

REPUBLIC OF SOUTH AFRICA



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NO: 2025-109584

1. REPORTABLE: NO
2. OF INTEREST TO OTHER JUDGES: NO
3. REVISED

DATE: 10 OCTOBER 2025

SIGNATURE OF JUDGE:



In the matter between:

**COMMERCIAL AVIATION ASSOCIATION OF
SOUTH AFRICA NPC**

1st Applicant

AVIATION WATCH ACTION COMMITTEE

2nd Applicant

AERO CLUB OF SOUTH AFRICA NPC

3rd Applicant

**CAPE TOWN INTERNATIONAL AVIATION
ACADEMY NPC**

4th Applicant

and

THE DIRECTOR OF CIVIL AVIATION

1st Respondent

**THE SOUTH AFRICAN CIVIL AVIATION
AUTHORITY**

2nd Respondent

THE MINISTER OF TRANSPORT

3rd Respondent

JUDGMENT

VAN DEN BOGERT, AJ

- [1] The central issue in this application is whether the interdictory relief that the applicants seek, trespasses upon the terrain of the executive. The determination is whether this court can grant an interim interdict restraining executive power without an underlying legality review or constitutional challenge against the exercise of that power.
- [2] The first applicant is the Commercial Aviation Association of Southern Africa NPC (herein "**CAASA**"), a non-profit organisation formed in 1944, which promotes and protects the commercial interest of the general aviation industry in South Africa. The second applicant is Aviation Watch Action Committee (herein "**AWAC**"). It is a voluntary association situated at the Cape Town International Airport. The third applicant is Aero Club of South Africa NPC. It is also a non-profit company. The fourth applicant is the Cape Town International Aviation Academy NPC, another non-profit company.
- [3] It is undisputed that the applicants represent a wide variety of operators in the commercial civil aviation industry. The applicants' application is instituted by and on behalf of the owners and operators of aircraft who are categorised as private operators, commercial operators, aerial work operators, air ambulance operators, aviation training operators, and parachuting operators. There is no dispute about the standing of the applicants to act for and on behalf of that part of the general aviation sector of the aviation industry.

- [4] The first respondent is the Director of Civil Aviation (herein the "**DCA**"). The director is appointed in terms of section 85 of the Civil Aviation Act, 13 of 2009 (herein "**the CA act**"). The present incumbent is Mrs Poppy Khoza. She is the head of the Civil Aviation Authority's administration and manages the Civil Aviation Authority (herein "**the CAA**") in terms of the provisions of section 86 of the CA act. I shall revert hereinafter to her statutory powers.
- [5] The second respondent is the South African Civil Aviation Authority (herein "**SACAA**"). It is established in terms of section 71 of the CA act. It is a schedule 3A public entity in terms of the Public Finance Management Act, 1 of 1999. The third respondent is the Minister of Transport cited in her capacity as the head of the Department of Transport. The relief sought by the applicants is mostly aimed at a decision made by the DCA after it was considered by subcommittees of the SACAA.
- [6] Although the applicants made a fundamental turnabout in the replying affidavit about the relief that they seek from this court, during argument at the hearing before me, the amendment proposed and delivered, together with the replying affidavit, was by concession abandoned. I heard argument on the introduction of the amendment at the commencement of the hearing of this case but reserved my ruling in that respect. During argument in reply, the applicants by concession decided not to persist with the proposed amendment.
- [7] Considering the concession that the amendment is not persisted with, the interlocutory application for the amendment is dismissed with costs.
- [8] This application was launched as an urgent application on 9 July 2025. Due to the voluminous nature of the application, the parties approached the Acting Deputy Judge President, and the case was allocated to me as a

special motion in the third court. At the hearing I enquired whether the question of urgency remained an issue. Having been informed that it was, I heard argument on urgency and ruled in favour of the applicants that I regarded the application to be sufficiently urgent to be heard as such.

[9] The relief sought by the applicants in the main is this:

"2 *Interdicting and restraining the respondents from implementing the provisions of South African Civil Aviation Technical Standard (SA-CATS) 2/2025.*

3 *Ordering the first respondent and the second respondent to, with immediate effect, reimplement:*

3.1 *Aeronautical Information Circular (AIC) 18.19; and*

3.2 *Part 43 together with SA-CATS 43.02.5 and SA-CATS 43.02.8, as they were prior to their amendment by SA-CATS 2/2025 on 19 June 2025.*

4 *Directing the applicants to, within 30 (thirty) days of this order, make application to the first respondent in terms of Part 11.04.6 of the Civil Aviation Regulations, 2011 (CAR) for the recognition of alternative means of compliance with the provisions of Part 43 of the CARs and its related technical standards.*

5 *Directing the applicants to, within 30 (thirty) days of this order, submit to the Civil Aviation Regulations Committee ("CARCom") of the second respondent a proposal in terms of Parts 11.03.1 (1) and*

(2) of the CARs on the amendment or withdrawal of Part 43 and the technical standards.

- 6 *Ordering that the orders in 2, 3, 4, and 5 above will operate as an interim interdict pending the final outcome of the said applications to be made by the Applicants in terms of part 11.04.06 and/or Parts 11.03.1 (1) and (2) of the CARs...."*

[10] It is necessary to deal to some extent with the Aeronautical Information Circular 18/19 (herein "**AIC 18.19**"). The applicants tell that they struggled to obtain a copy of it, because it is not freely available on the website of the CAA anymore. It is however attached to the replying affidavit. The AIC 18.19 provides a general exemption from a recommended 12-year engine overall requirement, which was laid down in Part 43 of the then Civil Aviation Regulations. This exemption is granted to aircraft that are fitted with Textron Lycoming and Teledyne Continental Reciprocating aircraft engines. In essence the exemption means that aircraft with these engines, which have not reached a certain number of flying hours, do not have to be overhauled every twelve years. The exemption provides alternative maintenance requirements for engines twelve years and older. It stipulates:

"5.1 These requirements will be applicable to Textron Lycoming and Teledyne Continental reciprocating aircraft engines that have reached a 12 year calendar cycle, but not exceeded the hourly limitation imposed, and shall be carried out to ensure continued compliance with the airworthiness standards for the engine:

- (a) All such engines, which have not been overhauled for the past 12 years or more, or upon reaching the 12 year calendar life period, shall be inspected and all AMO's shall record this in the relevant logbook. This entry will state that all Inspections*

for Continuous Airworthiness (ICA) requirements (Certification Requirements and AD's) have been complied with.

- (b) The engine must be inspected for defects and blow-by and a boroscope inspection carried out on all cylinders. The blow-by and boroscope inspection must be within acceptable limits and certified as such in the applicable logbook. The engine must conform with all relevant Airworthiness Directives.*
- (c) All fuel carrying lines and oil leaks must be investigated and rectified where necessary. Seals and hoses requiring replacement are to be replaced.*
- (d) Engine mounted components and accessories requiring overhaul at the same hourly or calendar intervals as the engine, shall be overhauled at the same time as the engine, unless otherwise specified by the component or accessory manufacturer whichever is the shortest period.*
- (e) The Commissioner for Civil Aviation reserves the right to review this policy and these conditions on the basis of new AD's which the manufacturing state may issue in relation to the continuing airworthiness requirements of these engines or a significant safety case based upon recorded aviation safety data involving these engines."*

[11] The Commissioner of Civil Aviation is the predecessor of the DCA. Clause 6 of the AIC18.19 stipulates that the exemption will remain in force until withdrawn. Considering the quoted clause 5.1(e) above, the argument that the DCA has the authority to simply withdraw it without following proper

procedure seems untenable. Not much, however, turns on this point, since no review has been launched or is envisaged to be launched against the withdrawal of AIC 18.19.

