



Australian Government

Civil Aviation Safety Authority

LEGAL AFFAIRS, REGULATORY POLICY
AND INTERNATIONAL STRATEGY

TRIM Ref: F16/5851

17 March 2017

Mr Rob Cumming

Via email: Rob Cumming foi+request-2811-196c68e1@righttoknow.org.au

Dear Mr Cumming,

ACCESS TO DOCUMENTS UNDER THE *FREEDOM OF INFORMATION ACT 1982*

I refer to your email dated 6 December 2016 seeking access to documents under the *Freedom of Information Act 1982* (Cth) (the Act). You sought access to documents as follows:

In relation to the Removal/ revocation of the E&EC – Ethics and Conduct Committee:

This committee was revoked/ abolished on/about 21st September 2016 in a meeting attended by Mr. Skidmore, Mr. Carmody and others of the senior management group of CASA.

I require:

1. All information relating to the reasoning for the decision;
2. The terms of reference for the decision;
3. The basis for the governance and effects on CASA by the removal;
4. How the decision made will affect the ethical conduct of CASA into the future;
5. How the committee functioned in the past.

All documents including but not limited to:

- Correspondence;
- File Notes;
- Meeting Notes;
- Internal Memo's;
- Diary/ calendar entries;
- Telephone records;
- All data electronically collected, being by mobile phone, Dictaphone, tape recorder or mp3/4 recorder or other means
- E-mails;
- All database entries including entries into Sky Sentinel and AIRS;
- All supervisory staff records relating to the matter;
- If referred to the CASA Board, all related Board minutes, discussions and recommendations made to advise CASA as to direction for the Board in relation to this request.

On 13 January 2017, you agreed to redefine the scope of your request as follows:

- (1) Access to all documents regarding why the Committee was abolished;
and
- (2) Documentation stating the purpose and functioning of the Committee when it was functioning.

I am the decision maker for your request and I have identified 9 pages of documents which fall within scope of your request. In accordance with section 22 of the FOI Act I have redacted parts of the documents that fall outside of the scope of your request.

Documents released

The documents which I have decided to release to you are enclosed with this letter.

Application for internal review of decision

Section 54 of the Act gives you the right to apply for an internal review of my decision. An application for internal review of my decision must be made in writing within 30 days of receipt of this letter.

No particular form is required, but it is desirable to set out in the application the grounds on which you consider that the decision should be reviewed. An application for review should be addressed to Freedom of Information at the address below:

Freedom of Information
Legal Services Division
Civil Aviation Safety Authority
GPO Box 2005, Canberra ACT 2601

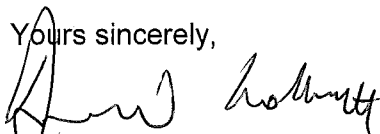
Review by the Australian Information Commissioner

Alternatively, under section 54L of the Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW
phone: 1300 363 992

Please do not hesitate to contact me on (02) 6217 1281 if you have any questions in relation to your request.

Yours sincerely,



David Gobbitt
A/g Freedom of Information Coordinator
Legal Affairs, Regulatory Policy and International Strategy Branch

