



24 April 2020

Final Report

# Civil Aviation Authority Organisational Culture Review

Ministry of Transport



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# Executive Summary

## 1. Background

The Civil Aviation Authority (CAA)<sup>1</sup> regulates New Zealand's civil aviation industry and delivers aviation security services. As such it plays a central role in maintaining a safe and secure civil aviation system. Increased aviation and passenger safety are a direct outcome of the work of the CAA. Equally, anything that has the potential to impact the effectiveness of the work of the CAA has the potential to impact aviation safety and security.

In June 2019, TV3 ran a story containing allegations of bullying and harassment and poor workplace culture at the CAA.

Assurances were attributed publicly to the Chief Executive that there was "a good culture"<sup>2</sup> and to the then Chair of the CAA that, it "was on track and doing well"<sup>3</sup>. Further, the Authority was reported as saying "the permanent staff turnover rate was just shy of 15 percent for the 2018/2019 financial year, and that a recent staff survey showed two-thirds of employees are extremely happy with their workplace"<sup>4</sup>.

The Minister of Transport sought advice from the Chair and was advised that the complaints related to disgruntled ex-staff members.

Further media reports were published covering allegations of poor treatment of the CAA staff. These included allegations that the Chair and Chief Executive were aware of a number of bullying and sexual harassment complaints which had not been appropriately addressed by the CAA.

The Chair responded through the media questioning the motives of the complainants. This response was subsequently criticised as being not helpful by the Human Rights Commission.<sup>5</sup>

In August the Chair resigned at the request of the Minister. The Minister also initiated this Independent Review of the Culture of the CAA under section 132 of the Crown Entities Act 2004.

### *Purpose and approach to the Review*

The Minister proposed a review that would consider whether the CAA has appropriate policies, systems and practices in place to deal with allegations of sexual harassment and bullying and whether the CAA had responded appropriately to the complaints and allegations.

These were to be considered within an overall review of the organisational culture of the CAA, with recommendations sought on improvements to the culture, treatment of staff, handling of complaints, and policies and procedures. The Review would assist the Minister to better understand whether or not there are, or have been, significant areas of concern regarding the organisational culture at the CAA, and if so, how the organisation has

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<sup>1</sup> All references to the CAA or the Authority should be regarded as including both the regulatory function and the Aviation Security Service unless the context otherwise requires and mean the organisation as a whole. References to the Board mean the Board of the CAA as a whole (including Avsec).

<sup>2</sup> <https://www.newshub.co.nz/home/new-zealand/2019/06/secretcy-and-cover-up-explosive-allegations-from-within-the-civil-aviation-authority.html>

<sup>3</sup> <https://www.newshub.co.nz/home/politics/2019/08/civil-aviation-authority-chair-nigel-gould-in-transport-minister-phil-twyford-s-sights-over-response-to-sexual-harassment-complaints.html>

<sup>4</sup> <https://www.rnz.co.nz/news/national/392832/civil-aviation-authority-toxic-and-crumbling-former-employees-operators>

<sup>5</sup> <https://www.newshub.co.nz/home/politics/2019/08/transport-minister-phil-twyford-was-warned-about-civil-aviation-authority-s-sexual-harassment-claims.html>

responded to those concerns. The Review would also provide the opportunity to consider advice and recommendations for improving the culture within the CAA.

The Review would:

- Consider how complaints of bullying and harassment had been handled.
- Consider how staff and complainants had been treated.
- Assess policies and procedures against best practice and identify any barriers to reporting or making complaints.
- Establish whether appropriate prevention and other control measures were in place and whether these were in accordance with WorkSafe's guidance and other best practice guidance.
- Establish the effectiveness of the prevention and control measures and identify opportunities for improvement.
- Consider the CAA as a place to work, with regard to ensuring staff are treated with dignity and respect, and the maintenance of an open and supportive culture.

This Review would make recommendations for improvements on:

- How to maintain an open and supportive culture.
- How to promote and ensure staff are treated with dignity and respect.
- How bullying and harassment complaints are handled, and how staff and management are trained in dealing with complaints.
- Policies, systems and procedures for dealing with complaints.
- Any other recommendations the Ministry considers to be directly relevant.

In carrying out the Review we spoke directly with over 120 people including:

- Past and present staff of the CAA, including Aviation Security Service (Avsec) employees who voluntarily came forward to speak to the reviewers.
- Members of the Authority Leadership Team.
- Other senior leaders and management.
- The Chair and Members of the Board, some past and present.
- Aviation industry participants and representative bodies.
- Union delegates and organisers including the PSA, NUPE and E tū.

In addition, the independent barrister on the Review Team obtained and reviewed over 30 individual personnel files relating to complaints and investigations carried out by the CAA between 2015 and the commencement of the Review in September 2019.

We also reviewed numerous policies, processes and other documentation dealing with workplace culture and staff behaviour. We were provided with minutes, reports strategies and other information detailing the work the CAA has done over the past five years to support and improve positive workplace culture. This included communications from the Chief Executive to staff about his expectations of staff behaviour, information about reporting tools, tool kits, updated policies covering bullying and harassment and other relevant material.

## 2. Organisational Culture

Our overall finding is that the current and past culture within the CAA does not operate to support a safe and respectful workplace and, in some areas, it is below the standard that

meets bottom-line standards for health, safety and wellbeing. At its core, we consider the root cause to be a failure of governance and leadership. We did not find that there was a deliberate and tolerated culture of bullying and harassment, including sexual harassment within the CAA.

However, we did find a culture in which these behaviours were able to occur due to the inability of leadership to understand how to build an appropriate culture in general, including an inability to adequately identify and address issues such as bullying and sexual harassment.

While the CAA's leadership wanted to see improvements in behaviour, its absence of an holistic and deliberate approach to building and reinforcing a desired culture, including the need to set expectations from the top and consistently hold people to those expectations, collect empirical evidence, implement a suite of actions and ensure ongoing monitoring by the Board and management to hold people to account for those expectations, undermined its specific actions taken in respect of bullying and sexual harassment.

As described by the Institute of Directors in New Zealand, in addition to fostering a healthy board culture, the Board has a key leadership role to foster high ethical standards and set the tone for a healthy organisational culture. This means leading from the top as well as supporting management and holding them to account on achieving and maintaining a healthy culture and ethical practices.<sup>6</sup>

The senior leadership at the CAA evidences the strengths and weaknesses of its individual leaders. While this is true of any leadership team, some members of the ALT<sup>7</sup> described it to us as being competitive and dysfunctional. We were told that there are several strong personalities on the ALT who dominate and contribute to the dysfunction of the organisation and that some senior leaders do not model or demonstrate desirable leadership behaviours.

In interviews with us, some members of the ALT were highly critical of their peers' leadership style and how they deal with some members of their staff. We were also told by some ALT members and other staff that some senior managers (including those at Avsec) openly expressed negative views about their colleagues and that sometimes these views were shared directly with members of staff. This was corroborated by a number of staff who recounted very negative experiences in their dealings with senior managers.

The Chief Executive maintains an 'open door policy' and was approached directly by staff on more than one occasion and advised of issues with the treatment of women within the CAA. The Board, Chief Executive and ALT endeavoured to respond to these issues and have been genuinely motivated to ensure that CAA operates a safe and respectful culture, free of bullying and harassment. We consider that the Board, Chief Executive and ALT genuinely believe that the actions they have implemented would (and have) improve the culture within the CAA. In part, this may be correct, however, if the organisation is not gathering evidence through measures like staff engagement surveys it cannot be sure.

In our opinion, insufficient work has been done to provide assurance and empirical evidence about the state of the CAA's culture. In March 2017, members of the CAA's Diversity and Inclusion Working Group engaged Diversity Works NZ<sup>8</sup> to help tailor the Diversity and Inclusion in Asia Network diagnostic tool for use at the CAA. The diagnostic tool is meant to

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<sup>6</sup> Institute of Directors in New Zealand Inc; The Four Pillars of Governance Best Practice p54; 2017.

<sup>7</sup> CAA operates two senior management groups. The Executive Leadership Team (ELT) comprises the CE and Deputy Chief Executive, Deputy Director Air Transport and Airworthiness, Deputy Director General Aviation, Deputy Director Aviation Infrastructure & Personnel, General Manager Corporate Services, General Manager Organisational Development, and Chief Legal Counsel. The Authority Leadership Team (ALT) comprises the same group of leaders as the ELT (with the CE acting as the Director of Civil Aviation), supplemented by the Executive Group Manager Aviation Security Service and the General Managers Aviation Security Service. Except where the distinction is necessary, we use ALT to refer to both.

<sup>8</sup> Formerly the Equal Employment Opportunities Trust

help organisations understand where they are on their diversity journey and to gauge perceptions of diversity and inclusion within the organisation.

The pilot survey was sent to 21 people within the organisation (chosen to provide a good cross-section and representation of employees including gender, tier and functional group) with 14 completing it.<sup>9</sup>

The survey was undertaken again in November 2018 and was opened to all CAA employees (including Avsec). Almost 40% (521) of employees completed the survey. The ratings average improved from March 2017 across all indicators. Diversity Works attributed this to differences in the participating groups and the addition of an option to respond 'unsure' rather than give a forced rating. It was suggested to us that this was clear evidence of an improvement in the culture of the CAA. While the 2018 scores are comparable to the benchmarks for the survey, suggesting a sample size of around 14 could be regarded as some sort of baseline is not statistically valid. Neither is the survey analogous to a staff engagement survey which would have provided better empirical evidence of the underlying culture, including any shifts since the last survey was undertaken in 2017.

In our view, the programme and the survey are good examples of the CAA's failure to understand that the issue of culture is fundamentally one of leadership and the use of proper engagement tools to understand where an organisation's culture is strong and where it is weak. Policies, processes, tools and frameworks are important, but they are not a substitute for proper engagement with staff using robust practices to allow them to report what is good and what needs to change.

We would endorse the finding of the 2018 Diversity Works survey, that more internal communication is needed about the steps being taken to lift diversity and inclusion. However, we note that culture and changing it, is much broader than diversity and inclusion, albeit that both are linked to culture. Many of the staff we spoke to told us that they were not particularly aware of exactly what the Diversity and Inclusion Working Group did, or what it had achieved to date. This included members of the Diversity Working Group who told us variously that they were not aware of some of the reported actions listed as being part of the strategy or that until they were invited to be part of it, did not know it existed.

Themes conveyed to us by participants in our Review included distrust of the steps being taken or cynicism as to whether they would make a difference.

What the CAA needs is a more leadership-enabled culture and we do not consider the initiatives outlined in the strategy will shift the culture of the CAA to where it needs to be.

Without a comprehensive baseline of evidence from across the organisation, the ALT and the Board are not able to assess objectively whether the many actions and changes that they have initiated and undertaken have had the effect of positively changing the culture and behaviours previously operating within some parts of the organisation.