[12] What is further undisputed on the papers is this. Absent the general exemption, a substantive number of aircraft became grounded. This is because without the exemption they lose their airworthiness, and should they fly, they are uninsured. It is not apparent from the papers what the exact number of aircraft is that fly under the general AIC exemption, but it seems to exceed at least 1,400 affected planes. I revert hereinafter to the uncontested impact that the withdrawal of AIC 18.19 had on the industry.

[13] The general exemption AIC 18.19 was granted or issued in the year 2001. It was reinstated in the year 2006, and it was operative until November 2023. Thereafter a similar exemption was granted and extended by the DCA for two subsequent periods of 180 days (6 months) each. In November 2024, the DCA, absent her powers to further extend the exemption, issued a general exemption to the industry that was arguably intended to simulate the previous exemptions. I shall revert to this in some more detail hereinafter.

[14] The upshot of this is that for approximately 25 years, the aircraft with the specified engines were not subject to the costly exercise of overhauling engines every twelve years. This changed when on 19 June 2025, the DCA approved the amendment and issued SA-CATS 2/2025. The promulgation of these new civil aviation technical standards brought an end to the general exemption. It is undisputed that this has a severe immediate prejudicial impact on the general aviation industry.

[15] In this regard, I list some of the impacts it had on the industry:

- 15.1. aerial firefighting organisations cannot operate without the necessary spotter aircraft required to conduct a safe operation.
- 15.2. aviation training organisations that use aircraft with the impugned engines are grounded and cannot generate an income. This has the consequence that flight students who attend such organisations are unable to complete their flight training with some of them having only a few hours left to receive their private pilot's licence.
- 15.3. the fourth applicant is such a training organisation. It offers financial assistance to students in development training and its transformation efforts uplifting students in development training, are severely impacted. CTIAA, the fourth respondent, has since the issuing of the new CATs 2/2025 only 27 students left of its almost 100 students who did their flying training with the fourth respondent.
- 15.4. with smaller aircraft the cost of overhauling an engine is in the region of R800,000.00 to R1 million per engine, but some fixed-wing aircraft have two engines, doubling those costs. On a more complex and larger horsepower engine, the cost of overhauling could range more than R2 million per engine. Should such an aircraft have two engines, the cost exceeds R4 million per overhaul.
- 15.5. some of the aircraft that operate commercially cannot be replaced, because the cost of an overhaul exceeds or approximates the market value of the aircraft.

- 15.6. the result is that numerous commercial operators and training organisations must cease operations and close their businesses. This is so, because it becomes uneconomical to continue operating if one calculates the cost of an overhaul into the operating costs.
- 15.7. the impact affects aircraft that are used for many aerial services, which include the rendering of charter flights for the transportation of passengers and goods to and from destinations within the country and outside, training flights, ambulance services, firefighter operations and crops spraying in the agricultural sector.
- 15.8. the industry's biggest and most immediate concern is the fact that all the affected aircraft used in general aviation became immediately uninsured because they do not meet the requirements for a certificate of airworthiness anymore and lack authority to fly.
- 15.9. as such, the changes that were made by the DCA and the SACAA has devastating consequences on the general aviation and the aviation industry resulting in, at least, some 1 400 aircraft being rendered technically unairworthy, illegal to fly and not covered by an insurance policy.
- 15.10. it is not only those who work in the aviation sector that are affected but also support services personnel working in commercial operations that involve the use of aircraft. Examples of these are the larger tourism industry, which involves hundreds of thousands of jobs, as well as security patrols, game catching and darting, crop spraying (in the agricultural aviation), air ambulance services, aerial firefighting, flight training and the transportation of high value assets such as cash, diamonds or gold.

- 15.11. the impact is not only felt within the borders of South Africa, but also in many other African countries beyond our borders because throughout Sub-Saharan Africa aircraft are commonly registered with a ZS registration. This is a South African registration, which means that the aircraft is maintained in accordance with South African maintenance standards. These aircraft are also now unairworthy by default.
- 15.12. because of the DCA's decision to withdraw AIC18-19, and the subsequent exemptions, without making provision for an alternative, the additional maintenance cost that must now be incurred on an aircraft has resulted that such an aircraft loses a significant percentage of its value. Examples are a Cessna C182 that previously retailed at \$190,000 is devalued and now retails at \$147,000. A Cirrus that previously retailed at \$470,000, now retails at \$387,000, and a Seneca B that retailed at \$205,000 is devalued and retails at \$129,000.
- 15.13. the decision has the consequence that it takes aircraft out of the commerce for periods of up to 5 years, because:
- 15.13.1. one could buy a new engine from the manufacturer and add approximately 30% to the engine overhaul price. The lead time on a Lycoming engine is 31 months and on a Continental engine 18 months, or
- 15.13.2. buy a factory remanufactured engine and add 20% to the overhaul price. The same lead times apply, or

15.13.3. have the engine overhauled by a local engine overhaul facility. Due to the number of engines that need to be overhauled simultaneously because of the new technical standards and with only five engine overhaul facilities in South Africa, there could be a lead time of up to five years.

- [16] The above is not an exhaustive list. It demonstrates, however, the severe prejudicial consequences the first respondent's decision had on the general aviation industry. One would have hoped that, given the conceded disastrous effect, the applicants and the respondents would have worked together to find an urgent resolve to this impasse. That would have obviated the need for litigation. I say more about this later in this judgment.
- [17] The Civil Aviation Regulations, 2011 are published under general notice R425 in the Government Gazette of 1 June 2012 (herein "*the regulations*" or "*CARcoms*"). The regulations are divided and the different section in the regulations are called "*Parts*". Part 43 of the regulations deals with the general maintenance rules applicable to aircraft.
- [18] Parallel to Part 43 of the regulations one finds the technical standards that apply to the maintenance of aircraft. The technical standards are called SA-CATS 43, referring to South African Civil Aviation Technical Standards 43. This means that Part 43 of the regulations must be read with Part 43 of the technical standards (i.e., SA-CATS 43).
- [19] Part 43.02.5(3) of SA-CATS43 set out the previous "*overhaul, repair and substitution of major components*" engine maintenance programme. It stipulates that the overhaul of all components and items of equipment installed on aircraft must be executed at such times as is recommended by the manufacturer. This requires in respect of the impacted engines an

overhaul every 12 year and it does not matter whether it had flown only a low number of hours. The need of a costly overhaul was however ameliorated by a general industry exemption AIC18.19.

[20] Paragraph 5.1 thereof has been quoted hereinabove. It provided for an alternative means of compliance obviating the need to overhaul engines every 12 years. SA-CATS 2/2025, which was published by the DCA on 19 June 2025, fails to provide such an alternative means of compliance to replace the withdrawn AIC18.19. It also brought an end to the general exemption that was operative since December 2024.

[21] I provide some of the facts that led to the publication of the new technical standards in June 2025. On 2 November 2023, without any public participation process having been followed by the DCA or SACAA, the DCA withdrew AIC18.19 by greying out the entry on the AIC18.2 checklist and annotating it as withdrawn. This happened without consultation or participation by the general aviation sector. The industry realised this on 12 November 2023 and took it up with SACAA. It is unnecessary to set out the detail about what transpired then.

[22] On 1 December 2023, the DCA issued a general notice relating to AIC18.19. It stipulates and I quote:

“This General Notice serves to confirm that, after a thorough review of all AIC’s issued and published on the SACAA website, in November 2023, AIC18.19 has been withdrawn. AIC18.19 was initially issued in 2001 and reissued in 2006. After internal analysis of the AIC content, it became clear that the AIC is outdated as it still referred to the repealed Civil Aviation Regulations (CAR) of 1977. The 1977 regulations were repealed in 2011.