Email address: david.gobbitt@casa.gov.au

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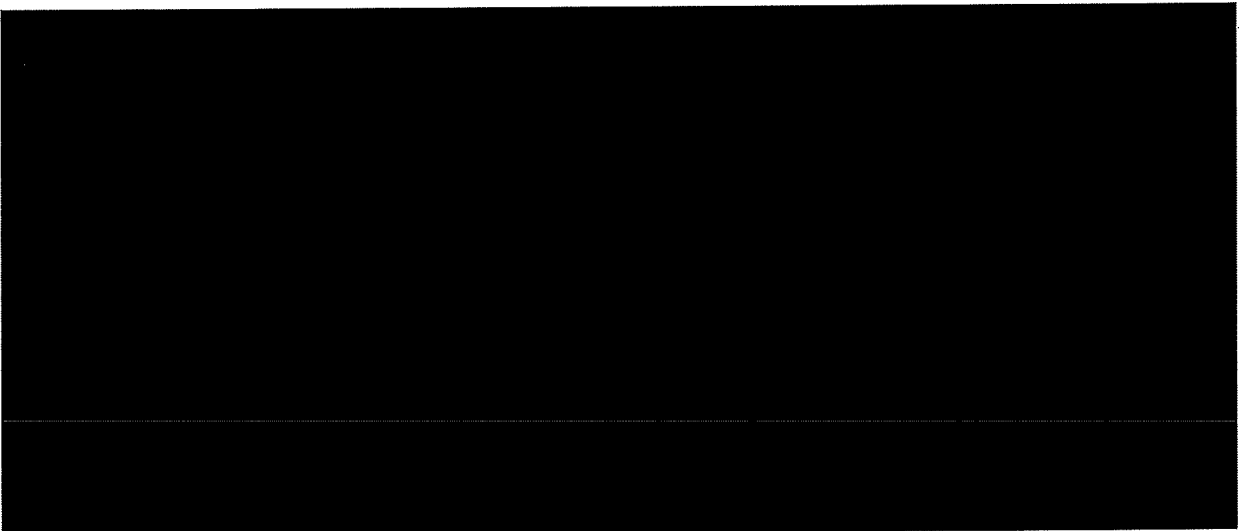
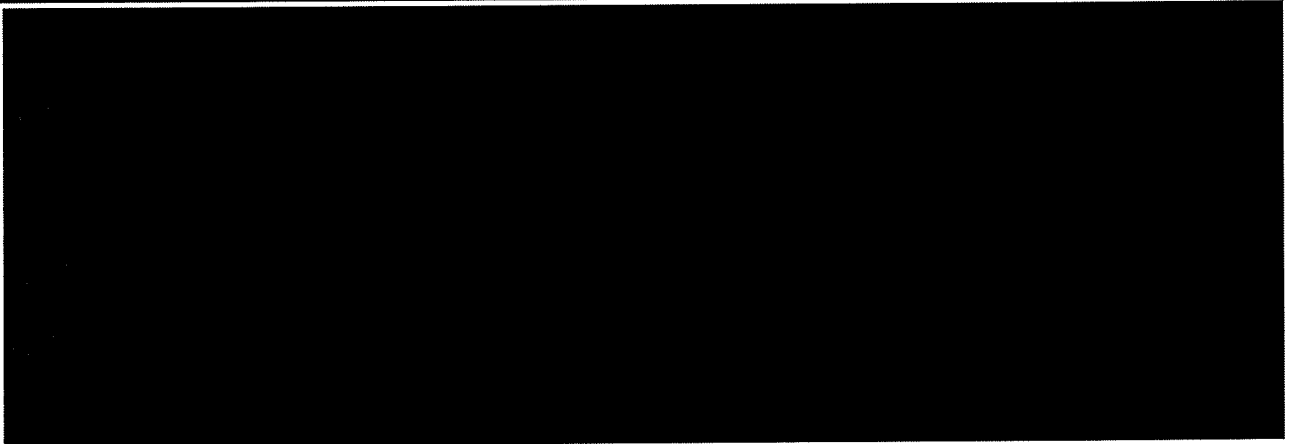
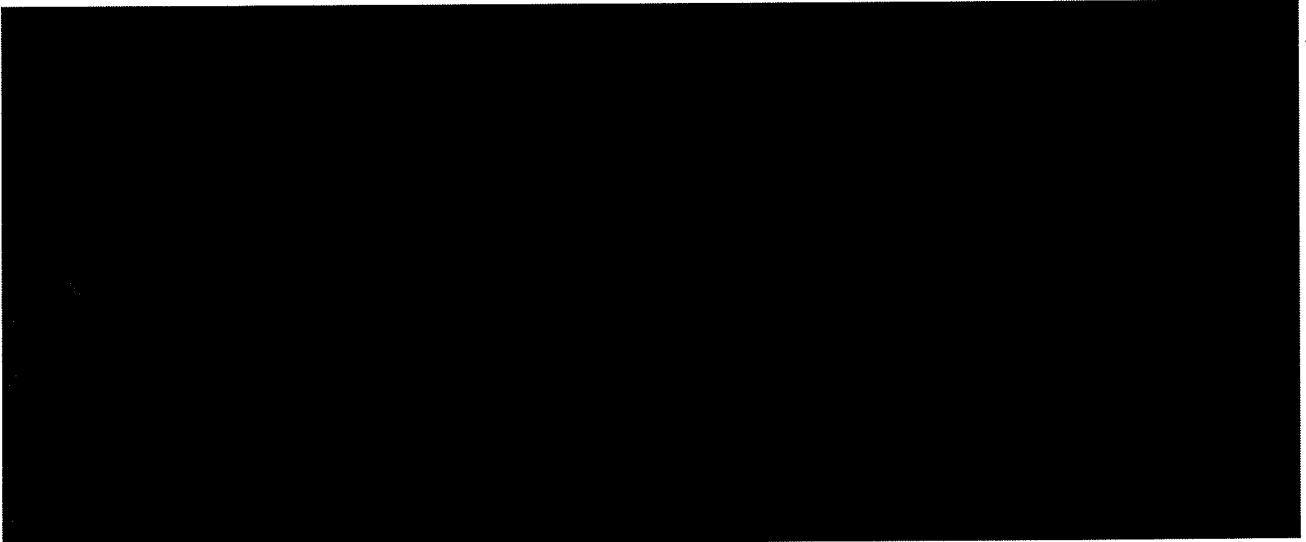