As to why the CAA has not undertaken an employee engagement survey since mid-2017, we were advised by a member of the ALT that this is due to the recent exit of the provider (IBM Kenexa) from the market, the need to undertake an RFP to find an alternative provider and that the CAA was looking around to see what products best suited its needs. Another member of the ALT in feedback to us advised that there had been discussions at ALT and that a decision had been made not to undertake further staff "engagement" surveys, given the period of time since previous surveys had been undertaken and also in relation to the need to find a new provider. Some members of the ALT further advised us that the ALT also had a view that some of the measures would take a little time to have an impact, and thus

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<sup>9</sup> Several others who were unable to complete the survey itself provided feedback directly to a member of the Diversity & Inclusion Working Group.

surveys undertaken in a short period of time relative to the implementation of these measures would be of marginal benefit in providing 'assurance' of where the culture was at.

We note that in April 2018 Kenexa advised it was exiting the New Zealand market. Kenexa also provided engagement survey services to a number of other government agencies. Other providers, such as AskYourTeam<sup>10</sup> were in the market at the time and have transitioned a number of agencies from Kenexa to their product, whilst maintaining a comparative baseline for future surveys. We are not endorsing or suggesting the CAA adopt AskYourTeam as their provider. We simply note that alternative providers were available and that the ALT did not have to take a completely new approach to assess staff engagement.

While negative behaviours and poor culture have been clearly called out by the Chief Executive and the Board in communications to staff and management across the CAA, a significant number of the people we interviewed told us that there remains in some parts of the organisation a reluctance or a delay in embracing and demonstrating the core leadership values and behaviours expected of people at all levels of the organisation. This includes leaders taking action where inappropriate behaviour occurs. This is despite the fact that staff, including leaders at all levels, have their performance assessed against the CAA core behaviours at every performance appraisal, and a core part of the onboarding process for new staff is an explanation of the behaviours expected and the objectives of the diversity and inclusion programme. We note that almost none of the staff interviewed, when asked, were able to tell us what the CAA's core values are.

Face-to-face staff meetings were held about acceptable behaviour after the results of the pilot Diversity Works survey became known. Yet, despite these initiatives, what good leadership looks like and the expectations of leaders at all levels were not able to be easily articulated to us by a large proportion of the people who spoke to us. This includes clear signalling of the role leaders must consistently play every time poor behaviours including bullying and harassment occur.

The policies, procedures and guidance relating to bullying, harassment and workplace safety and wellbeing have been updated a number of times over the past five years, including during the course of this Review. Collectively, they clearly identify which behaviours by staff and management are appropriate and which are not. However, the way in which these policies and procedures have been applied has been inconsistent. Coupled with this has been the absence of clear operational intelligence, information about staff wellbeing and assurance processes that could have provided clear and timely evidence of the operative culture, including where behaviours by some staff and some managers were not in line with the expectations of the Chief Executive and the Board.

Unfortunately, our conclusion is that the measures the CAA has taken and its responses to incidents have been ineffective in consistently changing behaviours and the underlying culture in some parts of the organisation. As a result, some staff have continued to experience inappropriate behaviours and bullying. Unless urgent and appropriate action is taken this is likely to continue to occur and is a significant risk. We consider that currently, the CAA faces a continuing risk of a serious harm incident occurring.

From mid-2018 onwards, the ALT and the Health and Safety Committee of the Board were aware that there were inappropriate behaviours that needed to change, that negative mental health impacts were being caused by workplace issues and that these were a significant risk for the organisation. While the ALT and the Board were committed to eliminating both risks, and a number of policies and "toolkits" were rolled out, these have not effectively dealt with the risks identified.

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<sup>10</sup> <https://www.development.org.nz/news-and-views/ibm-kenexa-exit-has-a-silver-lining/>

We have not been able to identify any systematic and complete oversight or reporting to the ALT or the Board on outstanding investigations, their nature, duration, resolution or lessons learned. We were told that there were discussions at ELT, ALT and with the Board about some cases, normally more serious cases. We were advised that these discussions were limited in nature and were more by way of updates on these cases. In our view, neither the Board nor the leadership of the CAA was engaged or connected enough with these cases or staff directly to be able to independently form a view as to whether management was handling complaints appropriately. It seems that they simply relied on the advice they received on those cases that were brought to their attention.

Many of the staff that we spoke to believe that the CAA has a poor culture that is attributable to the importation of militaristic, hierarchical management and leadership behaviours from the Police, the Defence Force and the aviation industry. While many staff and management at the CAA do have backgrounds including service within these organisations, we do not agree with this hypothesis.

Over the course of the Review, we interviewed a number of staff and management with military, police or aviation backgrounds. We did not discern any link between their previous organisational background, and effective management and leadership behaviours. Some impressed us with their approach and insights into building effective teams and cultures. Others were less impressive, and some displayed a poor understanding of what an appropriate workplace looked like and what is and isn't appropriate behaviour. Some had a clear grasp of what an inclusive and diverse culture looked like and how to treat people from diverse backgrounds with dignity and respect. Again, other people we spoke to did not. Where people had previously worked did not appear to determine whether they were able to evidence a sound understanding of culture and what drives good culture. We consider the actual issue to be tacit tolerance of poor behaviour by some staff, and weak, inconsistent or ineffective leadership responses to some incidents.

Without exception, the people we spoke to were passionate about the work of the CAA. In talking to us many people identified that their commitment to their work and the contribution this makes to aviation safety, coupled with their equal passion for aviation, ameliorated the negative experiences they had at work.

Against this background, last year the Chief Executive initiated a restructure affecting the regulatory function and the corporate support functions shared with Avsec. Avsec operational units were not directly impacted by this change proposal, although we note that at a similar time structural changes were being proposed to the Explosive Detector Dog Unit within Avsec. This was subsequently put on hold.

The proposed changes are aimed at lifting regulatory performance. Whilst commenting on the restructure is out of scope of this Review, a significant number of people we interviewed raised concerns and issues about how the restructure was being communicated and conducted and told us that this was negatively impacting some staff and leading to further degradation in the culture of some parts of the regulatory organisation. Concerns were expressed to us by a number of people from within the regulatory organisation and from the aviation industry that the way the restructure was being managed was resulting in the loss of capable staff with significant institutional knowledge and that this could potentially impact the CAA's regulatory performance.

Inevitably, some may question whether the majority of people that came forward to speak to us were discontented or disgruntled in some manner. Indeed, it was suggested to us during the Review that the present state of the culture, to the extent it is not wholly positive, is simply a by-product of the organisational restructure and the unsettling nature of change. However, after conducting over 120 interviews, we do not consider this to be a particularly strong contributor to the levels of staff dissatisfaction expressed to us and it is not associated with the negative experiences of staff who have actually experienced

inappropriate treatment. Although, as noted above, a significant number of staff did identify how change was being managed as contributing to uncertainty, a loss of trust and a more stressful working environment.

Through our interviews with current and former staff, some management, the unions and aviation industry participants and representatives, most identified issues with the culture and treatment of staff across the CAA (including Avsec). This is not to say that all staff have experienced bullying or harassment, or that all managers and leaders do not provide appropriate support and maintain a positive workplace culture. Indeed, a number of staff we spoke with advised that they were very happy in their work, felt supported and were unaware of any issues across the organisation. There are clearly teams within the CAA, including teams with significant diversity, where great working environments exist, where staff feel respected and supported, and where diversity is valued.

Staff and unions have an equally important role to play in supporting and operating an effective culture. Their engagement and connection to the development of organisational values and decisions about culture are central to organisational values being lived and breathed in the CAA.

While we identified at the outset the link between culture and performance and therefore the potential risk to the performance of the CAA's core purpose and functions, we are not suggesting that there is any actual current issue or risk relating to the safety and security of civil aviation. As well as being outside of our Terms of Reference, it is not within our area of expertise and we simply make the observation of the potential linkage between organisational culture and the effective performance of the CAA's regulatory and aviation security responsibilities. We would also note that the risk of negative impacts on the performance and effective delivery of core services sits equally across the regulatory part of the CAA and Avsec.

### **3. Bullying and Harassment Policies and Complaints**

The CAA's written policies and procedures in relation to preventing and responding to bullying and harassment are largely consistent with good practice, particularly the latest iterations rolled out in 2018. However, the operation and implementation of these have been inconsistent, in some cases inappropriate, and in others inconsistent with natural justice.

A review of complaint files from 2015 to 2019 shows that some current and former staff have undoubtedly been subjected to bullying and other inappropriate behaviour. Some women have been sexually harassed. Some of these incidents have been appropriately dealt with, including some in an exemplary manner. Others have not, and the management of some complaints has caused additional, unnecessary stress and harm to complainants and in some cases to those who were the subject of the complaints.

As Appendix 2 shows, how complaints are handled is variable. The team an individual is in, their particular team leader and/or manager, and which part of the organisation that team sits within largely determines how well complaints are managed. Some managers are particularly skilled at dealing with complaints in accordance with the relevant CAA guidance and procedures. The experience of staff and management in working for the CAA has been variable (and unfortunately remains so) and sits on the continuum from very good to extremely poor.

### **4. Recommendations**

In line with our Terms of Reference, we have outlined our broad findings based on our interviews, the review of documentation and specific complaint files. Our more detailed recommendations are contained in section 13 of this Report.

We also make a number of recommendations which we believe will assist the CAA to move forward with its staff to build a consistently positive culture and a high-performing organisation.

To this end, we present our recommendations, consistent with our key findings and in order of priority for action, in the areas of:

- Leadership and Management (including reporting)
- Keeping staff engaged and safe (ensuring health and wellbeing)
- Policies, procedures and guidelines

Our recommendations are:

#### 4.1. Leadership and management

1. The Board, Chief Executive and ALT acknowledge past failings to consistently identify and respond to a poor workplace culture and the negative impact these failings have had on former and current staff, the organisation and the industry and stakeholders. This should include an acknowledgement that statements made about the culture being good and questioning the motives of complainants whilst made in good faith were not accurate and that this had the effect of further eroding the trust staff had in the Board and senior management of the CAA.
2. The Board determine whether the organisation's leadership is operating effectively to deliver the culture change desired and where this is not the case, the Board should implement changes in order to do so. The Board should set clear expectations for the Chief Executive to implement changes to achieve the desired levels of leadership cohesion and performance across all levels of the CAA and request regular reporting from the Chief Executive to ensure delivery.
3. The Board review and revise its health and safety strategy to expressly recognise bullying, harassment and discrimination as a significant health and safety risk and set out the Board's zero-tolerance policy to the Chief Executive and ALT to ensure they consistently and proportionately respond to every occasion where standards have not been met, and request regular reporting from the Chief Executive to ensure delivery.
4. The Board review what information and reports it receives regarding the health, safety and wellbeing of staff to ensure it has access to timely, accurate and appropriate levels of information about staff wellbeing. This should be included as a specific item on the Board's Health and Safety Committee agenda.
5. The Board require the ALT to systematically report to it on conduct issues and complaints and any health and safety risks associated with them. Similarly, the CAA's ALT and ELT should also be receiving systematic and full reporting and advice on open complaints in relation to bullying and harassment, including sexual harassment or sexual assault.
6. The Board, ALT and the unions formalise their commitment to eliminating bullying and harassment from the CAA and commit to adopting a partnership approach to working together. This approach should be taken in working together to review complaints about bullying and harassment, the review of policies and procedures for managing complaints and a review of the code of conduct.
7. The Board develop an engagement plan to ensure it has a direct line of communication to staff and unions in order to assure itself that it is appropriately aware of the state of the culture and any health and safety risks in relation to workplace practices/behaviours.