In order to close the gap created by the withdrawal of AIC18.19, the SACAA will be issuing a general exemption for a period of 180 days which is aligned to the current Regulations.

Upon expiry of this general exemptions, aircraft owners or operators are required to comply with CAR43.02.5 of 2011 and its associated Civil aviation technical standards...”

- [23] Together with the above notice a further notice styled “*Decision in Respect of a General Exemption*” was issued by the DCA. The industry was granted a 180-day exemption. The exemption applies to aircraft with Textron Lycoming and Teledyne Continental engines (herein “*the impacted engines*”). The content of the exemption mimics the then withdrawn AIC18.19.
- [24] In both notices the industry is forewarned that upon the expiry of the new general exemption compliance with the civil aviation regulation 43.02.5 of 2011 will become mandatory. Seemingly, this constitutes a notification to the general aviation industry that it has a small window period whereafter the regulations, absent another or new exemption, would become applicable.
- [25] On 29 May 2024, the same exemption was extended for another period of 180 days by means of another notice of general exemption issued by the DCA. These exemptions are issued by the DCA in terms of the CARcoms. In terms of Part 11.04.4, the DCA may grant an exemption which may not exceed 180 days. In terms of Part 11.04.5, there may be an extension to the exemption, which may not exceed 180 days. The upshot is that an exemption may be given for a total number of 360 days and nothing more.

- [26] Because the DCA could not extent the exemption any further, she, on 26 November 2024 issued a document with the name "*General Notice relating to CAR 43.02.8 and CATS 43.02.5*". As indicated CAR refers to the Civil Aviation Regulations and CATS refers to Civil Aviation Technical Standards. The document would apply to all owners and operators, or aircraft fitted with the impacted engines.
- [27] In the notice, the DCA reiterates that AIC18.19 had been withdrawn because it was outdated. It is then alleged that the AIC granted industry exemption contrary to current regulatory framework and without an impact assessment of the safety risk posed to the industry, the SACAA and the public at large. If one considers the content of AIC18.19, this seems not to be correct. The notice itself confirms that the safety risk was assessed. I shall revert to this. The DCA then reiterates that there was an exemption which was extended for two periods of 180 days. The 25 November 2024 general notice stipulates and I quote:

"While the CARCOM process for the amendment of the current regulation and technical standards amendment proposals unfolds and in order to ensure civil aviation safety without overburdening operators or owners of the affected engines, the Director wishes to give waiver to the strict compliance by the industry with the current provisions of CAR 43.02.8 read together with CATS 43.02.5 as follows: conditions:

- 2.1 *Not all Service Bulletins (SB) are considered to be mandatory, owners and operators must comply with manufacturers maintenance requirements and must consider all SB, Service Instructions (SI) or Service Letters (SL) and implement them in line with the document's applicability. An SB is mandatory when it relates to an Airworthiness Directive,*

Airworthiness Limitation Section of aircraft TCDS, as approved by the Director or the State having responsibility over the manufacturer who issued the SB.

2.2 *Similarly, the overall consideration of Textron Lycoming or Teledyne continental reciprocating aircraft engines, including maintenance methods, techniques and inspection, must be done in line with the engines manufacture requirements as detailed in the maintenance manual or any other continuing airworthiness information (SB, SI or SL) that maybe issued by manufacturers from time to time.*

2.3 *All other provisions of CAR 43.02.8 and CATS 43.02.5, to the extent that there is no relief granted in terms of this General Notice, remains applicable.”*

[28] This notice is not an example of clarity, but the fact that all service bulletins are not regarded as mandatory, was seemingly allowed to provide some reprieve. At best it seems to be some explanatory note as to how the existing regulations and technical standards may be interpreted.

[29] The document concludes with the warning that the general notice will be effective from the date of its approval until the proposed amendments to CAR 43.02.8 and CATS 43.02.5 are approved. As indicated the amendment to SA-CATS 43 was approved by SA-CATS 2-2025 in June 2025. That therefore brought an end to the general notice of 25 November 2024, and any or all previous exemptions granted in respect of the impacted engines.

- [30] The fact that the 25 November 2025 notice created more confusion than solutions, is demonstrated by an insurance claim that was subsequently rejected because of it. An aircraft of CTIAA, the fourth applicant, was involved in an accident on 14 December 2024. This is after the 25 November 2025 notice was effective. The aircraft is fitted with a Lycoming engine. It was last overhauled 18 ½ years ago, but the engine duly underwent maintenance in accordance with AIC18.19.
- [31] The aircraft is insured by Santam Aviation. The loss was reported to Santam. Santam rejected the claim, stating that the aircraft was not airworthy. This Santam claims was because the engine was not strictly overhauled in accordance with Part 43 of the technical standards. It demonstrates that the insurance industry is well aware of the developments in the aviation industry with the resultant exploitation of the uncertainty that the November 2024 notice brought.
- [32] The fourth applicant alerted the respondents of this. The difficulty that the unclear notice brought was highlighted. A Mr Mafahla of SACAA responded on 8 January and said *inter alia* the following:

“This waiver was introduced precisely to prevent undue hardship on operators and owners of affected engines while maintaining civil aviation safety. Therefore, your reliance on this notice to support your operations during this period is valid.

Given the implication of SANTAM's position, I would recommend presenting a copy of the General Notice along with a formal statement referencing Regulation 11.01.3 to reinforce that the waiver was legitimately issued by the Director and is binding until further regulatory amendments are finalised....”

- [33] The rejection of the insurance claim demonstrates that absent the November 2025 notice, and with the introduction of SA-CATS 2/25 all aircraft with impacted engines became immediately uninsured and uninsurable.
- [34] I proceed to deal with the consultation process that was followed by the Civil Aviation Regulations Committee (herein "CARCom") to amend part 43 of the technical standards. I do this since much of the applicants' case turns on the fact that they claim to have held the belief or reasonable expectation that with the promulgation of new regulations or technical standards, the respondents would also approve a general "alternative method of compliance" or "AMOC" for the impacted engines. The applicants tell the court that they had a reasonable expectation that this would occur.
- [35] The Civil Aviation Regulation Committee's (CARCom) members consist not only of representatives or employees of the respondents, but a wide range of members from the general aviation industry. This includes, for example, members of the applicants such as Mr Kevin Storie and Mr R Garbett of the first applicant. The minutes of the CARCom meetings demonstrate that many observers of the general aviation industry attended CARCom meetings and were presumably allowed to observe the participation in the compiling of new regulations and safety standards. It is therefore to be accepted that the promulgation of new technical standards should have been a concerted effort of the general aviation industry, its experts and the respondents with their experts.
- [36] In terms of section 155(1) of the CA act, the Minister may make regulations regarding *inter alia* the powers or the duties of the DCA, which includes the amendment or the withdrawal of technical standards for civil aviation and the determination of the matters in respect of which such standards may be

issued. Section 91 of the CA act stipulates that the director must, in the performance of her/his functions and responsibilities, endeavour to consult with relevant persons, bodies and organisations engaged in civil aviation to attain the objects of section 72, which in return are to control and regulate civil aviation safety and security, overseeing the functioning and development of the civil aviation industry and the development of any regulations required in terms of the Act, to mention a few.