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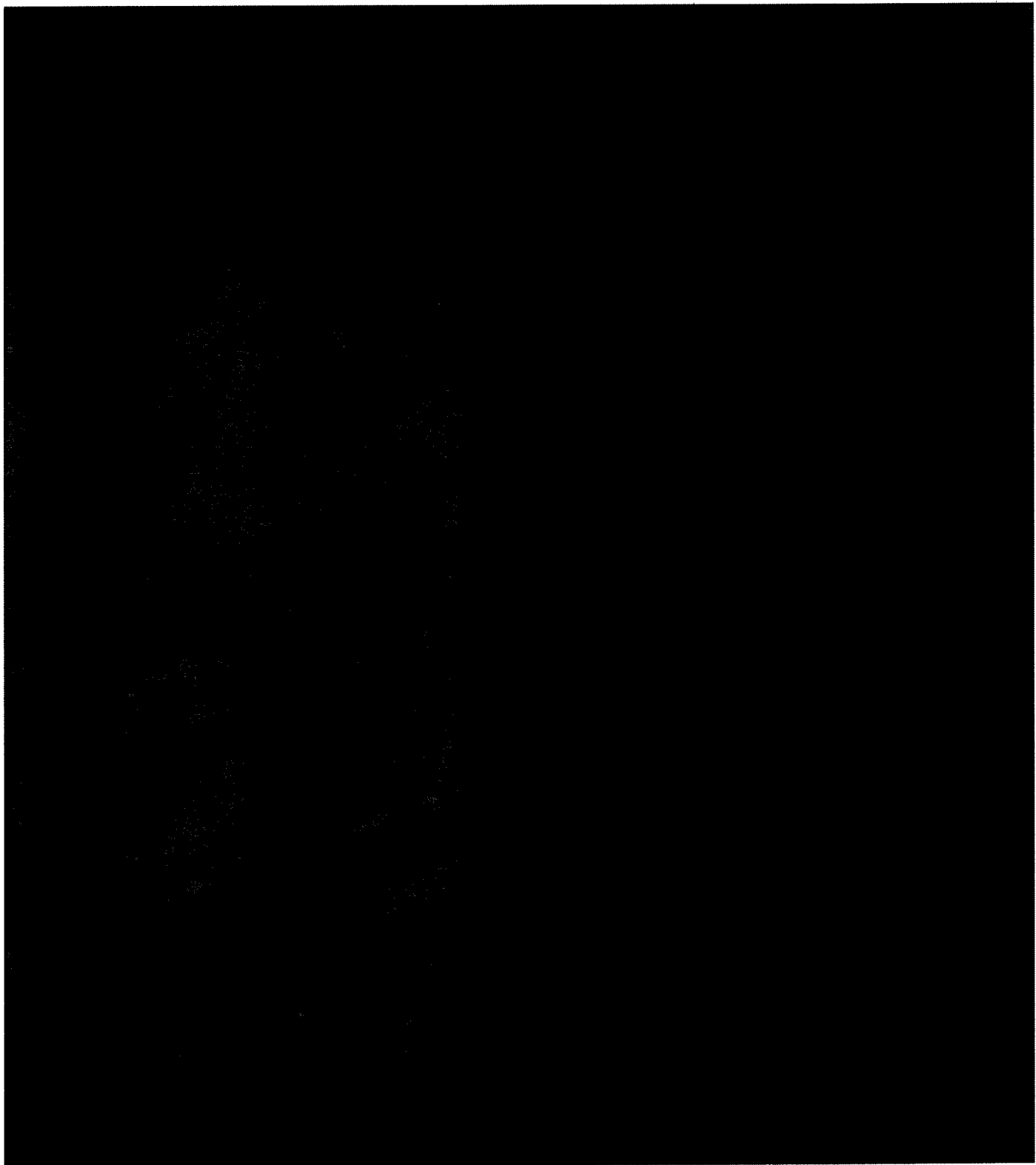
MINUTES OF THE MEETING OF THE EXECUTIVE LEADERSHIP TEAM 06-2016

