate transcript is available).
- If you refer to this transcript you will see that there was no question of me having first denied then agreed to something, since my answer is in a single uninterrupted paragraph.

This is a classic example of repeated instances (in the Scott-Gorman report and testimony) of their failure to check readily available factual material before making pronouncements ***ex cathedra***.

'... at the time he was due to resign as PMO...'

Scott-Gorman have again exaggerated matters for effect. I had actually resigned almost three months previously, and was due to leave CAA in two weeks. This is explained further below.

'... On the basis of his E-mail to the current PMO about Ewing (Enclosure 9), it is clear that the only reason why Dodwell did not sack Ewing was his fear of legal action...'

It is revealing that Scott and Gorman place so much faith on the interpretation of an e-mail message written by me almost a year after I had ceased to be PMO of CAA (to the extent they are willing to say '***it is clear***').

- I would have expected an intelligent reader of this message to have inferred from its final paragraph that the responsibility for deciding whether to 'sack Ewing' rested with the person identified as '***Macka***'. This was **Mr Richard McFarlane (Manager Personnel Licensing, MPEL)**. If Scott and Gorman had checked the necessary files held by CAA they would know that suspension or revocation of an AMA's appointment must go through a process (in order to satisfy the requirements of *natural justice*, a concept with which they should now be becoming increasingly familiar).
- The facts are as follows, and can be readily checked by reference to the personal file of Dr Ewing (held by CAA). Two weeks before I left CAA I was advised of a serious problem which implied disobedience on the part of Dr Ewing. At that stage the evidence was not fully available. I wrote to Dr Ewing inviting an explanation, and *made a clear recommendation to McFarlane that the process should continue*. Just before I left CAA Dr Ewing had responded in an understandably upset manner, offering legal action against the CAA. Since I was leaving, and had merely initiated action on behalf of

CAA, I had no reason whatsoever to fear such legal action and *was not in a position in any case to bow to alleged threats*. That role appears to have been taken by Mr Richard Macfarlane. Further details about Mr McFarlane's role appear in the next item, No 3.

As should be clear from my e-mail (which CAA have rashly revealed), any faintheartedness was on the part of Mr McFarlane. This then appears to have led to a more serious problem arising in August 1998.

Moreover Mr McFarlane appeared to have still not taken action at the point in April 1999 when Dr Tony Hochberg referred the ***** case to me as a private contractor for advice. I advised that this airline pilot should be immediately grounded and I recommended further investigations because of the apparent seriousness of the illness which had occurred only one month prior to his last medical certification. This was initiated by Dr Hochberg.

- The whole reason for my then writing this e-mail to Dr Callaghan was my concern that she might otherwise be unaware of the inaction by her immediate superior and so **might inherit an unsafe system unwittingly**.
- It should also be clear to the Committee from the tone and content of this e-mail message that I was concerned about the **health** of Dr Ewing, not about whether he was a **criminal**. I believe it is reasonably public knowledge that Dr Ewing had suffered a stroke a year or two previously. My concern was that he might have returned to work somewhat prematurely and as a result might be not completely fit in terms of his thought processes. Such effects can be subtle, and so it had taken me some time to accumulate increasingly disquieting evidence. Once this evidence became sufficient to have clear safety relevance, I did not shrink from taking action. *It is those to whom I entrusted the CAA Medical Unit's management, on my departure, whom Scott and Gorman should be accusing. It says something about their lack of objectivity that they do otherwise.*

The committee should also bear in mind that recovery from a stroke is a slow and progressive process. Provided no further strokes were to occur, it was quite on the cards Dr Ewing would eventually be fit once more. For this reason, I am shocked that CAA has chosen to release this document now (containing sensitive medical commentary about Dr Ewing) when its value may already be time-expired, and when CAA had already decided to take no action during 1998-1999.

'... Note the ongoing use of AMSANZ (Griffith and Dodwell) of Ewing as an auditor and author, which does raise the question of whether Ewing is being set up here as a potential 'fall guy'...'