- [37] Against this backdrop I accept that CARCom allows for consultation with the general aviation industry, being a recommended step prior to the issuing of new regulations and/or technical standards. The respondents claim that there was proper consultation prior to the issuing of SA-CATS 2/25. The applicants say that this was not the case because their proposals and/or suggestions were firstly not recorded in the minutes of CARcom meetings and were overall ignored.
- [38] At a CARCom meeting of 22 March 2024, the respondents proposed to incorporate the original engine manufacturers' service bulletins into SA-CATS 43.02.8 without having them published as airworthiness directives first. This would entail that the industry would become subject to recommendations of original engine manufacturers. Those representing the industry raised objections to that at the CARCom meeting and indicated that compliance with service bulletins, service letters and service instructions will only become mandatory when linked to an airworthiness directive.
- [39] On 14 April 2024, a member of the applicant, Mr Andrew Bam, directed an email to the second respondent stipulated frustrations experienced by their members during the CARCom process and telling SACAA that they are losing faith in the process. It was mentioned that the second respondent's inability to provide accurate minutes of meetings causes difficulties and that

there has not been a written commitment forthcoming that some 1200 aircraft affected will be able to continue operating with new regulations or technical standards.

- [40] To that the second respondent answered on 15 April 2024, stating *inter alia* that if the industry wanted an exemption they had to follow part 11 of the regulation; that there was no resolution that SACAA had to communicate anything to the industry; that recordings are for minute purposes only and that there was no agreement that there will be a written commitment that the 1200 aircraft affected by the withdrawal, will be able to continue operating.
- [41] On the same day there was a response by the industry that it had requested minutes of meetings and recordings but that these were not forthcoming. The aviation industry disagreed that there was a resolution for the industry to motivate a general exemption but that it was for SACAA to do so and for the industry to provide the necessary information.
- [42] On 26 April 2024, SA-CATS 43.02.8 was published in the Government Gazette for comment. On 7 June AWAC (the Aviation Watch Action Committee) sent formal comments to the publication, stating that the overhaul of all components and items of equipment installed on aircraft must be executed at such times as is mandatory or stipulated in the approved aircraft maintenance programme and not as recommended. Further, that where no mandatory instructions are issued, such components or equipment must only be overhauled as and when their conditions shows that it is necessary to keep the aircraft serviceable.
- [43] On 13 June 2024, the first applicant complained in an email directed to the second respondent stating *inter alia* that they do not see their comments that were submitted during the public comment period in the proposal and

sought guidance on the way forward, more particularly in respect of the absence of their comments, to be addressed or dealt with at CARCom. On the same day AWAC sent a similar complaint.

- [44] At the CARCom meeting of 19 June 2024, the proposal for the amendment of SA-CATS 43 was presented and it was requested that the proposal be approved for publication for public comments. At that meeting Mr Garbett of the first applicant indicated that there is a debate that first needs to be held on the interpretation of the technical standards from the Federal Aviation Administration. He suggested that the proposal be published for comments but be referred to a workgroup for further deliberations. This then happened. On 28 June 2024 it was published for comments. On 23 July 2024, proposals on the amendment were referred to the Aviation Safety Operations Subcommittee.
- [45] It is relevant to mention that at the meeting of 19 June 2024, the first applicant withdrew its proposals in respect of SA-CATS 43.02.8. This was allegedly done to ensure that all public comments are properly considered. Although this reasoning is not properly explained, it is an uncontested fact that the first respondent had withdrawn its proposals and thus seeks in prayer 5 of its application an opportunity to resubmit proposals in terms of Part 11.03.1(1) and (2) on the amendment of Part 43 and its technical standards.
- [46] As of 30 October 2024, AWAC raised concern about the fact that their recommendations had not yet been considered. On 11 November 2024 an established Part 43 workgroup met. At that workgroup meeting the aviation industry raised the issue with the wording “*mandatory*” and “*classified by the manufacturer as mandatory*” in the proposed amendment. The aviation industry members indicated that they do not support the proposal

discussed in an ASO (Aviation Safety Operations) workgroup because of the uncertainty whether AIC18.19 would be extended or not.

- [47] At the said ASO subcommittee meeting, the engine overhaul intervals issue was again raised. The industry noted their concern about the inclusion of specific maintenance intervals in regulations to be mandatory, because that would make the twelve-year overhaul requirement mandatory without exception. A concern was again raised making the classification of service bulletins mandatory. Industry representatives emphasised the importance of incorporating diverse perspectives, particularly given their proposals, and the negative implications for operational costs and compliance.

- [48] At another CARCom meeting held on 6 December 2024, Mr Storie of the first applicant, suggested on behalf of the industry that the two proposals relating to the amendments of SA-CATS 43.02.5 and SA-CATS 43.02.8 be held in abeyance until work on the other Part 43, which needs to be represented to CARCom, is done.

- [49] On 21 January 2025, at yet another ASO meeting the industry raised again the fact that it seeks clarification on whether SB's, SL's and SI's are mandatory where it merely refers to "*recommended*". On 21 February 2025, the respondents published a consolidated SA-CATS 43 for comment in the Government Gazette. On 26 March 2025, a public comment was received from Mr Mark Drutman who raised the same concerns as the applicants.

- [50] At a CARCom meeting of 14 April 2025, the respondents presented the proposal for the amendment of SA-CATS 43 and indicated that the proposal was previously before CARCom but was then referred to the subcommittee for further deliberations. That subcommittee resolved that another proposal should be drafted. The new proposal was presented before CARCom on 6 December 2024, and it was resolved that the old

proposal be merged with the new proposal. The merged proposal was approved for publication and there was one comment received. On 14 April 2025, it was therefore requested that the proposal be approved for promulgation. Again, the industry raised all its previous concerns. This, notwithstanding, the respondents proceeded to approve the proposal for amendment for promulgation.

[51] The industry's issues were immediately thereafter again raised in email correspondence of 14 April 2024. On 9 May 2025, the second respondent answered. It confirmed that the airworthiness department has established a task team to investigate the twelve-year engine overhaul and aging aircraft requirement and will advise as soon as they are ready to commence with interactions with the aviation industry to share findings, compare notes and so forth.

[52] On 26 May 2025, the revised CATS 2/2025 was circulated between CARCom members for comment. On 29 May 2025 a Mr Sean Murphy commented. On the same day comments were received from Global Airways. On 2 June Aviation for SA sought extra time to submit comments, which was granted.

[53] In June 2025, SACAA issued a notice to give clarity on the withdrawal of AIC18.19 and the impact on twelve-year engine overhaul regulations. It quotes *inter alia* the DCA who said:

"The SACAA will continue to engage the industry on this matter to find a middle ground without compromising each others' responsibilities. The Regulator has demonstrated on many accounts to be responsive to the industry's views, however, what is also needed is for the industry to have an appreciation of the Regulator's perspective as it balances aviation safety and industry interests."

- [54] The notice further claims that the door for engagement has not been closed and that steps have been taken to engage with original equipment manufacturers to pronounce themselves on the matter. The last CARCom meeting, prior to the adoption of the approval was held on 18 June 2025 but the agenda demonstrates that the amendment of SA-CATS 43 was not on the agenda. The next day CATS 2/2025 was approved.
- [55] Premised on the fact that the issues raised by the aviation industry were not properly recorded in the meetings, and that their proposals were simply ignored, the applicants say that the consultation process was not proper.
- [56] The objective facts demonstrate, however, that the outcome of the above consultation process was a publication of new technical standards without a general exemption that would allow for an alternative means of compliance with the new standard. This happened without the applicants being given reasons why their proposals and submissions about the inclusion of a similar exemption as those contained in AIC18.19 was not addressed at all.
- [57] As indicated, the respondents deny that there was no proper record keeping. In this respect the respondents argue that, with reference to the minutes of the meetings of CARCom, the first resolution at such meetings was usually the adoption of previous minutes. This occurred by unanimous consent and is proved in that each minute reflects the previous minutes were approved as a true reflection of the proceedings. The applicant, on the other hand claims that that argument negates the fact that Mr Storie for the first applicant recorded, for example at a 14 February 2024 CARCom meeting, that there should be a reverting to the recordings to verify what was discussed and he suggested that minutes be approved, subject to clarity on agenda items dealing with parts that were not captured in the minutes.