Adelaide Office

21-22 September 2016



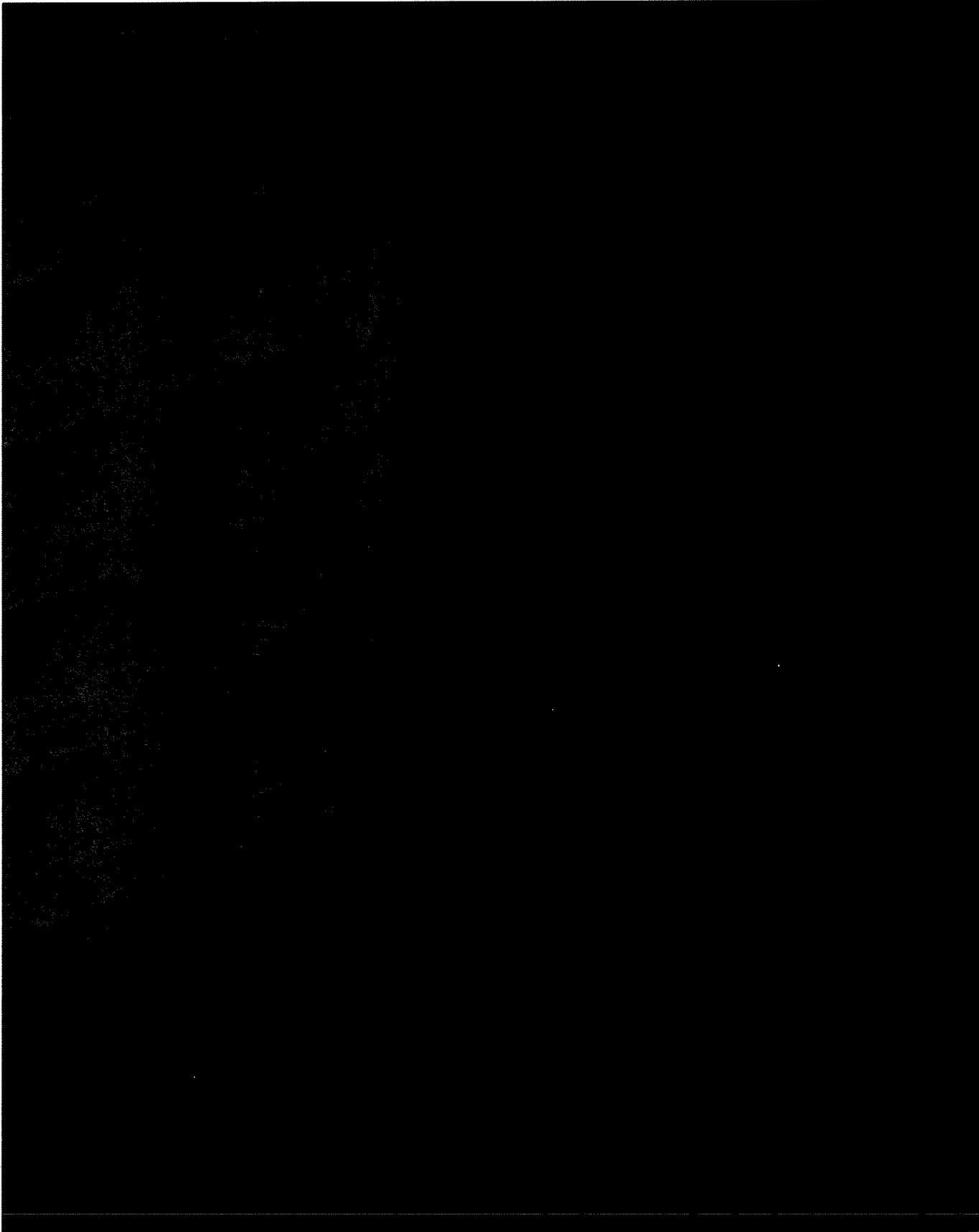
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- Action No. 12: Closed. Dr Aleck requested to close the Action Item as there is little utility in continuing the E&CC under the existing Terms of Reference. A number of the positions on the Committee no longer exist (including the chair) and other organisational changes render the model unworkable in its current form. With a view to the future, however, consideration was given to the establishment of an 'integrity' committee, with an appropriate structure and functions. The MELT agreed that

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E&CC would be discontinued—but for the closure of any outstanding matters—and Dr Aleck was asked to investigate the setting up of an Integrity Unit.