This final comment reads more like a passage from a cheap crime thriller than serious comment from an academic of any standing. It has no basis in reality, and I will not dignify it by any further response. Other interpretations might be considered for the term "*fall guy*", since it was not I who revealed this material about Ewing.

3. Paragraph 20 regarding Dr Daniels - 85b

‘... We also know that Dodwell discussed his concern and desire to sack Daniels, as well as Ewing, with both Faris and Griffiths during his tenure as PMO...’

This is fiction. Since it was certainly not obtained from Griffiths, it can only have come from **Dr John Faris** *[who appears to be suffering a severe credibility problem currently. I remind you of my submission No 2 dated 12 April 2001 regarding a document which Dr Faris selectively released to the committee on 11 April as part of his testimony. We should discuss this further during oral questions on 16 May].*

During my tenure as PMO I discussed no such concerns with Dr Faris about either of these doctors. It would have been improper, since Dr Faris had no connection with the CAA at that time.

- Regarding Dr Ewing, it can be seen from the above that I did not become seriously concerned about Dr Ewing until the time I left CAA.

I do recall on one *later* occasion, in 1999 or perhaps early 2000, mentioning (in general terms) to Dr Faris perhaps as part of AMSANZ committee discussion some concerns about an AMA (*whose identity I did not reveal*) who had made a faulty decision the previous year. Dr Faris speculated as to who that might be, and I declined to comment on his speculation. It is possible that he made inferences of his own from this conversation, and has now become confused as to when the conversation occurred and what it was that was really said. I remember it well, because I have always been impeccable in my behaviour about such matters.

- Regarding Dr Daniels, I can think of no conversation, remotely related to the competence or otherwise of Dr Daniels, on which Dr Faris could have based such a grossly inaccurate comment. I did not at any stage during my tenure as PMO consider his suspension, and found him in general to be very competent.

‘... Given Ewing’s profile and Daniels throughput, why weren’t these concerns declared previously or to you?...’

- It should be evident from the above testimony that this question is irrelevant in the case of Dr Daniels.
- My concerns about Dr Ewing were declared to my immediate superior within CAA promptly and at the appropriate time. *Indeed, I took my professional responsibilities sufficiently seriously that I renewed that notification to my successor (Dr Callaghan) at the earliest opportunity. The e-mail is clear evidence of that, as is my testimony to this committee recorded on 11 April 2001. The inferences drawn by Scott and Gorman are not rational and further damage their own credibility.*
- It may also interest the committee to know that I never had any response from Dr Callaghan to acknowledge my notification or indicate that any action was taken by her. Until a few weeks ago my relationship with Dr Ewing remained cool, and I had no way of knowing whether any action had been taken by CAA at all in the case of Dr Ewing. I am happy to say that the astonishing and unprofessional behaviour of the CAA and those

associated with the Scott Gorman report has had one excellent effect. It has led Dr Ewing and me to mend some fences in the last few weeks. This is the way professionals should behave. He has informed me that it was his decision to retire which led to his no longer being an AMA. *This confirmed the inaction of CAA.*

‘... It is clear that the problem with AMA performance is long-standing and that the current conflict is not a product of the current CAA medical division...’

My evidence above shows that this conclusion is as tenuous as numerous others made by Scott and Gorman. Contrariwise, in tabling this document they have assisted the Committee in confirming earlier allegations about recent CAA performance (or lack of it).

- **Mr Richard McFarlane (MPEL)** stands revealed, by their release of this document, as the public official who should be the object of their accusations. Further, the failure of Richard Macfarlane to take prompt action in July/August 1998 in response to my advice shows that it is not only doctor-patient relationships which can at times become unduly or improperly close:

I recall very clearly that in the week before I left CAA Richard Macfarlane had a meeting with Dr Ewing with no witness present. I commented on the impropriety of this meeting in view of the problems under investigation since the previous week, and Mr Macfarlane assured me that the meeting had nothing to do with Dr Ewing's performance.