- [58] It follows that whether there was proper consultation or not is a disputed fact. For the reasons set out hereunder, I am not required to resolve this factual dispute. It is, however, uncontested that with the publication of CATS 2/2025 none of the issues raised by the Aviation Industry in respect of the impacted engines was incorporated in the new technical standards as a general exemption. Save for a general comment that the DCA must balance the interests of the industry versus aviation safety, it becomes apparent that no reasons or explanation was given why the proposals of the industry were not included in the amended technical standards.
- [59] Absent a review against the publication of CATS 2/2025, not much turns on this point. This is so, because the decision of the DCA is not being challenged based upon rationality or legality, and had that been the case, the respondents argued that they might have answered those matters differently.
- [60] Before I proceed to deal with the issues, I mention that the DCA in the answering papers claims to have withdrawn AIC18.19, because it was firstly outdated, and the failure to overhaul every 12-year cycle secondly constitute a safety risk and thirdly might expose SACAA to liability for possible claims.
- [61] Again, not much turns on it, because the withdrawal of AIC 18.19 is not challenged by means of a review and there is no dispute between the parties that the DCA is empowered to withdraw AIC18.19. As such, she acted within her powers to withdraw the notice. Prima facie, however, the reasons for the withdrawal are not convincing. Firstly, it is common cause that AIC18.19 was operative since 2001 and not one single example of a liability claim as against SACAA is provided.

- [62] Secondly, as argued by the applicants in reply, AIC18.19 itself in paragraph 3.7 stipulates:

"The CAA was unable to uncover any local or internationally safety case, i.e. significant statistically data to point to the engine calendar life being a determining factor in an aircraft engine failure or problems which gave rise to accidents. Nor is there comparable data to indicate why twelve year represents a specific cut-off point in the airworthiness of reciprocating aircraft engines. For example, 'I have consulted with our Continued Airworthiness Specialists and our Safety Investigation Unit and they report they do not recall any anecdotal evidence of a higher failure rate for high time engines, nor do any particular examples spring to mind.' David Gill CAANZ Airworthiness Engineer 14 March 2001."

- [63] AIC18.19 stipulates further that the then Commission for Civil Aviation could find no compelling argument for South Africa to differ from that of the regulatory requirements in the manufacturing nation, being the United States of America, i.e. the FAA (Federal Aviation Authority). This country's safety case was therefore premised on the approach adopted by the Federal Aviation Administration.

- [64] In the replying affidavit the applicants say that the FAA still applies the exemption, and that European Union also generally allows for extended intervals for overhauling engine components. These facts are undisputed.

- [65] The respondents, in support of their safety case, rely on 2 air crashes that occurred within a period of approximately 23 years. These happened in January 2019 and May 2021. AIC 18.19 was only withdrawn 2 years after the latest accident. On closer scrutiny, no case is made out that the cause of these 2 accidents can be related to the 12-year overhaul issue. The one engine apparently failed due to a lack of mandatory 25 hours oil changes

having been done. The second failure was because of a fractured crankshaft that was not, but the aircraft had, according to its logbook in fact been overhauled in about May 2020¹, being a year prior to the accident.

[66] In any event, if the DCA was so convinced that AIC18.19 was not premised on a proper safety case and that there were apparent safety risks, her incorporation thereof in the two subsequent exemptions would have been reckless. In my view, the so-called safety case is unconvincing.

[67] Similarly, the notion that the AIC18.19 was outdated, is no reason to simply withdraw it, without considering a replacement, and cause conceded irreparable harm to an industry. Yet, the withdrawal of AIC18.19 is not challenged, and not much turn on this.

[68] Considering this background, I deal with the relief sought by the applicants. It is formulated as follows:

68.1. interdicting and restraining the respondents from implementing the provisions of SA-CATS 2/2025.

68.2. ordering the respondents to with immediate effect, reimplement AIC18.19 and part 43 together with SA-CATS 43.02.5 and SA-CATS 43.02.8 as they were prior to their amendment by SA-CATS 2/2025 on 19 June 2025.

68.3. directing the applicants to, within 30 days of the order, make application to the DCA in terms of part 11.04.6 of the regulations for the recognition of alternative means of compliance with Part 43 of the regulations and its technical standards.

¹ This is also disputed. The respondents claim that the last overhaul was in the year 2000.

68.4. directing the applicants to within 30 days of the order submit to CARCom a proposal in terms of Part 11.03.1(1) and (2) of the CARS on the amendment of withdrawal of Part 43 and its technical standards.

68.5. ordering that the orders will operate as an interim interdict pending the outcome of the applications by the applicants in terms of part 11.04.06 and 11.03.1(1) and (2).

[69] It is firstly relevant that it is common between the parties that nothing stands in the way of the applicants, or ever stood in their way, to make application to the DCA in terms of part 11.04.6 of the regulations for the recognition of alternative means of compliance with Part 43 of the regulations and its technical standards. Nothing prevented them or prevents the submitting to CARCom of a proposal in terms of Part 11.03.1(1) and (2) of the CARS on the amendment of withdrawal of Part 43 and its technical standards. As such the respondents do not prevent the applicants from doing any of the aforesaid.

[70] Being faced with the answering affidavit claiming that the relief sought by means of the interdict impermissibly intrudes into the policy laden and complex withdrawal and publication decisions made by the DCA and is separation of powers insensitive, the applicants introduced a proposed amendment in reply and sought prayers in the alternative:

70.1. an order directing them to within 20 days from the date of the order institute a review application seeking a judicial review and setting aside of the DCA's withdrawal of AIC18.19 and the enactment of SA-CATS 2/2025.

70.2. in the further alternative, within 20 days instituting proceedings declaring a constitutional challenge to the withdrawal by the DCA of AIC18.19 and the enacting of SA-CATS 2/2025 premised on violations of sections 22 and 25 of the Constitution and a failure to comply with sections 195(a), (b), (c), (d), (e), (f), (g) and (h) of the Constitution.

[71] The constitutional attack was for the first time pleaded “with some more detail” in the replying affidavit and although the grounds on which a review would be sought are not properly set out in the replying affidavit, a case for a review was only introduced in the replying affidavit.

[72] In argument at the hearing before me, however, the applicants persisted with their relief in the main. They effectively jettisoned their review, and the constitutional challenge sought in the alternative. When being questioned on what relief I was asked to grant and whether it was at all competent for me to grant relief as sought in the main, this court was told that there is in fact no attack upon:

69.1. the approval of SA-CATS 2/2025; and

69.2. the withdrawal of AIC18.19.

[73] The argument, as I understood it, was that the adoption of SA-CATS 2/2025 without dealing with the withdrawn AIC18.19, left a lacuna. To “fill the gap” I was requested to issue an interdict for a limited period that would allow the applicants to, in consultation with the respondents:

70.1. apply for an exemption for the impacted engines; and

70.2. introduce proposals on a general and more permanent AMOC (alternative method of compliance) with the recommendations of the original engine manufacturers. It would be something that is more aligned with the withdrawn AIC18.19 but takes into consideration modern technical developments.

[74] In this respect, the version of the applicants in the replying affidavit is important. In paragraph 40 of the replying affidavit, the applicants claim that there would be little to no point in seeking a court to set aside the amendments of SA-CATS 2/2025 on review in terms of PAJA if the statutory internal mechanism prescribes that the submission of a proposal for the amendment, or withdrawal, or the introduction of a technical standard must be done by means of a proposal to be submitted to CARcom.

[75] It is also claimed in the same paragraph that a review would simply set aside the decision that was made to implement SA-CATS 2/2025 without substituting it with an alternative and would in any event leave the lacuna created by the withdrawal of AIC 18.19. As such it is said that applications (i.e., plural) for continuous exemptions to "*fill the gap*", will have to be made. As indicated, there is nothing that prevents the applicants from making such application/s.