8. Using the results of this Report the ALT initiate an organisation-wide culture change programme. This programme should be jointly designed and led by management, staff, and the unions, supported by appropriate experts. The Board should approve this programme and monitor progress against expected milestones.
9. The Board work with the ALT to refresh the CAA's values and behaviours and ensure these are aligned to the culture the Board expects to see operating within the CAA as a result of the culture change programme.

#### 4.2. Keeping staff engaged and safe

10. The ALT undertake a staff engagement survey as a matter of urgency and report the results and proposed action plan to the Board, staff and unions. Following which the ALT should implement regular pulse surveys to assess progress against the baseline survey and take appropriate corrective action to ensure the culture continues to move to the desired state.
11. The ALT make clear again to all staff its zero-tolerance policy for inappropriate behaviours and ensure staff consistently and proportionately respond to every occasion where standards have not been met and that any inappropriate behaviour is reported to the ALT for oversight.
12. The ALT establish a peer support network consisting of trained staff at all levels of the organisation to assist with the reporting of issues, and the mentoring and support of staff going through the process. Staff involved should be trained in all aspects of complaints procedures, privacy and confidentiality issues, and support mechanisms to be able to adequately support and mentor those who approach them. The ALT consider the introduction of a welfare manager to its staff complement for the foreseeable future.
13. The ALT review how it can promote healthy conversations (including about specific incidents where appropriate and whilst maintaining privacy and confidentiality) to encourage staff to discuss what being treated with dignity and respect means in order to promote a culture that is open and truly diverse and inclusive.
14. The ALT strengthen an early intervention/de-escalation approach with processes to deal with less serious issues by initiating appropriate bullying and harassment complaint management training for all managers. This training is to be recorded and refreshed regularly. Managers should also have access to skilled facilitators either internally or externally through a specialist dispute resolution unit established internally.
15. The ALT improve the support it provides to participants going through the complaints process. This should include improved communication with participants on timelines and progress, consistent advice and support from HR and advice on the outcomes of such an investigation. It should also continue to include the provision of specialist services beyond EAP to those who request or need such services and ensure support is provided by suitably trained people through the complaints process. This should include regular follow-ups with the participant to ensure concerns are addressed.
16. The ALT implement a "safe space" protocol whereby, while a complaint of bullying or harassment is being investigated, complainants and respondents are not in proximity to each other either physically or in their reporting lines.
17. The ALT ensure that all persons who have responsibility for receiving and resolving complaints of bullying and harassment receive adequate information or training in the delivery of the CAA procedures and practices and that their competency to manage complaints is appropriately and regularly assessed, at a minimum annually.

18. The ALT has a policy that only people who are experienced in carrying out investigations can be appointed to undertake investigations and that conflicts of interest are declared and, if needed, managed such as the appointment of a new Manager to undertake the investigation.
19. Where appropriate, the ALT consider undertaking facilitated restorative sessions with participants following the resolution of investigations to support the normalisation of relationships where possible. This may require the use of skilled external facilitators.
20. The Board and ALT undertake a review and consider whether the Spot tool can be an effective channel for making a complaint and consider alternative options such as an external hotline or an externally hosted helpline staffed by independent professionals able to provide initial advice and guidance to staff.
21. The ALT ensure there is effective worker and union consultation, participation and engagement when updating any policy, processes or systems relating to bullying or harassment.

#### 4.3. Policies, procedures and guidelines

22. The ALT ensure that the Code of Conduct, and its articulated values, and the CAA's 'Just Culture' approach be referenced and included in job descriptions, recruitment documents, training materials, employment agreements, and in the performance framework as individual accountability.
23. The ALT review and amend all performance agreements to ensure the requirement to promote a healthy culture and to respond to inappropriate behaviours is a core accountability requirement.
24. The ALT ensure that all references are removed in policies or other documents to having to inform one's manager first if raising an issue. Any employee should be able to go straight to Human Resources, a member of the peer support network recommended above to be established, or to another senior manager, they trust with an issue or a complaint and know it will be dealt with consistently and with adequate support.
25. The ALT implement a policy that when a complaint or report of bullying and harassment proceeds to a formal investigation when the seriousness of the complaint warrants this elevation in response, the investigation is conducted by an external investigator, with no input from the CAA, except for the participation in interviews, document gathering, and communications regarding timelines and progress of the investigation.
26. The ALT ensure that the Terms of Reference for external investigations into bullying and harassment issues include deadlines for undertaking the investigation as well as timelines for providing both complainants and respondents with progress updates. Further that the ALT ensures there is standardisation in approaches through the development and mandatory use of templates in this regard.
27. The ALT ensure the bullying and harassment policies and guidelines are easily locatable and accessible to all staff, including Avsec operational staff. Training on these policies should be a core part of induction for all new staff and training should be refreshed on a regular basis and at least annually. The training must include education in what constitutes bullying, harassment and discrimination, the risks to health and safety of bullying and harassment, having difficult conversations, bystander intervention training, conflict de-escalation and resolution, privacy and confidentiality principles, unconscious bias training, and what employment law classifies as misconduct and serious misconduct.

28. The Board and ALT conduct regular and scheduled reviews, with the engagement of unions, to ensure complaint management training is effective in supporting the desired culture. To support this, reporting will be mandatory to the Board and ALT for all bullying and harassment complaints.
29. The ALT ensure exit interviews are undertaken for all departing staff (where they agree), where appropriate using an independent party and that the information from these interviews is collated, examined for themes and used as part of a continuous improvement approach to culture building.

#### 4.4. General

30. We recommend that the Board and ALT undertake effective management, staff, union and sector consultation, participation and engagement prior to implementing the above recommendations, as appropriate.
31. In implementing these recommendations, the Board should ensure change management plans take account of the different nature of the roles performed by Avsec and the regulatory part of the CAA and that the leadership and engagement approaches used are tailored to the different workforce profiles to ensure change is effectively embedded across all parts of the CAA. A one size fits all approach will not be effective.

## 5. Limitations and Acknowledgements

We heard from a wide range of staff and ex-staff from across the CAA and at all levels of the organisational structure. One factor was evident throughout our review; almost to a person, the people who spoke to us had an impressive and, in our experience, near unique passion for the work they do and for the aviation industry.

Indeed, most people who spoke to us were positive and passionate about the work of the CAA and motivated to share their story so it could positively contribute to our understanding of the issues the CAA faces and to inform our recommendations to help make the CAA a great place to work. Criticisms, where made, were generally considered and based on personal experiences or observations of what others had experienced.

Some people shared positive experiences and spoke of enjoying their work at the CAA. Others spoke of less positive work experiences. Many told us they were fearful of being targeted for coming forward to speak to us. We wish to acknowledge in particular those people who came forward and told us how negative and inappropriate behaviours had personally impacted them. For some, this included impacts on their mental health and personal lives. For these people sharing their experiences with us was difficult and at times distressing. For some, recounting their experiences resurfaced emotions that were painful and difficult. We were humbled by these people's honesty and courage.

In all, we carried out over 120 interviews. We acknowledge that reviews of this nature might be seen as providing a platform for people who are disgruntled for some reason or who are discontented in some manner arising from their employment. Given the significant number of interviews and the broad cross-section of the CAA they represented, we do not consider that to be the case here.

Some comments and suggestions received were outside the scope of the Terms of Reference. Where appropriate, however, we have referenced these in our findings and recommendations.

We note that this was a review and not a substantive reinvestigation of individual complaints. As such we make no findings in relation to the substantive merits of any

complaint we reviewed. Nor do we make direct criticism of any individual in relation to their management of any particular complaint.

# Introduction

## 6. Background and Context

In June 2019, a staff member appeared on TV3 as a “whistle-blower” and made several allegations regarding the culture at the CAA.<sup>11</sup> A proposal to substantially reorganise the regulatory functions of the CAA, including the disestablishment of all senior management positions, was also leaked to the media.<sup>12</sup>

The Minister was required to confirm his public support for the CAA and express confidence in its actions.

In August 2019, more staff came forward to the media, including alleging that the Minister had been written to by the Chair of the Board the previous year (2018) advising of a complainant who had contacted the Board.<sup>13</sup>

The Minister was again required to confirm his public support for the CAA, in particular, the Chair and that the Chair had advised the Minister that the complaint was from a disgruntled ex-staff member.

More media reports covering staff allegations emerged over the month, including allegations that the Chair and Chief Executive were aware of a number of bullying and sexual harassment complaints but that these had not been addressed.<sup>14</sup>

The Chair responded through the media, questioning the motives of the complainants. This response was subsequently criticised as being not helpful by the Human Rights Commission.<sup>15</sup>

On 21 August 2019, it was reported that the Minister had requested that the Chair step down to make way for new leadership and had ordered the Ministry of Transport to initiate an Independent Review of the Culture of the CAA under section 132 of the Crown Entities Act 1994.<sup>16</sup>

Section 132 empowers a responsible Minister to review the operations and performance of a Crown Entity at any time and the entity is compelled to cooperate with the review. Before the Minister can undertake a review under this section they must consult with the entity on the purpose and nature of the review and consider any submissions by the entity on the proposal.

The Minister proposed a review that would consider whether the CAA has appropriate policies, systems and practices in place to deal with allegations of sexual harassment and bullying and that the CAA has responded appropriately to the complaints and allegations made to it.

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<sup>11</sup> <https://www.newshub.co.nz/home/new-zealand/2019/06/secretcy-and-cover-up-explosive-allegations-from-within-the-civil-aviation-authority.html>

<sup>12</sup> <https://www.newshub.co.nz/home/new-zealand/2019/06/exclusive-leaked-report-reveals-major-overhaul-for-civil-aviation-authority.html>

<sup>13</sup> <https://www.newshub.co.nz/home/politics/2019/08/transport-minister-phil-twyford-was-warned-about-civil-aviation-authority-s-sexual-harassment-claims.html>

<sup>14</sup> <https://www.newshub.co.nz/home/new-zealand/2019/08/sexual-harassment-at-civil-aviation-authority-swept-under-the-carpet-staff.html>

<sup>15</sup> <https://www.newshub.co.nz/home/politics/2019/08/transport-minister-phil-twyford-was-warned-about-civil-aviation-authority-s-sexual-harassment-claims.html>

<sup>16</sup> <https://www.newshub.co.nz/home/new-zealand/2019/08/civil-aviation-authority-chair-nigel-gould-resigns-at-transport-minister-phil-twyford-s-request.html>

This was to be considered within an overall review of the organisational culture of the CAA, with recommendations sought on improvements to the culture, treatment of staff, handling of complaints and policies and procedures.

The Minister directed the Ministry of Transport (the Ministry) to conduct the Review on the Minister's behalf with the assistance of independent external specialists.

At the time of consulting with the CAA on the proposed Terms of Reference for the Review, the CAA advised the Ministry it had retained the services of David Laurenson QC to complete an independent investigation into allegations regarding Avsec.

## 7. Scope and Purpose of the Review

In September 2019, the Minister formally announced an Independent Review into the Organisational Culture of the CAA (the Review). The Review was to focus on three areas; reviewing reports of bullying and harassment to understand how they were addressed, conducting a workplace culture assessment, and ensuring policies, procedures and prevention controls for managing bullying and harassment were appropriate. The Terms of Reference for the Review are attached at Appendix 1.