Nevertheless, in the circumstances I felt it was quite inappropriate for this to have been an unwitnessed meeting. It may be of significance therefore that no further inquiry by CAA Personnel Licensing Unit appears to have occurred regarding Dr Ewing's behaviour.

In pointing this out, I make no allegations or inferences regarding this meeting. I merely point it out as an example of a situation having considerable parallels with the comments by Scott and Gorman regarding doctor-patient relationships, including unfounded innuendoes (in the report) which were subsequently followed up by allegations in oral evidence (and subsequently published in newspaper reports), on whether these relationships were *'corrupt'*.

- It is foolish of Scott and Gorman to imply that the question of **undue influence** being brought on an AMA can be resolved by centralising the AMA function to CAA. Undue influence is not a situation foreign to the CAA, as evidenced by a copy of a letter which I had reason to write as PMO firmly warning a particular airline's operations department against having direct contact with the Medical Unit and attempting undue influence regarding the conduct of a medical assessment within CAA.
- The important issue is not whether such influence is attempted, but how one reacts to it. Paternalistic reactions such as that of Scott and Gorman (legislating the problem *'out of existence'*) will not solve the problem but merely shift its focus... *if indeed it exists, which they have not yet demonstrated.*

- The proper response many months ago, if they truly believed there was evidence of corruption on the part of an AMA, would have been first and foremost to refer the matter to the Medical Council **so that the truth of the matter could be validated**. It is extraordinary that they have sat on this *alleged* evidence for so many months without taking action to validate the information. Such delay brings their motives and professionalism into question.

No weight can be put on these allegations until the Medical Council reaches a decision on the competence of doctors referred to it for this purpose.

4. Scott-Gorman Report p19-21 on AMA Examinations

I remind you of the most serious example of false allegations made by Scott and Gorman against myself. This was raised by me in my first submission presented **on 29 March 2001**. It related to Scott and Gorman making allegations about the conduct of AMA exams, having failed to check their facts.

- It should not have escaped the Committee that Scott and Gorman have failed to respond to that point. Appearing once more on 11 April 2001 to respond to what they seemed to term '*personal attacks*' they made no response whatsoever in defence of that allegation.
- This appears to be another tactic, that when they fail to bring home one point they will drop it in favour of a diversionary move to a completely different point. That is an unsatisfactory and unscientific way to debate a point, and is inappropriate behaviour for a professor of an academic institution.



Dr Peter Dodwell

85 a-1 – memo from Dr Griffiths to Dr Dodwell giving exam results;

I do not propose to respond to this particular document in detail. I do not have a transcript of the oral evidence relating to it, and I understand that this was correctly aimed at Dr Griffiths (since the AMA examination which was conducted in 1997 was not conducted by myself but by Dr Griffiths, assisted by Dr Hochberg).

- It should be stated however, that the decision to have Dr Griffiths conduct this was not mine but was imposed on me by my manager **Mr Steve Douglas** after I had advised him that I did not have the necessary resources to conduct the examination myself.

I had advised the two doctors who were candidates for the 1997 examination that an examination would not be conducted that year, and had refunded their application fee. They had subsequently objected about this to Mr Douglas, who was persuaded that an examination should proceed.

- While it may be that the result was a happy outcome for the doctors concerned, it is my view that Mr Douglas buckled inappropriately under external pressure (in circumstances of having been told there were inadequate resources). This had the potential to compromise the exam, or to compromise the resources of the medical unit. Since I took no active role in the examination, I am not in a position to comment directly on it, other than to state that I had complete confidence in Dr Griffiths conducting it, in view of his past experience.

85 a-2 – draft proposal (ID number P14357) from director to minister;

This submission perhaps does not directly affect my reputation, since apparently the comments relating to it were directed at Dr Griffiths.

- However, I will point out that it is peculiar for a **draft document** to be presented as evidence in support of allegations. Drafts have a habit of changing, sometimes quite drastically, before they are sent. The Committee is surely owed the courtesy of a final document as evidence from the CAA.