[76] It would be improper to grant an interdict pending an undisclosed number of possible applications for an alternative method of compliance. This is relevant since the applicants argued in court that each individual or entity that has an aircraft with an affected engine, must bring his/her/its own application for an AMOC.

[77] The applicants also argued that making application for an alternative method of compliance in fact constitutes an internal remedy as envisaged

in section 7 of the Promotion of Administrative Justice Act (herein "PAJA"). The applicants were duty bound to first exhaust such remedy prior to launching a review, so the argument went. I disagree with that contention. An internal remedy is a remedy, such as an internal appeal, being for example the internal appeal process found in section 120 of the CA act. Its purpose is to appeal or review internally an offending decision made by an administrator. It always presupposes a decision already made by such an administrator that the aggrieved party seeks to set aside or review.

[78] An application for an alternative method of compliance is a self-standing application. It is not brought, because a party wishes to set aside or vary an existing decision. It becomes only subject to an internal remedy and/or a review once the application has been refused. An AMOC does not constitute an internal remedy as envisaged in PAJA, because it does not seek to vary or set aside any decision or action already taken. That argument is therefore rejected.

[79] Given that there was no challenge against the adoption of CATS 2/2025 and the withdrawal of AIC18.19, I questioned during argument in reply, whether I could at all grant the proposed amendment if that was the case. It was then that I received the concession that the amendment would not be proceeded with. This had in any event become clear in court, since the review case or the constitutional challenge case was not argued at all. In my view, that pertinent election leaves the applicants with insurmountable problems. I shall revert to this.

[80] Before I do so, however, I mention this. In court I posed to all parties, and more specifically, counsel for the respondents, the question whether I could, bearing in mind the disastrous effect that the DCA's decision had upon the aviation industry, and considering that constitutional issues or conduct in contravention of the Constitution was raised, craft a remedy in

terms of section 172 of the Constitution. Considering *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC) (herein “Gordhan”) public power in a proper case can be restrained pending a challenge against the exercise of such power.²

- [81] In *Gordhan*, the Constitutional Court confirms that a determination of a just and equitable order of necessity requires a careful consideration of the interest of the parties on both sides of the litigation.³ The case promotes a flexible approach where constitutional issues are raised.
- [82] Where however, as in this case, the applicants tell this court that AIC18.19 was “lawfully” withdrawn (i.e., the withdrawal was within the powers of the DCA) and SA-CATS 2/2025 was legally adopted and that there is no challenge against those decisions, the withdrawal decision and the adoption decisions do not raise a legality or constitutional issue. The complaint seems to be that the newly adopted SA-CATS 2/2025, although lawfully adopted, did not make provision for a general exemption for the impacted engines. The second complaint is that, although AIC18.19 was lawfully withdrawn, it should have been replaced with another exemption. I can obviously not tell the respondents to do so. That would be an unacceptable separation of powers trespass.
- [83] It is true, as further argued by the applicants, that all spheres of Government are subject to the basis principles as set out in section 195 of the Constitution of the Republic of South Africa, 1996 (here “**the Constitution**”). This requires that public administration must be governed

² Para 114 “The power to suspend operation of the Public Protector’s remedial action is sourced from s 172(1)(b) of the Constitution. If in a matter like the present, it is considered just and equitable to suspend a remedial action pending a determination of the review in which the validity of the remedial action is impugned, a court may grant the suspension. Guidance for the issuing the suspension is derived from considerations of justice and equity.”

³ Par 115 of the judgment.

by democratic values and principles enshrined in the Constitution, which concludes those listed in section 195.

[84] The failure to consult, and the infringement caused by the DCA's alleged violation of the applicants' constitutional rights in terms of sections 22 and 25 by the withdrawal of AIC18.19 and enacting SA-CATS 2/2025, become irrelevant considerations, absent a challenge against those two decisions.

[85] To my mind there can be no dispute about the fact that an interdict reinstating AIC18.19, which was already withdrawn in November 2023, constitutes an infringement upon the exclusive domain of another sphere of government. It offends the separation of powers principle. Counsel for the applicants could not provide me with any authority that would allow me to do so. It is a conceded fact that only the DCA could withdraw AIC18.19 and approve the new technical standards. It falls therefore squarely within the ambit of her executive and legislative powers.

[86] The actual complaint of the applicants is that the DCA approved CATS 2/2025 without also enacting an alternative method of compliance in respect of the impacted engines. The complaint seems to be that the DCA did so without following due consultation and public participation processes and acted in that regard unconstitutional in that she thereby infringed upon the applicants' section 22 and 25 rights.

[87] That being the case, and although I do not express any views on the merits of such an approach, there surely should have been a legality challenge against the adopting of CATS 2/2025 without considering alternative means of compliance⁴. Pending such a review or challenge an interdict could

⁴ The respondents argued that then the DCA's answer would also have been provided on a different basis. The whole case then have been considered in a different way.

possibly have been considered. In this case, the withdrawal decision and the approval decision are not sought to be impugned.

- [88] I cannot issue an interdict directing the DCA to reinstate an AIC that has been withdrawn where such withdrawal fell within her powers. In a similar fashion, a court cannot interdict the implementation of legislation properly and lawfully enacted by parliament to allow a party to “get its house in order”. This is, at best, possible if a constitutional challenge is raised to the adoption of such legislation⁵.
- [89] In my view, therefore, I am not empowered to grant the relief in the manner that it was requested. A court cannot fill the lacuna created by the withdrawal of the notice, by reinstating the notice. Not even for an interim period.
- [90] On this basis already the application cannot succeed. That is dispositive of this case. I do, however, consider to a limited extent the further issues raised.
- [91] The applicants raise many grounds why the DCA should have considered their views when adopting CATS 25/2025, and much reliance is placed on comparative international practices. This could all have been relevant considerations if the applicants did not accede to the adoption of CATS 25/2025. I therefore refrain from dealing with the international convention such as the Convention on International Civil Aviation (the Chicago Convention), and other issues which can only have relevance if there is a challenge against the withdrawal and adoption decision.

⁵ Doctors For Life International v Speaker of the National Assembly 2006 (6) SA 416 CC

[92] As indicated, I do deal in short with the further defences raised by the respondents. Before doing so, I reiterate that I raised in open court that it troubled me severely, that seemingly, without any proper foundation therefore, a large part of the aviation industry was being destroyed. Save to mention that the facts of this case leave questions about the respondents' conduct in handling the industry they are supposed to serve, I shall refrain from raising any criticism. One can only be hopeful that the respondents will address the glaring need for intervention and the plight of the affected portion of the aviation industry urgently.

[93] The respondents' counsel, however, correctly referred me in that respect to *Damons v City of Cape Town* (CCT278/20) [2022] ZACC 13; 2022 JDR 0588 (CC) where the Constitutional Court cautions against pity:

"[110] I have read the judgment penned by my Sister, Pillay AJ (first judgment). It is elegantly crafted and rightly infused with great empathy and solicitude for the plight of persons with disabilities, particularly in the workplace. Regrettably, I find myself unable to agree with the outcome and the underlying reasoning in the first judgment. I agree that leave to appeal must be granted but take the view that the appeal ought to be dismissed. At the outset, it is necessary to caution against ad misericordiam (appeal to pity) reasoning that attempts to persuade solely by evoking legally irrelevant feelings of sympathy. In this case, that type of reasoning would have us fixate on the fact that the applicant sustained the injury that led to his permanent disability while at work. Yet, that fact is entirely irrelevant to the legal question that is dispositive of this appeal, namely: does the Policy discriminate unfairly against the applicant?"