The objectives of the Review were to:

- Consider how complaints of bullying and harassment had been handled.
- Consider how staff and complainants had been treated.
- Assess policies and procedures against best practice and identify any barriers to reporting or making complaints.
- Establish whether appropriate prevention and other control measures were in place and consider these against best practice guidance.
- Establish the effectiveness of the prevention and control measures and identify opportunities for improvement.
- Consider the CAA as a place to work with regard to ensuring staff are treated with dignity and respect and maintaining an open and supportive culture.
- Make recommendations for improvements to:
  - How to maintain an open and supportive culture.
  - How to promote and ensure staff are treated with dignity and respect.
  - How bullying and harassment complaints are handled, and how staff and management are trained in dealing with complaints.
  - Policies, systems and procedures for dealing with complaints.
- Any other recommendations the Ministry considers to be directly relevant.

The Ministry commissioned consulting firm RDC Group to provide external specialist support along with barrister Rachael Schmidt-McCleave (the Review Team).

The aims of the Review were:

- For the Minister to develop an understanding of whether there are, or have been, significant areas of concern regarding the organisational culture at the CAA or Avsec, and how the organisation has responded to those.
- To provide advice and recommendations to the Ministry on options for organisational improvement.

We were requested to focus the Review on the period from 1 January 2015 to September 2019.

It is also noted that while the Ministry and the Minister both play roles with respect to the CAA, these roles are not within the scope of our Review.

## 8. Approach

In undertaking the Review, we interviewed over 120 people (a mix of those in management, executive and governance roles proactively identified and approached for an interview, as well as those who volunteered to participate), examined existing policies and processes, ALT and Board minutes and reporting, and reviewed over 30 individual personnel files in respect of complaints made and investigated.

In this way, we were able to identify consistent themes and triangulate feedback, observations and information provided to confirm the validity and veracity of these.

The Terms of Reference contained express provisions dealing with confidentiality and protection of privacy. All personal information collected through the Review from the CAA, from CAA staff, and ex-CAA staff, is subject to an obligation of confidence (to the CAA, its current and former staff). That obligation of confidence is owed by the recipients of the confidential information, including the Review Team, and any staff in the Ministry who may be involved in the Review.

All those interviewed or spoken to as part of the Review were advised that notwithstanding the above commitment to confidentiality, the Report, its findings and its recommendations are intended to be released by the Minister in due course. However, those findings will not identify any individual or make reference to facts that could reasonably lead to the identification of any complainant or the person about whom a complaint has been made.

In this way, we were able to identify consistent themes and triangulate feedback, observations and information provided to confirm the validity and veracity of these.

We emphasise that this was an independent Review and not a formal investigation. As such, we have not made factual findings of any individual or set of circumstances but, rather, have focussed on themes ascertained from what we have been told and what Rachael Schmidt-McCleave found in reviewing the anonymised and redacted files she viewed. The Terms of Reference make it clear that this Review is not a re-hearing of any particular (previous) investigation. We were required to review reports of bullying and harassment not to determine if those reports were well-founded but to determine "how they were addressed". In other words, this is a process Review, rather than a fact-finding investigation. Likewise, we were required to conduct a "workplace culture assessment". This asked us to talk to employees and make findings of how those employees perceive the culture of the CAA. Perception findings are, again, not about findings of fact but of feelings.

In taking this approach, we were able to gain a clear understanding of the current state of the CAA culture, behaviours and practices including how complaints about alleged inappropriate behaviour were managed and responded to.

Rachael Schmidt-McCleave was provided with all relevant files relating to the period under review with redactions to protect the privacy of those individuals involved. For those individuals from whom privacy waivers were received, the files were released to Ms Schmidt-McCleave in full, except for the personal information of third parties.

During interviews, we followed a set of questions which sought to understand:

- Board, management and staff perceptions, understanding and experience of the culture of the CAA.

- The vision for the organisation including what sort of organisation it wanted to be and the associated values and behaviours expected, including those related to personal and professional performance.
- The communication of these values and behaviours.
- The implications/consequences of not conforming with the expected values and behaviours.
- The consistency of leadership and management behaviours with those communicated.
- The correlation/consequence of actual leadership and management behaviours demonstrated and resulting staff behaviours and experiences.
- The level of management and staff awareness and understanding of policies, processes, guidelines and tools in place to deal with poor professional or personal performance.
- The level of support and training management received in administering the same.
- The consistency of management's application and administration of the same.
- The consistency of staff's experience of management's application and administration of same including how they were dealt with and the interventions used to respond to complaints.

In addition to the interviews and documentation review outlined above, we examined:

- State sector guidance on the expectations of public servants and their professional and personal behaviour.
- WorkSafe New Zealand's (WorkSafe) guidance relating to workplace bullying.
- Previous independent audits and reviews, including those of the Office of the Auditor-General.
- The policies and approach to leadership and management including dealing with complaints taken by several similar organisations.

Having formed a view of what good practice and leadership models for handling complaints looks like, we then assessed the gaps and opportunities for the CAA to enhance its current approaches and where opportunities existed to build its culture.

# Background

## 9. A Brief History of the CAA and New Zealand's Aviation Regulation System

In 1988, following the establishment of the Airways Corporation, the Ministry of Transport commissioned an independent study into the residual role and functions of the Civil Aviation Division.

The study was to consider the need for proposed regulatory controls in civil aviation and the requirement to enforce them. From this examination conclusions were to be drawn on the appropriate level of regulation, considering the safety factor, economic considerations and New Zealand's international commitments. The resource requirements for the Civil Aviation Division would then be determined.

The Study advocated that New Zealand's civil aviation safety system be designed based on the "life-cycle" approach.

This system is based on:

- Setting a minimum standard of safety behaviour through a set of rules (the Rules), and by placing conditions on aviation documents.
- Allowing entry into the civil aviation system to those operators who have the capability to meet the required minimum standard for certification and the conditions placed on their aviation documents (certification).
- Providing information and advice to operators to help them comply with the Rules; monitoring operator adherence to the safety standards and their aviation documents, including identifying the action that these participants need to take to ensure that they comply with the safety standards (surveillance); and where necessary in the interests of safety, imposing conditions on, suspending, or revoking the aviation document issued to the operator.

In implementing the recommendations of the report, the Ministry developed a legal framework to establish rules of operation and divisions of responsibility within the civil aviation system.

The legal framework today consists of the Civil Aviation Act 1990, the Transport Accident Investigation Commission Act 1990, the Crown Entities Act 2004 and the Civil Aviation Rules and Regulations.

The primary aviation legislation, the Civil Aviation Act 1990 (the Act), came into force on 1 September 1990 and was enacted by Parliament to promote aviation safety, ensure that New Zealand meets its obligations under the Chicago Convention, and implement international aviation agreements. In so doing, the Act clearly establishes the authority for the control of the aviation system with the New Zealand Government. It requires an aviation document for entry into the civil aviation system and contains enforcement provisions for contraventions of the Act.

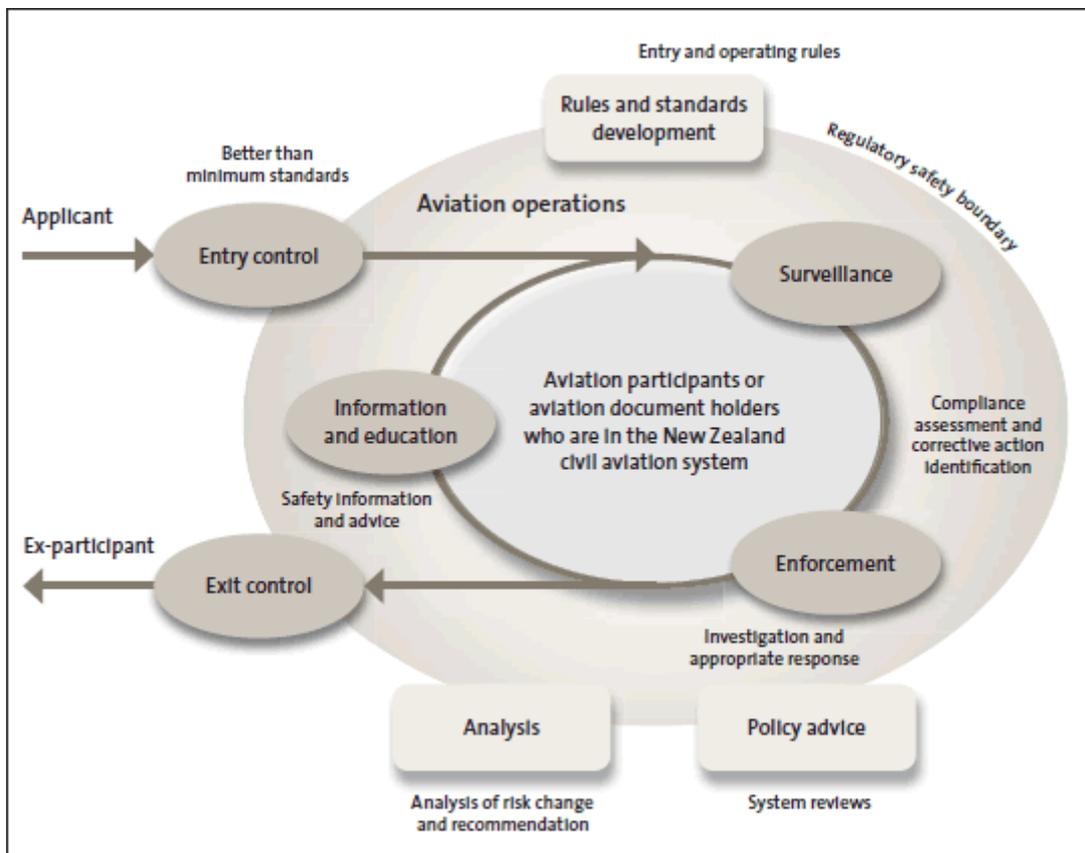
The system is depicted in Figure 1 overleaf.

The International Civil Aviation Organisation (ICAO) had its origins in the 1944 Chicago Convention on international civil aviation. The main objective of the Chicago Convention was to ensure the safe and orderly development of international civil aviation.

ICAO is a specialised agency of the United Nations, formed to promote the safe and orderly development of international civil aviation throughout the world. It sets standards and regulations necessary for aviation safety, security, efficiency and regularity, as well as for

aviation environmental protection. The Organisation serves as the forum for cooperation in all fields of civil aviation among its 193 member States.

Figure 1: New Zealand Civil Aviation Regulation System



(Source: Brief for the Incoming Associate Minister of Transport, The Civil Aviation Authority of New Zealand, Civil Aviation Authority, 30 June 2009, page 21.)

The obligation on ICAO members is to adhere to the standards and to endeavour to follow the recommendations.

Based on ICAO commitments, the following functions define the duties of a national civil aviation authority:

- To define goals and objectives for safety levels.
- To develop and maintain national rules, regulations and standards.
- To ensure that all participants in the system are competent and operate according to rules and standards.
- To support persons and organisations in the system with information and advice.
- To analyse information to identify potential hazards, adverse safety trends and system shortcomings.
- To investigate accidents and incidents.