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TERMS OF REFERENCE

Ethics and Conduct Committee

1. Purpose

- 1.1 The purpose of the CASA Ethics and Conduct (E&CC or the Committee) is to ensure that allegations and complaints made against CASA employees, delegates, authorised persons and contractors, which are not more properly dealt with in accordance with other processes and procedures, are fairly and effectively addressed.
- 1.2 The E&CC will receive, assess, consider and determine matters properly referred to it, with a view to making:
 - 1.2.1 appropriate referrals to relevant CASA senior executives or managers for further consideration and action; and
 - 1.2.2 appropriate recommendations to the Director of Aviation Safety for such further action as the E&CC may consider to be necessary or appropriate in the circumstances, having regard to relevant CASA policies and the applicable requirements of the law.

2. Composition

- 2.1 The E&CC is comprised of five (5) *permanent members* and one or more *non-permanent members*.
- 2.2 The *permanent members* are:
 - 2.2.1 the Associate Director of Aviation Safety (Chair of the E&CC);
 - 2.2.2 the Deputy Director of Aviation Safety
 - 2.2.3 the Manager, Governance Systems Branch
 - 2.2.4 the Head, People and Performance; and
 - 2.2.5 the Chief Legal Officer

- 2.3 *Non-permanent members* include Executive Manager(s) of the relevant CASA Division(s), having regard to the issues to hand. The E&CC will determine which Executive Managers, if any, should participate as a non-permanent member in respect of any particular matter.

3. Role of the E&CC

- 3.1 On the *proper referral* of a matter, the E&CC will consider complaints or allegations that a CASA employee, delegate, authorised person or contractor has acted in a manner inconsistent with or in contravention of:

- 3.1.1 the CASA Code of Conduct;
- 3.1.2 the CASA Conflict of Interest Policy
- 3.1.3 the Commonwealth Fraud Control Guidelines;
- 3.1.4 the CASA Fraud Control Policy; or
- 3.1.5 a provision of Commonwealth, State or Territorial law.

- 3.2 Having duly considered a matter that has been properly referred to the E&CC, the E&CC may:

- 3.2.1 determine the matter and make recommendations to the Director of Aviation Safety as to what, in the view of the E&CC, is the fair, correct and reasonable disposition or resolution of the matter, having regard to the relevant CASA policies and in accordance with applicable provisions of the law; or
- 3.2.2 refer the matter to another person for consideration and action, in accordance with clause 5.1.

4. Matters Properly Referred to the E&CC

- 4.1 A matter is *properly referred* to the E&CC if the matter falls within the parameters of paragraphs 3.1.1 to 3.1.5 above; and

- 4.1.1 is not a reviewable decision, within the meaning of subsection 31(1) of the *Civil Aviation Act 1988*;
- 4.1.2 is not a decision to which the *Administrative Decisions (Judicial Review) Act 1977* applies;
- 4.1.3 is not already the subject of proceedings before a court or a tribunal (including Fair Work Australia);

- 4.1.4 is not already subject to a review process of the kind contemplated by clause 65.1 of the Civil Aviation Safety Authority Enterprise Agreement 2010-2011 or a successor agreement, or a matter that has been referred to Fair Work Australia pursuant to clause 10 of the Civil Aviation Safety Authority Enterprise Agreement 2010-2011 or a successor agreement;
- 4.1.5 is not a matter that is the subject of, or has been referred to Legal Services Division for investigation pursuant to Part IIIA of the Civil Aviation Act;
- 4.1.6 is not a matter in respect of which administrative action with a view to the possibility of a variation, suspension or cancellation of a civil aviation authorisation has been, or is likely to be, initiated; and
- 4.1.7 is not a matter which, in the E&CC's view, ought more properly to be determined by a court or a tribunal or in some other forum.
- 4.2 A properly referred matter must be presented to the E&CC in writing, with sufficient information and detail to enable the E&CC, or a person to whom the E&CC may decide to refer the matter, to make meaningful inquiries with a view to addressing and resolving the issues to hand in a timely, fair and reasonable manner.
- 4.3 Any person may refer a matter to the E&CC.
- 4.4 Any complaint or allegation involving a matter of the kind contemplated by clause 3.1 above, and which, in the first instance, has been referred to, brought or come to the attention of:
- the ICC;
 - the Head of People and Performance; or
 - any other CASA manager,

must be referred to the E&CC for the E&CC's consideration and disposition, in accordance with the provisions of clause 3.2.