[111] *Although it is tempting to have regard to the circumstances surrounding the applicant's injury, which are emotionally compelling, they are not logically connected to the central issue in the case, namely the alleged unfair discrimination brought about by the Policy's inherent requirement for the job of senior firefighter. One understandably empathises with the applicant's unfortunate plight and its cause, and of course, the law must be responsive to social realities. It does not exist in a vacuum. However, the law must also balance various interests, which may at times compete, and it must be applied dispassionately and in a sustainable fashion."*

[94] Although the facts of this case do lure one into feelings of empathy for an industry that has been, concededly so, negatively impacted by the decisions of the DCA, feelings of pity call for judicial restraint. In this case such feelings would have me fixate on the harm suffered by the industry and ignore the legal question whether a court can reinstate the AIC18.19, absent a challenge to the withdrawal. See also *Gordhan* at paragraph 97:

"This matter has garnered much public interest and criticism. It is a matter which has a political bite to it. It is thus understandable why the public would have an interest in it. However, it must at all times be remembered that courts must show fidelity to the text, values and aspirations of the Constitution. A court should not be moved to ignore the law and the Constitution, and merely make a decision that would please the public. The rule of law, as entrenched in the Constitution, enjoins the judiciary, as well as everyone in the Republic, to function and operate within the bounds of the law. This means that a court cannot make a decision that is out of step with the Constitution and the law of the Republic. It must impartially apply the law to the prevailing set of facts, without fear, favour or prejudice."

[95] The Constitution requires this court to be separation of powers sensitive.

[96] The respondents raise several defences, which have been covered by my finding that I cannot grant an interdict in the manner and on the basis as it is requested by the applicants. The first issue raised by the defendants is that they say that the interdictory relief fails to make it out of the starting blocks. In this respect the respondents argue that the withdrawal decision of AIC18.19 and the amendment of SA-CATS 43.02.5 and SA-CATS 43.02.8 by SA-CATS 2/2025 must under the Oudekraal rule of our law be treated as valid, unless reviewed and set aside by a competent court. In this respect, the SCA in *Oudekraal Estates (Pty) Ltd v City of Cape Town* 2004 (6) SA 222 (SCA) at paragraph 26, says that:

"Our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for as long as the unlawful act is not set aside."

[97] As such, the respondents argue that this court cannot grant interdictory relief that is inconsistent with the withdrawal decision of AIC18.19 and SA-CATS 2/2025 before they are subjected to judicial review or amended by the DCA. Premised on my findings hereinabove, I agree, but subject thereto that in accordance with *Gordhan* a court may restrain the implementation of such decisions if it is the subject of a review or a constitutional challenge.

[98] The second defence raised by the respondents is that the interdict sought by the applicants will impermissibly intrude into the policy laden and complex withdrawal and publication decisions made by the DCA and is therefore separation of powers insensitive. The respondents *inter alia* rely on *National Treasury v Opposition to Urban Tolling and Alliance* 2012 (6) SA 223 (CC) where the Constitutional Court says at paragraph 47:

"The balance of convenience enquiry must now carefully probe whether and to which extent the restraining order will probably intrude into the exclusive terrain of another branch of Government. The enquiry must, alongside other relevant harm, have proper regard to what may be called separation of powers harm. A court must keep in mind that a temporary restraint against the exercise of statutory power well ahead of the final adjudication of a claimant's case may be granted only in the clearest of cases and after a careful consideration of separation of powers harm. It is neither prudent nor necessary to define "clearest of cases". However, one important consideration would be whether the harm apprehended by the claimant amounts to a breach of one or more fundamental rights warranted by the Bill of Rights. This is not such a case."

- [99] This is also not such a case. The reason therefore is plain. This court is called upon to interfere in the withdrawal and approval decisions of the DCA absent a challenge to such decisions. The Constitutional Court says that a court is not allowed to make such an order. In this respect due cognisance must be given to the case of *International Trade Administration Commission v SCAW South Africa (Pty) Ltd* 2012 (4) SA 618 (CC) at paragraph 95:

"Where the Constitution or valid legislation has entrusted specific powers and functions to a particular branch of government, courts may not usurp that power or function by making a decision of their preference. That would frustrate the balance of power implied in the principle of separation of powers. The primary responsibility of a court is not to make decisions reserved for or within the domain of other branches of government, but rather to ensure that the concerned branches of government exercise their authority within the bounds of the Constitution. This would especially be so where the decision in issue is policy laden as well as polycentric."

- [100] In principle, this court therefore cannot reinstate a notice withdrawn by the DCA given the concession that she has the power to do so. That would be an impermissible interference. It is irrelevant whether this court would prefer another decision than those taken by the DCA. As such, in this respect, I am also in agreement with the respondents.
- [101] A large portion of the respondents' case is dedicated to the fact that the withdrawal of AIC18.19 was lawful. That, in my view, is not an issue that this court should concern itself with, because absent a challenge to that decision, it stands (whether lawfully withdrawn or not). The decision to withdraw cannot be ignored on the Oudekraal principle referred to above already.
- [102] The respondents also claim that the previous Commissioner's decision to issue AIC18.19 was *ultra vires*, the Commissioner's powers. As such, it is argued that it was lawful to withdraw AIC18.19, which should not have been implemented in the first instance and that, to order a reinstatement thereof, would in fact constitute an illegality and a court is not empowered to make an order that would result in an illegality.
- [103] This argument is premised upon the notion that an exemption cannot be granted by means of an AIC. I have serious doubts about the correctness of the argument, but it is also not relevant for purposes of the adjudication of this case. In any event, as with the withdrawal of the AIC18.19, its existence, prior to its withdrawal, had not been the subject of any challenge and on the Oudekraal principle had effect for many years, and provided the applicants rights that they did not have absent AIC18.19. Moreover, the *ultra vires* issue was not the expressed view of the DCA when she decided to withdraw the AIC. Her withdrawal was premised on the notion that the AIC18.19 was outdated and posed alleged safety risks.

[104] The respondents then also argue that the interdict that is sought by the applicants is not a mere interim interdict, because it is final in effect. Although the applicants insisted in their replying affidavit that this is not true and that they only seek interim relief that has not the effect of a final judgment, in argument in court they claimed that they had in fact made out a case for a final interdict, which would absolve them from having to deal with the issue of “*balance of convenience*”.

[105] The relief sought on the papers, however, is for an interim interdict and the applicant in the founding affidavit sets out the requirements for an interim interdict. Again, this does not matter, because the applicants do not demonstrate a *prima facie* right, let alone a clear right for the interdict that they seek.

[106] The *prima facie* right relied upon by the applicant is set out in paragraphs 214 to 216 of their founding papers and I quote:

“214 *The Applicants contend that they, as representatives of the General Aviation sector have a legitimate expectation to a proper notice and comment process and/or to receive a hearing by the DCA to determine an alternative means of compliance with Part 43 and its associated technical standards.*

215 *The Applicants intend making application to the DCA in terms of part 11.04.6 of the CARs for the recognition of alternative means of compliance with the provisions of Part 43 of the CARs and its related technical standards, and by submitting to CARcom a proposal in terms of Parts 11.03.1(1) and (2) of the CARs for the amendment or withdrawal of Part 43 and its technical standards.*

216 *To afford them a reasonable opportunity to do so (being within 30 days) without suffering further prejudice, the Honourable Court has requested to grant the interim orders as sought in paragraphs 2 to 5 of the notice of motion.”*

[107] In this respect I first make the following remark. The applicants’ application was issued on 9 July 2025. It was to be heard in the urgent court on 22 July 2025. The applicants sought a period of 30 days from the date of the order to make application for the alternative means of compliance. Nothing prevented them from doing so and as the date of the hearing of this application in the third motion court on 11 September 2025, no such application had been brought. When I made queries about this fact, I was told that the applicants wished to await judgment in this case before acting upon the right, which they all along had, to bring an application for an AMOC. It is unclear why this approach was adopted. One would think that the sooner the application is brought the better for the applicants.