## 10. Role of the CAA

The CAA, a Crown Entity for the purposes of section 7 of the Crown Entities Act 2004, was set up on 10 August 1992 by an amendment to the Civil Aviation Act. The CAA's functions include (relevantly):

- promoting civil aviation safety and security;
- promoting civil aviation security beyond our borders in accordance with New Zealand's international obligations; and
- establishing and continuing the Aviation Security Service (Avsec).

The Act provides for the Minister to appoint a five-member Civil Aviation Authority, generally referred to today as "the Board" as distinct from the organisation that is "the Civil Aviation Authority". The Board is the governance body of the CAA. The Act allows the Minister's functions and powers to be delegated to the Board, and also enables the Board to appoint a Director of Civil Aviation (the Director) and to delegate responsibilities and powers to that person.

The Act creates the unique relationship between the CAA regulatory organisation and Avsec, whereby Avsec is part of the CAA but is also regulated by another part of the CAA as the Part 140 aviation security services certificate holder. The CAA regulatory organisation provides administrative support services for Avsec on the terms and conditions agreed between the Director of the CAA and the General Manager of Avsec. The CAA regulatory organisation is required by the Act to perform its functions in respect of Avsec separately from its other functions and maintain accounts, records and reports accordingly. The Avsec General Manager performs his or her Avsec functions independently from the Minister, the Authority, and the Director of the CAA.

It is the Board who determines the terms and conditions of employment of the General Manager of Avsec. The Director of the CAA appoints, terminates and suspends the employment of CAA employees, and the General Manager of Avsec does so for Avsec employees.

The Act specifies that the functions of the Minister of Transport (the Minister) include promoting civil aviation safety and security and administering New Zealand's participation in the Chicago Convention and any other international aviation convention, agreement, or understanding to which the Government of New Zealand is a party.

The Act also gives the Director a range of functions and powers independent of the Board or Ministerial oversight, including the ability to:

- control entry into, and operation within, the civil aviation system, through granting, suspending, revoking, or imposing conditions on aviation documents; and
- take any action that may be in the public interest to enforce the provisions of the Act and the Rules made under the Act, including inspections and monitoring.

The Act also provides the Director with discretion on whether to suspend, revoke, or impose conditions on an aviation document. The Director is also the Chief Executive of the CAA. In this role, the Director is accountable to the Board for the CAA's performance in achieving the strategic priorities and operating intentions as set out in the CAA's statement of intent, including the performance measures.

Under section 191 of the Health and Safety at Work Act 2015 (HSWA), the CAA is the designated agency for health and safety relating to:

- work to prepare an aircraft for imminent flight
- work onboard an aircraft for the purpose of imminent flight or while in operation

- aircraft as workplaces while in operation.

The CAA is also responsible for enforcing the Hazardous Substances and New Organisms Act 1996 in relation to aircraft and aviation.

Figure 2, taken from the 2017 Briefing to the Incoming Associate Minister, represents the legislative, political and governance arrangements of the CAA described above.

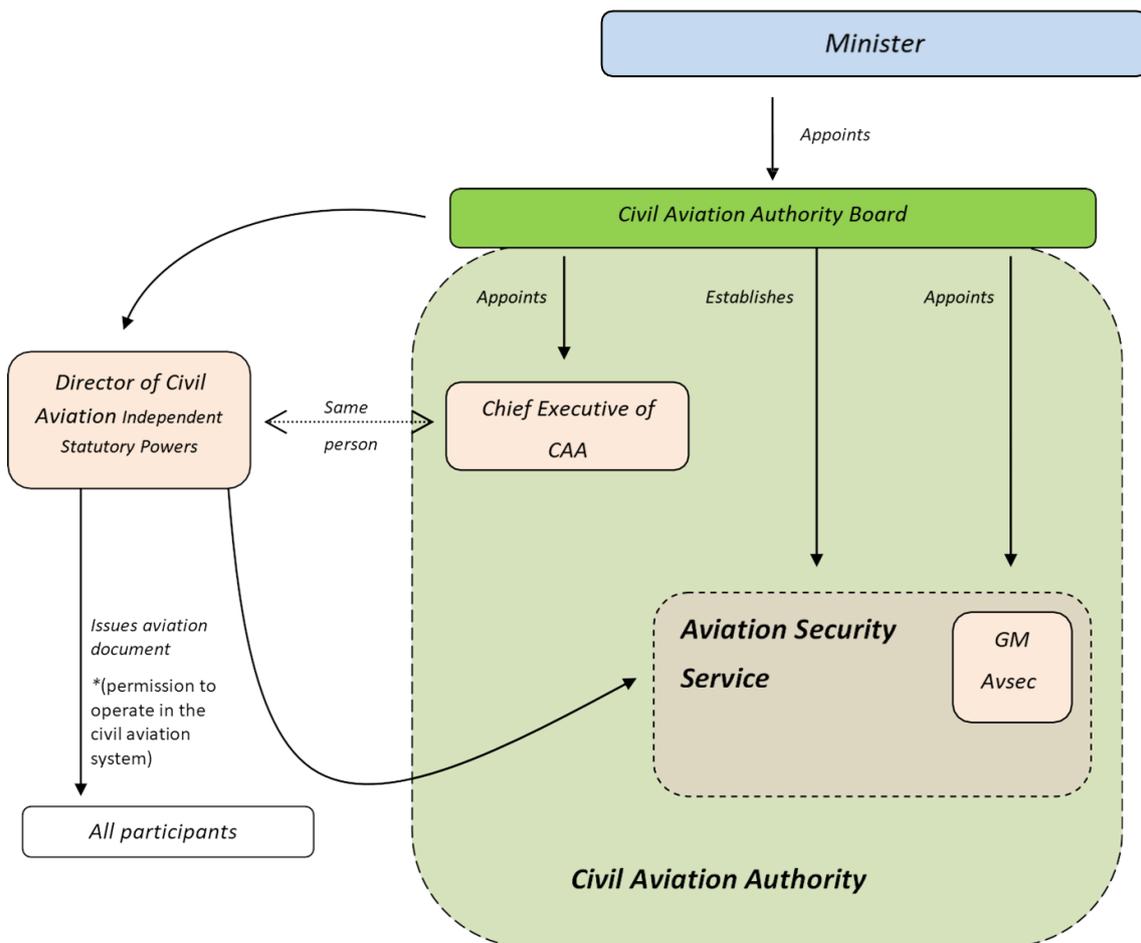
As stated above, Avsec is a separate service unit of the Board that provides specialised aviation security services.

In theory, the arrangements are intended to create a clear separation between the operational management of Avsec and the assurance processes used by the CAA regulatory organisation with respect to how well Avsec carries out its activities as an operator certified under the Act.

There is a direct reporting line from the General Manager Avsec to the Board regarding the certification held but all other aspects of the General Manager's role report via the Chief Executive of the CAA.

In practice, there are inherent conflicts of interest, primarily at Board and Chief Executive level, in the structure established by the Act.

Figure 2: CAA legislative, political and governance arrangements



*\*By virtue of Ministerial Gazette Notice 3702, only Avsec can be granted an aviation document to provide aviation security services*

While the CAA regulatory organisation and Avsec separately perform a range of functions, the common support services (finance, human resources and information systems) are located within the CAA regulatory organisation and support both functions (although, as set out above, it is the General Manager of Avsec who deals with employment matters of Avsec staff).

The Review Team notes that although the regulatory framework and operating environments faced by the CAA and Avsec are complex, in respect of the capacity and capability demanded of the Board and senior management, we do not consider that the nature of the organisation or its environment exhibits additional complexity than that faced by other public sector entities.

# Analysis

## 11. Organisational Culture

An organisation's culture is derived from the values and behaviours that are held and exhibited within the organisation. Culture impacts the working environment and the professional, social and psychological environment of an organisation.

Culture influences the way people interact, how they deal with change and conflict and the resistance they may have towards changes to the culture. Aspects of culture include actions, inactions and reactions, that either reflect or don't reflect the desired values of an organisation.

Therefore, culture can be distilled in the difference between actions and words, the tacit and the explicit, including the difference between what management does and says and what employees experience, see and hear. There is an oft-repeated phrase about culture that *"the standard you walk past, is the standard you accept"* which captures this concept.

Some organisations make the mistake of using values as the primary basis for culture. Our values describe how and what we are. This can be misleading because values do not always align to intended behaviours, and at times values may not be evidenced in the actual behaviours of staff and management.

It is therefore critical, in setting out the values of an organisation, that its leaders and governors have mechanisms in place to provide them with the necessary information and intelligence on the actual values operating within the organisation. Without this information leaders and governors can have no basis for being confident about how the organisation is actually operating. This is no different from information and data about other aspects of organisational performance, such as productivity and financial performance.

Finally, shifting a culture over time is more realistic and more successful than radical change, because cultural change is an extraordinarily long process, due to the deep-seated nature of culture. Rarely, a crisis, external scrutiny, or a merger can be a trigger for change, but managers who adopt a "marathon not a sprint" approach will be more successful.

A disruptive event can provide the occasion for savvy managers to make the change that has been desired, but rarely does a disruption enable a wholesale change that was previously unplanned.<sup>17</sup>

*"Organisations that learn to manage health and safety well learn that the capability that drives success in this area is the same capability that drives success in other areas of the business. Organisations with a good health and safety culture and reputation are valued by workers, investors and stakeholders."<sup>18</sup>*

### 11.1. The Board's role

The Institute of Directors for New Zealand (Inc) establishes the Four Pillars of Governance Best Practice. These are:

- Determining purpose
- An effective governance culture
- Holding [management] to account

<sup>17</sup> Meyer, Alan D., 1982, Adapting to Environmental Jolts, *Administrative Science Quarterly*, Volume 27, Issue 4, pp. 515-37

<sup>18</sup> WorkSafe NZ-Health and Safety Guide: Good Governance for Directors, March 2016

- Effective compliance.

The second pillar, a functional culture, is therefore essential to a high performing Board. Within the corporate structure, the Board has the highest standards of accountability and liability while operating with the least amount of time and almost no day to day control. Sound Board architecture and processes provide a platform for good governance but do not guarantee it. With limited time and resource, an effective Board will concentrate on the important issues of ... strategy, culture, holding management to account and compliance.

In addition to fostering a healthy Board culture, the Board has a key leadership role to foster high ethical standards and set the tone for a healthy organisational culture. It means leading from the top as well as supporting management and holding them to account on achieving and maintaining a healthy culture and ethical practices. By displaying and encouraging high ethical standards, directors positively influence culture, behaviour and the reputation of their companies.

Governing Culture: Risk and Opportunity (2016) by Tomorrow's Company describes the Board's role in governing culture:

*"Boards have a dual leadership role – accountability and assurance. They are accountable for ensuring that there is no ambiguity about purpose and values and for embodying the behaviours needed to deliver their strategic goals. They also need to assure themselves that the culture of the Board is the desired culture and that the executive is taking the appropriate action to achieve and maintain the desired culture throughout the organisation".<sup>19</sup>*

Therefore, ensuring culture is operating as a strategic asset, and subsequently managed as a key corporate risk, should be one of the Board's top priorities. Ethical practice should be fundamental to all directors and Boards. There is a strong relationship between values and ethics.