5. Disposition of Matters Referred to the E&CC

- 5.1 When a matter has been properly referred to the E&CC, or referred to the E&CC in accordance with the provisions of clause 4.4 above, the E&CC will, in the first instance, determine whether the matter should be retained by the E&CC for further consideration and action, or referred (or referred back) for appropriate action to:

- 5.1.1 the Head of People and Performance;

- 5.1.2 the ICC;
 - 5.2.3 the Manager, Governance Systems;
 - 5.1.4 the Deputy Director of Aviation Safety; or
 - 5.1.5 one or more relevant Executive or Branch Managers
- 5.2 In referring a matter to (or back to) the Head of People and Performance, the ICC or one or more relevant Executive or Branch Managers pursuant to clause 5.1 above, the E&CC may give such directions and instructions as the E&CC considers to be necessary or appropriate in the circumstances.
- 5.3 In referring a matter to (or back to) the Deputy Director of Aviation Safety, under paragraph 2, the E&CC may make such recommendations as the E&CC considers to be necessary or appropriate in the circumstances.
- 5.4 Where the E&CC decides to consider a matter, it will do so in accordance with the procedures mentioned in section 6 below.
- 5.5 Where the E&CC determines a matter pursuant to paragraph 3.2.1, it will produce and submit written findings and recommendations to the Director, who, having considered the E&CC's recommendations, may take such action as he or she deems to be appropriate in the circumstances.
- 6. E&CC May Develop Its Own Procedures**
- 6.1 Having regard to the relevant CASA policies and the applicable requirements of the law (including the principles of procedural fairness), the E&CC may develop and specify, in writing, appropriate procedures governing the processes by which the E&CC assesses, manages and disposes of claims considered by the E&CC.
- 6.2 Amongst other things, the E&CC's procedures, or the procedures by which the E&CC functions in the absence of specified written procedures, will cover the matters mentioned in clause 5.5 above.
- 6.3 The E&CC's procedures will, in any case provide or allow for the preparation of dissenting reports by permanent or non-permanent members of the E&CC in relation to the matters referred to the Director for action pursuant to clause 5.5 above.

7. Tracking and Reporting

- 7.1 The E&CC will ensure that complete and accurate records of the activities of the E&CC are maintained, describing:
- 7.1.2 the substance of matters referred to the E&CC for consideration;
 - 7.1.3 the disposition of those matters, either by the E&CC or by the person(s), other than the Director, to whom those matters were referred for further consideration and action; and
 - 7.1.4 the disposition of matters submitted, with recommendations for action, to the Director.
- 7.2 The E&CC will provide the Director with a report containing the information mentioned in clause 7.1, and such additional information as the Director may require, at such intervals as the Director specifies.

8. Frequency of Meetings


- 8.1 Meetings of the E&CC shall be convened by the Chair as and when, in the view of the Chair, such meetings are necessary. Meetings may be conducted face-to-face, telephonically, electronically (via an email exchange), via video conferencing facilities or by correspondence.
- 8.2 The Chair may circulate materials to permanent and non-permanent members of the E&CC with a view to obtaining those members' opinions as to whether a matter has been properly referred, and:
- 8.2.1 if so, how the E&CC should proceed to consider the matter; or
 - 8.2.2 if not, what alternative disposition should be made of the matter.
- 8.3 The Chair of the E&CC must ensure that a written record is made and maintained of decisions and determinations of the E&CC in relation to the matters mentioned in clause 8.2.

9. E&CC Terms of Reference to be Construed Consistently with Relevant CASA Policies

- 9.1 The E&CC shall endeavour to construe any relevant CASA policy consistently with these Terms of Reference and any procedures developed pursuant to section 6 above.
- 9.2 Where the E&CC finds a provision of a relevant CASA policy to be irreconcilably inconsistent with a provision of these Terms of Reference or a procedure developed by pursuant to section 6 above, these Terms of Reference shall prevail, subject to any contrary determination by the Director of Aviation Safety.

10. E&CC Secretariat

The Office of the Director of Aviation Safety will arrange for the provision of secretariat services for the E&CC.



John F. McCormick
Director of Aviation Safety

06 October 2011