[108] The right that the applicants seek to protect by means of an interdict, is not threatened by any impending harm. Their right to a proper notice and comment process and to receive a fair hearing from the DCA to determine an alternative means of compliance exists is not threatened. Nothing stops them from bringing their intended applications and delivering comments in accordance with the existing regulations.

[109] The applicants do not claim that they have a right to an alternative method of compliance. They say that they have the right to apply, therefore. That right to apply is not threatened by anyone.

[110] In this respect the respondents also refer to the Outa case which stipulates in paragraph 50:

"Under the Setlogelo-test, the prima facie right a claimant must establish is not merely the right to approach a court in order to review an administrative decision. It is a right to which, if not protected by an interdict, irreparable harm would ensue. An interdict is meant to prevent future conduct and not decisions already made. Quite apart from the right to review and to set aside impugned decisions, the applicants should have demonstrated a prima facie right that is threatened by an impending or imminent irreparable harm. The right to review the impugned decisions did not require any preservation pendente lite."

[111] Similarly, the right to comment and bring an AMOC is not threatened.

[112] This obviously touches upon the issue of a reasonable apprehension of harm. It is true that the withdrawal and adoption decision by the DCA had a tremendous harmful and prejudicial impact on the general aviation industry. That seems to be undisputed. It did, however, not threaten and harm the right of the applicants to approach the respondents with an application for an alternative means of compliance and to make proposals and comments on an amendment of the newly adopted technical standards.

[113] Similarly, on this score the applicant's alternative remedy lies precisely in the applicants own proposal namely to approach the DCA and the SACAA to provide comments and make application for an AMOC. They do not require an interdict to take these steps.

[114] This above makes it unnecessary to deal with the issue of balance of convenience. It follows that I agree with the respondents that the applicants did not establish the requirements for an interim interdict and consequently also not for a final interdict.

[115] The applicants did not bring an application to restrain and/or suspend the withdrawal and adoption decisions pending a legality review/constitutional challenge. If that had been the case, a court would have to consider whether “possible” illegal and unlawful decisions of the DCA should be restrained pending the final adjudication of the question whether the decisions are unlawful. The applicants elected not to bring their case on this basis. As such, they cannot succeed.

[116] Therefore, the interdict that the applicants seek is refused.

[117] The respondents also sought to strike out several paragraphs in the replying affidavit on the basis that they are irrelevant. The respondents did not argue their striking application at the hearing. I got the impression, given the fact that their supplementary affidavit was allowed, the complaints about prejudice were resolved.

[118] To the extent that this is not the case and to clarify this issue, my ruling on the striking application is that it is not granted. By filing the supplementary affidavit, the respondents elected to plead over to the new material, and by withdrawing the proposed amendment, not much turns on the attempt to introduce the case for review in the replying affidavit. There is no intention to bring a review (at least not expressed in court).

[119] In that respect, I am, in any event, in agreement with the respondents that on trite established principles in our law, an applicant cannot change its approach in reply. One ought to stand or fall by the notice of motion and the averments set out in one’s founding affidavit. This much is trite. A case cannot be made out in the replying affidavit. In this respect, this proposition was confirmed in *Betlane v Shelly Court* CC 2011 (1) SA 388 (CC) at paragraph 29. I am therefore, in any event, bound by the case made out in

the founding papers. Not much turns on the new issues and case introduced in reply. That disposes of the interlocutory applications.

Costs:

[120] Although totally immaterial for purposes of the adjudication of this application, the applicants made an issue about the fact that the DCA is not an expert in the aviation industry. As such, according to the applicants, as I understood their case, she is unqualified to consider issues surrounding the technical standards. This approach was adopted in reply, because the respondents in the answering affidavit praise the credentials of the DCA and alluded to her successes and international standing in the aviation industry.

[121] Whatever the DCA's *curriculum vitae* entails is in my view immaterial. This is so, because the fact that she has the power to approve civil aviation technical standards is uncontested. Her credentials are therefore entirely irrelevant. Seemingly, under the impression that the respondents somehow sought to introduce the DCA as an expert, the respondents attempted to discredit her credentials in the replying affidavit. Because of that, the respondents now seek a punitive cost order against the applicants.

[122] It does not require much wisdom to know that an attack on credentials, unless purely motivated by ill intentions, does not warrant a punitive cost order. In any event, there is nothing in this case that warrants a punitive cost order to be granted against the applicants. The fact that the applicants' approach to court, in the fashion as they did, might possibly be considered as an error in election, does not deviate from the uncontested version of prejudice suffered by the general aviation industry.

[123] The applicants further argued that should I be against them, that premised on the Biowatch principle, no cost order should be issued.

[124] It is the case of *Affordable Medicines Trust and Others v Minister of Health and Others* 2006 (3) SA 247 (CC) that lays down that as a rule in constitutional litigation, an unsuccessful litigant in proceedings against the State ought not be ordered to pay cost.

[125] In *Biowatch Trust v Register, Genetic Resources and Others* 2009 (6) SA 232 (CC), the Constitutional Court in paragraph 23 provides the rationale for that rule. The one being the chilling effect adverse cost orders have on parties seeking to assert constitutional rights. It would then act as a deterrent for people to protect their constitutional rights. Secondly, constitutional litigation ordinarily has a bearing on the interest of all that live within the Republic. Thirdly, the State has the primary responsibility that both the law and the State's conduct are consistent with the Constitution. In the same case however, the Constitutional Court warns and I quote:

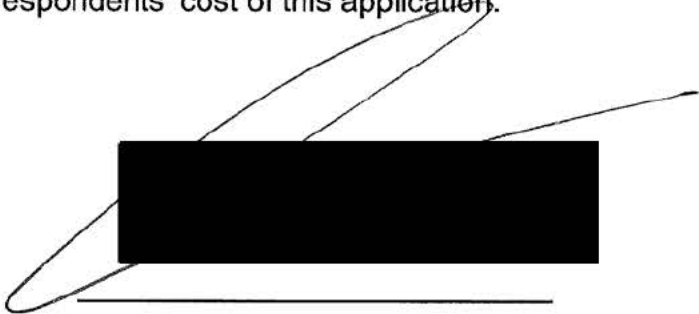
"25 *Merely labelling the litigation as constitutional and dragging in specious references to sections of the Constitution would, of course, not be enough in itself to invoke the general rule as referred to in Affordable Medicines. The issues must be genuine and substantive and truly raise constitutional considerations relevant to the adjudication. The converse is also true, namely, that when departing from the general rule a court should set out reasons that are carefully articulated and convincing. This would not only be of assistance to an appellate court but would also enable the party concerned and other potential litigants to know exactly what had been done wrongly, and what should be avoided in the future.*"

[126] In this case the applicants do not persist with their constitutional challenge. Their interdict is aimed at providing them a reprieve whilst applying for an alternative method of compliance. That does not raise one single constitutional issue. I can therefore not deviate from the general rule that cost ought to be awarded in favour the successful party.

[127] In the premises, I make the following order:

[1] The applicants' application is refused.

[2] The applicants shall pay the respondents' cost of this application.



D VAN DEN BOGERT
ACTING JUDGE
HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

This Judgment was handed down electronically by circulation to the parties' and or parties' representatives by email and by being uploaded to CaseLines. The date and time for the hand down is deemed to be 10h00 on 10 October 2025.

Appearances

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Ref.: Mr VS Mfinci

Date of Hearing: 11 - 12 September 2025

Date of Judgment: 10 October 2025