Values are part of the attitude systems that influence behaviours and the behaviour of those with whom people interact. Ethics are the standards by which those behaviours are evaluated for their probity. The values that the Board and senior management demonstrate have an enormous influence on an organisation's ethical standards. If these values are deficient, then sooner or later, the values and actions of other personnel will deteriorate. Major problems can still arise if the ethical values at the top are sound, but this is not adequately communicated to the rest of the entity<sup>20</sup>.

Following the tone set by directors, the CEO and management have a key leadership role in modelling ethical values. This usually establishes the benchmarks and expectations for every level of the company. The right behaviour should be practised by management consistently. A well-established values-based culture will pay dividends by its influence over management's actions. It provides a guide to reaching the best decisions in the circumstances. The strength this fosters is strongly evident when the company is under pressure or when time is limited to debate and consider options.

Management should regularly report to the Board on ethical matters and conduct incidents and the action taken to address them. It is important Boards monitor this and hold management to account. The repercussions from bad conduct can be devastating to a business. Boards need to ensure that management provides comprehensive and timely advice on ethical matters and conduct risks. Follow through by the Board is critical to setting the right tone<sup>21</sup>.

<sup>19</sup> Institute of Directors in New Zealand Inc; The Four Pillars of Governance Best Practice p54-55; 2017.

<sup>20</sup> Ibid p58-59.

<sup>21</sup> Ibid p61.

Effectively governing culture calls for the Board to understand and monitor the metrics that best reflect the health and strength of the CAA's culture. Culture is measurable; there are many options to directly and/or indirectly measure it. The 2017 COSO<sup>22</sup> update, notes that reporting on culture to the Board may include consideration of analytics of cultural trends, benchmarking to other entities or standards, lessons learned analyses, reviews of behavioural trends, and surveys of risk attitudes and risk awareness. Boards should oversee and organisations should report on, the different dimensions of culture, such as ethics and integrity, alignment with purpose and values, leading by example, performance and accountability, and inclusion and wellbeing.

Alongside this responsibility is accountability for ensuring the CAA is operating a workplace that meets its Health and Safety obligations as a Person Conducting a Business or Undertaking (PCBU).<sup>23</sup> Workplace conduct between staff and management and the underlying culture of an organisation can have direct links to the welfare and safety of staff and management.

As the 2016 WorkSafe Guidance for Directors identifies, the Board should be receiving regular reporting including:

- Data on all incidents, including near misses, work-related ill-health, compliance with health monitoring programmes and ACC claims. Effective monitoring of these statistics can alert the Board to underlying problems before any serious incidents occur.
- Data on absence rates due to sickness. This can be an indicator of issues such as stress and fatigue.
- Data on trends including routine exposure to risks that are potentially harmful to health such as high noise levels, toxic chemicals and bullying.
- Progress towards implementing formal improvement plans and meeting policy goals, including a number of actions closed-out on time.
- Actions in place aimed at preventing harm, such as training, and maintenance programmes.
- The health and safety performance and actions of contractors.
- Reports on internal and external audits and system reviews.
- Data on proactive safety visits such as safety tours and workplace inspections.

The Board should be alert to the possibility that there is a reluctance to report this information and should satisfy themselves that any obstacles have been addressed.<sup>24</sup>

### 11.2. The Chief Executive and Leadership Team's role

The effective Board checks that:

- Management has an implementation plan in place for the strategy.
- This plan is deployed throughout the business by the assignment of constituent tasks to business resources.
- Progress against plan measured and managed by valid performance management processes.

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<sup>22</sup> The Committee of Sponsoring Organizations of the Treadway Commission (COSO) is a joint initiative to combat corporate fraud. It was established in the United States by five private sector organizations, dedicated to guiding executive management and government entities in relevant aspects of organizational governance, business ethics, internal control, business risk management, fraud and financial reports.

<sup>23</sup> Ibid

<sup>24</sup> WorkSafe NZ-Health and Safety Guide: Good Governance for Directors, March 2016

- People are held accountable for their performance.

Boards must make decisions based on information that is sufficient, accurate, relevant and timely. For any given purpose it is up to the Board to decide what information it needs and the form in which that information should be presented. A key input is the advice of management.

Well-designed and comprehensive reporting systems enable the Board to hold management to account and to allocate resources and make strategic decisions with the best information available.

The Board is ultimately responsible for the system of internal controls including the management of risk. The failure to manage change is a major cause of business failure and/or lack of opportunity for success.

The Board should define its information requirements and most of the information will originate from management. Where these requirements are not being met by management, the Board should raise this as a priority<sup>25</sup>.

The role of the Chief Executive and the ALT is to translate the values and cultural expectations of the Board to the CAA staff and management. This includes describing how the desired culture links to the CAA's strategy and ensuring this is consistently followed through.

As leaders, the Chief Executive and the ALT need to role model the expectations they have set for others in the CAA and be exemplars of the behaviours that underpin the culture they espoused for the organisation. If they are not living and breathing the culture, then other managers and teams will have permission to do the same. If staff see senior leaders saying one thing and doing another, they will not respect or trust what they are being told.

Good practice guidance suggests that effective approaches by the Chief Executive would include the following:

- Open communication on what is working well whilst seeking genuine feedback on what is not.
- Consistently operating the policies and procedures that support an effective culture.
- Consistently holding people to account for their behaviour and responding proportionately and appropriately to incidents when they occur.
- Operating consistent feedback loops and taking the opportunity to learn from when things go wrong, as well as when things are going well.
- Recognising and celebrating progress. As leaders, the Chief Executive and the ALT need to make sure that progress is celebrated, and stories are shared.

### 11.3. The role of staff and the unions

Staff and unions have an equally important role to play in supporting and operating an effective culture. Their engagement and connection to the development of organisational values and decisions about culture are central to organisational values being lived and breathed in the CAA.

Worker engagement is an important part of growing a positive workplace culture. Research has shown that worker and union participation leads to better health and safety outcomes.<sup>26</sup> All workers should be encouraged to contribute to continuous improvement by raising

<sup>25</sup> Institute of Directors in New Zealand Inc; The Four Pillars of Governance Best Practice; 2017.

<sup>26</sup> The role and effectiveness of safety representatives in influencing workplace health and safety, Walters, D.R. Theo Nichols, Judith Connor, Ali C. Tasiran and Surhan Cam, (2005), HSE Research Report 363, Sudbury, HSE Books.

issues, generating ideas, and participating in system development, implementation, monitoring and review.

It is a legal requirement for all PCBUs to have worker engagement and participation practices, regardless of their size, level of risk or the type of work they carry out. PCBUs must:

- Engage with workers on matters which will or are likely to affect their health and safety. Have worker participation practices that provide workers with reasonable opportunities to participate effectively in improving health and safety.

Participation practices can be flexible – an organisation and its workers should choose a worker participation model that works for them. What is appropriate will depend on the nature of the risks, the size of the organisation and the views and needs of the workers.

*"Our vision is that worker participation is a valued part of the workplace health and safety system, and management is interested in an open and responsive to workers' health and safety concerns."<sup>27</sup>*

As with the development of strategy and organisational design, putting the staff of the CAA at the centre develops engagement, understanding and ultimately ownership of the culture. We believe that this approach goes well beyond consulting and would send a clear message to management as well as to the sector and other key stakeholders about how the CAA conducts itself.

#### **11.4. What operative culture exists within the CAA?**

We developed a clear understanding of the operative culture through our interviews with over 120 staff, including current and past Board members, senior executives, managers, staff and the unions, as well as through our review of corporate documents and complaint files. We also spoke with industry participants and experts who have carried out similar reviews into organisational culture.

In our view, there are both isolated and systemic issues with how people are treated in their work at the CAA. While staff are genuinely passionate about the industry and the roles they are endeavouring to play, the organisation within which they are endeavouring to do this does not consistently support mental health and wellbeing nor does it do enough to ensure a positive culture and workplace experience for all staff and management. In particular, as we have identified, leadership responses have not always been effective.

##### ***Leadership and management***

Many staff, including senior leaders, referred to the absence of or inadequacy of appropriate levels of leadership across the organisation. They told us that this showed up as inconsistency of expectations in both behaviour and performance, and therefore the treatment and subsequent employment experience of some staff and management.

The senior leadership at the CAA evidences the strengths and weaknesses of its individual leaders. While this is true of any leadership team, some current members of the ALT described it to us as being competitive and dysfunctional. We were told that there are some strong personalities on the ALT who dominate and contribute to the dysfunction of the CAA and that some senior leaders do not model or demonstrate desirable leadership behaviours.

In interviews with us, some members of the ALT were highly critical of their peers' leadership style and how they deal with some members of their staff. At times these views were shared with staff by members of the ALT in a highly inappropriate manner. These

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<sup>27</sup> The Report of the Independent Taskforce on Workplace Health & Safety: He Korowai Whakaruruhau (2013)

views were corroborated by a number of staff who recounted very negative experiences in their dealings with some members of ALT.

Many staff also told us that there was a high level of distrust and cynicism in respect of the senior leadership.

Many staff described to us that a number of managers across the CAA regulatory organisation and Avsec have established "in" and "out" groups and that this has led to inconsistent employment practices. Staff told us this is reflected in current appointment and recruitment decisions, how complaints are handled, who is subject to performance management, how people are advanced, what courses/conferences people can attend and how careers are managed/opportunities for advancement. This situation was described variously to us as "personality politics", with a number of staff describing management appointments made on favour and not merit leading to substantial conflict within teams. Many staff spoke of a culture of fear and the need to keep their heads down to avoid targeted and unwanted attention.

While this was not necessarily the experience of everyone we interviewed, in some teams the staff consistently praised the culture and leadership they experienced, but even some of those happy within their own teams spoke of distrust of senior management.

Coupled with this general distrust in senior leadership, some staff spoke to us of a very poor operating relationship between some members of the senior leadership in the CAA regulatory organisation and Avsec, which has led to a significant recent deterioration in relationships between both parts of the organisation.

Our Review looked at how the Chief Executive and Board had responded organisationally to incidents and complaints. Our general sense is that the approach to incidents and/or complaints has been to introduce new or updated policies, procedures, frameworks, and tools, and then to take a whole of organisational approach to training and rolling these out. As with the lack of proactive measures to "know" what's going on, little follow-up seems to have been undertaken to try and understand whether these actions have achieved the sustainable changes the Chief Executive and Board desired.

Board reporting is extensive but dominated by operational details. We were able to discuss with some current and former Board members how issues that had been raised to Board-level had been dealt with. We were told that they generally relied on the information and advice provided to them, principally by the Chief Executive and more recently by the General Manager, Organisational Development. During our interviews, current and former Board members told us that complaints were generally dismissed as noise relating to the restructure or changes that had been occurring over a number of years, such as the Regulatory Craft Programme, which were intended to drive a more performance focussed culture. The Chief Executive subsequently contested this.

The Board needs to be much more active in how it gets visibility of significant complaints and how it seeks information and assurance about how the organisation is responding to these. In some circumstances, more than just relying on the advice of senior management will be required. In the case of an extensive written complaint (46 pages) provided to the Board and copied to the Chief Executive, we consider the Board should have done more to look into the matters raised. In their letter to the Board, the complainant detailed not only their own experience of the complaints process but also noted the generally negative workplace culture experienced by other CAA staff. The complainant raised serious and detailed issues which, had they been properly looked into by the Board, would have disclosed some of the issues this Review reports on. Instead, the Board determined that the issues raised had been adequately dealt with by the organisation and that they did not require further or independent investigation. The complainant received a short reply that focused on the work programmes underway and advised the complainant that these were being given urgency and that the Board would be monitoring the progress, outcomes and

impact of this work. Many of the substantive matters raised in the complainant's letter were not addressed.<sup>28</sup>

We consider that had the Board sought and been provided with, detail of and assurances that the issues contained within the letter had or were being addressed appropriately, process failings and indicators that there were broader cultural concerns within the CAA would have been evident. This would have been unlikely in our view to have led to the conclusion that the situation as described had been adequately dealt with.

A significant number of staff and some managers told us that the response by the Board and the characterisation by staff of complainants perceived as pursuing personal agendas at the expense of the reputation of the CAA led to a loss of confidence in senior management and the Board. Staff considered it to be both unfair and a missed opportunity for the Board to understand what was actually going on.

Staff, in general, displayed little awareness of the Board and its role but also identified the prospect of being more engaged with the Board as an opportunity moving forward. Staff and some senior leaders described what they saw as a lack of visible leadership across the organisation. Some staff and managers told us that while senior leaders use "the right words" they did not see consistent follow-up and when challenged on this some senior leaders were reported to have acted with aggression or avoidance.

We were also told by a number of staff and managers that they regarded the ELT and the Avsec executive management relationships to be dysfunctional and that the teams were more a collection of bilateral engagements, where some members dominate and often behaviours were observed to be actively undermining other members.

Notwithstanding this, some senior leaders appear to have simply got on with the job and were/are working effectively with their people.

We did not evidence effective planning and structure by the ALT for the CAA, although more structure and a planning approach were observed to exist within Avsec management.

The Statement of Intent (SOI), as well as the Statement of Performance Expectations (SOPE), should provide the framework for driving performance across the CAA. However, many staff reflected that the development is undertaken in isolation, with a lack of staff and senior leadership engagement or ownership, and subsequently, an ideal of the CAA is described in theory as opposed to reflecting the reality how it is operating. Many staff noted that if the CAA was operating in accordance with how the organisation was described in the SOI and reflected in the measures reported in the SOPE, it would be well on track to be a great place to work and high performing organisation. These comments were also reflected by some industry participants we interviewed.

### *CAA behavioural norms*

Almost all staff we interviewed were able to articulate the mission of the CAA as being "safe and secure skies". When asked to tell us what they understood the CAA's values to be, none could describe these in any detail. Many referred to the "blue book" (the CAA's Code of Conduct) but were then unable to articulate what the blue book said the values were.

In many of our interviews instances of poor leadership and culture were identified by interviewees as resulting from the importation of militaristic, hierarchical management/leadership behaviours/culture from the aviation industry, or Police or the military.

While we consider some of the examples of negative leadership behaviours we heard about did display some of the traditional views held by people about how Police and the

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<sup>28</sup> It is unclear whether the whole Board saw the complainant's letter but the acknowledgement letter from the Chair to the complainant references the Chair's intention to consider it at the following Board meeting.

military operate and their organisational cultures, we were equally made aware of examples of excellent leadership behaviours with backgrounds in the Police, NZDF or the aviation sector. Our observation is that previous employment background is not a key determinant of the quality of leadership being displayed by CAA managers and senior leaders. We consider the issue to be one of inconsistent leadership capabilities and tacit tolerance of poor leadership behaviours.

However, it is clear to us that there remain pockets of staff who have not been socialised in appropriate workplace behaviour and what treating women and others with diverse backgrounds professionally with respect and dignity looks like.

This issue has been represented to the Chief Executive on several occasions, including by a delegation of senior women from across the CAA regulatory organisation who met with the Chief Executive at various times in 2016. An element of the approach taken was to describe the experience of the women and seek their views about how best to deal with the problem.

The Chief Executive reported to us that outcomes of the meetings included the creation of the Organisational Development Group and the Human Resources Transformation team, along with the establishment of the Diversity & Inclusion Working Group, strategy, Diversity Works' surveys, and staff meetings about inappropriate behaviours. These steps were unable to occur until 2017 and the creation of the Organisational Development Group due to the limited Human Resources capability of the CAA.

We note that while the women concerned considered that the Chief Executive seemed genuinely interested in understanding their concerns, they felt, however, that his response has been too low-level and ineffective in shifting the underlying culture where these pockets exist, which has ultimately put responsibility for finding a solution back on the women. We acknowledge the work the Organisational Development Group has done since 2017, and continues to do, in this area and, again, urge the CAA to continue to give this work the prominence and resourcing it requires.

We further emphasise that a strategy which involves the introduction of tools without achieving the buy-in from all concerned as to the need for such tools is not always effective at achieving true diversity of thought, which is only achieved through the development of leaders who model and encourage diversity in everything they say and do.

A key organisational response to these issues promoted by the Chief Executive and the General Manager of Organisational Development has been the establishment of the Diversity and Inclusion programme. This program is linked in the CAA's latest report to its response to bullying and harassment and is described as<sup>29</sup>:

*We have robust and comprehensive harassment, bullying and discrimination prevention and response policies and procedures, and there are clear paths for employees to raise any concerns. Our code of conduct clearly sets out the standards of behaviour and conduct expected of our people. This is supported by a range of other policies, with a strong emphasis on respect for others. As noted on page 38, the Authority is working to ensure the consistent application of these policies and procedures across the organisation. Our diversity and inclusion strategy work programme is further developing tools for managers and staff to identify, report and respond to unwelcome behaviour.*

*Our diversity and inclusion strategy was launched in 2018, with the aim of continuing to build a work environment that ensures all staff feel that the Authority is a good place to work, all voices are heard, and where individual differences and the strengths of diversity of thought are respected and embraced. The strategy outlines*

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<sup>29</sup> Civil Aviation Authority Annual Report 2018–2019.

*a three-year action plan towards an increasingly diverse, supportive, and inclusive workplace. Actions that we have committed to in our diversity and inclusion strategy include:*

- strengthening policies and processes*
- developing support structures and promoting awareness*
- providing new and innovative ways of encouraging staff to speak up*
- training and tools for staff and management*
- recruitment and talent development.*

*The diversity and inclusion strategy work plan is regularly reported on to the Board and Authority Leadership Team, ensuring that it is kept as a high priority and focus for senior management.*

As part of the process to improve diversity and inclusion (D&I) within the CAA, members of the D&I Working Group (DIWG) engaged Diversity Works NZ (formerly the Equal Employment Opportunities Trust) to help tailor the Diversity and Inclusion in Asia Network (DIAN) diagnostic tool for use at the CAA. Diversity Works NZ assists organisations in understanding the diversity opportunity and the myriad ways in which they can benefit from it. They also help to assist organisations with the integration of diversity into their very foundations and to measure the outcomes.

The diagnostic tool is meant to help organisations understand where they are on their diversity journey and to gauge perceptions of D&I within the organisation. The internationally benchmarked tool was tailored slightly to suit the CAA while still providing an opportunity to benchmark progress against other organisations.

Diversity Works NZ conducted a pilot survey in 2017. The pilot survey included questions regarding people's perceptions of the organisation with regards to diversity and inclusion (for example, visibility of policies and processes, attitudes and behaviour of staff, recruitment practices etc). The pilot survey was sent to 21 people within the organisation who reflected a cross-section of employees including gender, tier and functional group. 14 people completed the survey.<sup>30</sup>

The survey was undertaken again in November 2018 when the survey was opened to all employees. Almost 40% (521 employees) completed the survey then, with the rating average increasing from March 2017 across all indicators, which Diversity Works attributed to the difference in the participating groups and the addition of an option to respond 'unsure' rather than give a forced rating. It was suggested to us that this was clear evidence of an improvement in the culture of the CAA. While the 2018 scores are comparable to the benchmarks for the survey, suggesting a sample size of around 14 could be regarded as some sort of baseline is not statistically valid. Neither is the survey analogous to a staff engagement survey which would have provided better empirical evidence of the underlying culture, including shifts since the survey was undertaken in 2017.

In our view, the programme and the survey are good examples of the CAA's failure to understand that the issue of culture is fundamentally one of leadership and proper engagement tools and not one of policies, process, tools and frameworks. We would endorse the finding of the 2018 Diversity Works survey, that more internal communication is needed about what steps to lift diversity and inclusion are being taken, noting that while a key component of culture, it is just one of many. Many of the staff who we spoke to told us they were not particularly aware of exactly what the DIWG did, or what it had achieved to

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<sup>30</sup> Several others who were unable to complete the survey itself provided feedback directly to a member of the Diversity & Inclusion Working Group.

date. This included a member of the Group itself who said they were not aware of some of the reported actions listed as part of the strategy.

What the CAA needs is a more leadership-enabled culture and we do not consider the initiatives outlined in the plan will shift the culture of the CAA to where it needs to be.

### *Communication*

Many staff talked about communication becoming less open and transparent and increasingly controlled by personal agendas. The CAA notes from the engagement surveys carried out from 2014-2017 that the three main focus areas identified were:

- Treating employees with dignity and respect.
- Open and honest communication.
- Recognising and rewarding achievement.<sup>31</sup>

The CAA's response included:

- Hold quarterly leadership forums.
- Create a National Rostering Centre for Avsec staff.
- Review and restructure the frontline management of Avsec.
- Implement the SmartWay Leadership Programme.
- Set up the Diversity and Inclusion Working Group.<sup>32</sup>

While staff also told us of other communication channels employed by the CAA, such as Authority meetings, many reported these as being non-engaging and an experience of being talked at, rather than with. Further, many staff referred to a heavy reliance on electronic communications to inform staff in favour of inter-personal approaches.

When Avsec staff spoke to us about the methods of communication, they noted an absence of standard multi-site, shift work operational protocols that would facilitate effective communication between management and staff. Avsec staff also referred to a heavy reliance on electronic forms of communication that for operational, shift working staff were challenging to access on a regular basis. Our observation is that the volume of these electronic communications spoken about by staff is such that they cannot reliably be considered by management to have met the intended audience in the desired timeframe.

Many staff spoke of the changes to centralised control of rosters including leave, management and the loss of influence at a local level. Our observation is that the drive for centralised control has resulted in a greater inconsistency in the treatment and communication with staff. We heard about individual site cultures developing, led either by alignment to certain personalities within station management or with better practice being enabled through distance and team isolation from centralised control. We acknowledge that the nature of Avsec's role means that efficient processes for organising and deploying resources are required and that standard operating procedures and discipline in operating in accordance with these are important. However, we were told that there were generally poor explanations for centrally directed changes and that attempts to seek clarification on these would frequently be met with combative and hostile responses from Avsec senior management.

### *CAA/Avsec cultural tensions*

As noted, the values of the CAA were unable to be clearly or consistently articulated to us by the people we interviewed, beyond "safe and secure skies". Different cultures appear to

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<sup>31</sup> Civil Aviation Authority Annual Report 2016-2017

<sup>32</sup> Ibid

be operating across the CAA regulatory organisation and Avsec, and we were told the CAA regulatory organisation's corporate-facing groups and the sector-facing groups evidence further distinct cultures. Whilst this is to be expected given the different nature of the roles of the different parts of the CAA, we were told of tensions apparent between the leaders of Avsec and some senior CAA leaders from the regulatory organisation. These tensions have played out in inappropriate ways with instances of senior leaders in both parts of the organisation making disparaging remarks about other leaders in front of staff.

### *Change management – latest organisational restructure*

The restructure of the CAA regulatory organisation and its administrative functions that also support Avsec currently underway is outside the scope of our Review. We do however make some observations about how the reorganisation of that part of the CAA is being experienced by staff from the perspective of how the culture operates in the CAA.

Many staff and some senior managers expressed concern and frustration with how the current restructure was being communicated and that the way it was being managed reflected poor leadership and culture practices. Staff have felt disengaged from the rationale for the change, many felt the stated drivers for the change were in effect that they were not doing a good job. As highly qualified, well-paid, passionate professionals, this overt judgement of their collective performance came as a shock, especially since successive annual reports paint a picture of steadily increasing regulatory performance.

Staff told us that messages such as "...this change only affects leaders at the second and third-tiers" were not well-received and were considered disingenuous. Staff told us that in any workplace, who you work for, who the group leader is and who your colleagues are, is as important, if not more so, than the actual role you are fulfilling. Such statements have undermined staff trust both in the process as well as in the Chief Executive and were described by some people as evidencing a lack empathy for people and a true understanding of the impact the proposed change would have on all staff.

Many people we spoke to told us they considered the loss of significant institutional knowledge and of fundamentally good people to be a significant risk to the organisation.

The intended effective date for the new structure is 1 July 2020, however, in February 2020 existing units were aligned under the new Tier 2 structure. We consider that this is likely in response to the early (pre-June 30) departure of substantial numbers of the ELT, including most sector-facing executives. Further, we understand several Tier 3 managers have elected not to stay with the CAA, meaning many staff are facing the loss of not only their executive manager but also their line manager. The Chief Executive commented that staff communications have been clear as to the timing of changes, but this was not supported by the majority of the conversations the Review Team has had with staff.

We did not think the way the change was and is being managed evidences a culture of respect and effective engagement. For example, workshops were being held in late 2019 at short notice with staff, and with even less notice for presenters tasked with leading the sessions on the detail of the remaining structure. Best practice organisational change theory suggests that managers should first work to reduce resistance to change, by, for example, demonstrating how "old" strategies of action no longer work for new priorities and only then build up pressures for change by emphasising the reasons for change.<sup>33</sup>

By leading with arguments for change, before addressing resistance to change, managers can inadvertently trigger normal psychological responses of resistance. As well, studies demonstrate the power of representing change as an opportunity and painting a vivid picture of an associated positive future, over the relatively limited power of representing

<sup>33</sup> Kotter, John P., 1995. Leading Change: Why Transformation Efforts Fail, *Harvard Business Review*, May–June 1995; Lewin, Kurt, 1947, *Frontiers in Group Dynamics: Concept, Method and Reality in Social Science: Social Equilibria and Social Change*, Human Relations. 1: 5–41

change as a threat.<sup>34</sup> We do not consider that has been achieved through the process the CAA has adopted leading to further erosion in its culture.

### *Summary*

A failure of governance and leadership at the top of the CAA, including inadequate Board expectation, oversight and holding to account the Chief Executive for fundamental organisational health and cultural behaviours and indicators have allowed pockets of poor culture and inappropriate behaviours to persist in some parts of the CAA, including Avsec.

Without consistent leader-led responses to these behaviours, the overall culture and the individual experience of staff falls to the relative competencies of their direct line manager and team environment. These vary and, in some cases, significantly. As a result, many staff and managers are not affected at all by negative culture or workplace experiences. Some told us that they were unaware of what is happening elsewhere in the CAA given the organisation has a number of distinct silos. In contrast, others have told us of very negative experiences and recounted the substantial trauma they encountered either directly, by association with close colleagues or through their proximity to teams where poor culture and inappropriate behaviours were being experienced.

Some people identified to us that, in their view, they had seen poor culture being evidenced through discriminatory behaviours and personal politics. They told us that they observed some management "playing favourites" leading to an inconsistency in staff treatment and subsequently unnecessary conflict. They said they felt inappropriate behaviours and poor culture were allowed to exist and are manifesting in the absence of clear consistent and effective leadership responses. There was a general theme from people we spoke to around some poor leaders not being appropriately counselled, trained or held to account and a general inconsistency in senior management's response where expectations of personal and professional performance were not being met.

We believe that collectively the Board and the ALT have missed the opportunity to respond to the clear indicators that there is an underlying issue with the culture in some parts of the organisation. Coupled with this has been a lack of enquiry into the root cause of why incidents have persisted despite clear messaging and the establishment of many initiatives.

Responses to incidents when they have arisen on a number of occasions, have been ad hoc, inconsistent and generally focussed on following the policies and procedures, in some cases to the exclusion of 'doing the right thing by staff'.

The effectiveness of communication within the organisation remains an issue for many staff and some staff told us they experienced a loss of trust in some senior management when communications did not align with what else they were already aware of.

Of those who did tell us they enjoyed a healthy and enjoyable work environment, some expressed a lack of visibility and understanding of how things were in other parts of the CAA. One manager from the corporate area commented that they hoped what had been reported on TV wasn't true, but they really didn't know.

Undoubtedly some areas of the CAA are experiencing intense workload pressures and as a result, some people told us they were experiencing deteriorating mental health and well-being. It is well-established that workload pressures can lead not only to a deterioration in wellbeing but also an increase in inappropriate behaviours, including bullying and harassment behaviours.

The current change process has additionally had an adverse impact on the culture of the CAA regulatory organisation and some people disproportionately. This change is not in

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<sup>34</sup> Deutschman, Alan, 2005, *Change or Die*, Fast Company, May 2005, <https://www.fastcompany.com/52717/change-or-die>

isolation, and the effects are cumulative with other change processes that the CAA has been undertaking since 2016.

We consider there remains a significant cause for concern with the current culture of the CAA. There is an equally significant opportunity for the ALT, staff, Board and unions to work together to comprehensively understand and address the causes and drivers of both poor and good culture within the CAA.

## 12. Bullying and Harassment

### 12.1. Best practice and statutory obligations relating to bullying and harassment

#### *Health and Safety at Work Act 2015 (the HSWA), Employment Relations Act 2000 (ERA), Human Rights Act 1993 (HRA)*

The HSWA sets out the requirements for all businesses and undertakings to ensure the health and safety of workers and those who are in their workplaces. The HSWA:

- Focuses on a duty to manage risk (as opposed to the focus on hazards under the 1992 Act).
- Introduces the concept of a "Person Conducting a Business or Undertaking" (PCBU) as the principal duty holder under the legislation.
- Introduces a new duty on officers of PCBUs to exercise "due diligence" to ensure that the PCBU complies with its duties.
- Introduces a new category of "worker", which encompasses a broad range of individuals from employees and contractors through to volunteer workers. Workers under the HSWA owe a number of specific duties and PCBUs are subject to enhanced obligations in terms of worker engagement, participation and representation.
- Imposes a primary duty of care on PCBUs to eliminate, or if unable to eliminate, minimise risks to health and safety, so far as is reasonably practicable.

Duties under the HSWA also extend to officers of PCBUs, workers and other persons at a workplace. Section 16 of the HSWA defines a hazard as, *inter alia*, a person's behaviour where that behaviour has the potential to cause death, injury, or illness to a person. WorkSafe NZ has confirmed that hazardous behaviour includes bullying or harassing behaviours that harm another person.

As the primary regulator of health and safety in New Zealand, the most relevant best practice guidelines in this area are those of WorkSafe NZ, namely WorkSafe New Zealand Guidance: *"Preventing and Responding to Bullying at Work"*<sup>35</sup> (the 2017 Guidelines) and *WorkSafe Guidance for Businesses and Workers on Preventing and Responding to Sexual Harassment at Work*<sup>36</sup> (the 2018 Sexual Harassment Guidelines). Also relevant are the State Services Commission Model Standards *"Acting in the Spirit of Service – Positive and Safe Workplaces"*<sup>37</sup> (the 2019 SSC Workplace Standards) and the State Services Commission Model Standards *"Acting in the Spirit of Service – Speaking up"*<sup>38</sup> (the 2019 SSC Speaking Up Standards). Being the leading industry best practice guidelines in this area, we have therefore based our analysis on these.

In addition, the ERA imposes an obligation on employers to treat employees fairly. A failure to properly address complaints can give rise to a personal grievance. Further, the HRA

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<sup>35</sup> Issued March 2017

<sup>36</sup> Issued October 2018.

<sup>37</sup> Published August 2019.

<sup>38</sup> Originally published July 2017, current version published April 2019.

requires employers to take proactive steps to prevent harassment and investigate complaints.

***WorkSafe New Zealand Guidance: "Preventing and Responding to Bullying at Work"***

The 2017 WorkSafe Bullying Guidelines update the 2014 Guidelines, as a result of the coming into force of the Health and Safety at Work Act 2015 (the HWCA) and a result of external feedback obtained by WorkSafe. The two key points underpinning the guidelines are that bullying at work is repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm, and that businesses must effectively deal with bullying at their workplaces.

The guidelines advocate a "Plan-Do-Check-Act" approach when managing work risks, including those arising from bullying:

- **Plan** - assess whether bullying is a risk and engage workers and representatives to identify reasonably practicable control measures.
- **Do** - implement control measures to effectively minimise the likelihood of bullying.
- **Check** - implement appropriate means for workers to report bullying.
- **Act** - routinely review the effectiveness of control measures at scheduled periods, review incidents and talk to workers to check the control measures are effectively minimising the risk, use the results of reviews and investigations into incidents to improve control measures.

It is critical to note at the outset what the 2017 Guidelines define as workplace bullying, and what is not workplace bullying. We have applied these definitions in conducting our analysis. The 2017 Guidelines, adapted from the definition used by Safe Work Australia, state that (emphasis in original):

**Workplace bullying is:**

- **Repeated and unreasonable behaviour directed towards a worker or a group of workers that can lead to physical or psychological harm.**
- **Repeated** behaviour is persistent (occurs more than once) and can involve a range of actions over time.
- **Unreasonable** behaviour means actions that a reasonable person in the same circumstances would see as unreasonable. It includes victimising, humiliating, intimidating or threatening a person.
- Bullying may also include harassment, discrimination or violence.

The 2017 Guidelines emphasise that workplace bullying is not:

- One-off or occasional instances of forgetfulness, rudeness or tactlessness.
- Setting high-performance standards.
- Constructive feedback and legitimate advice or peer review.
- A manager requiring reasonable verbal or written work instructions to be carried out.
- Warning or disciplining workers in line with the business or undertaking's code of conduct.
- A single incident of unreasonable behaviour.
- Reasonable management actions delivered in a reasonable way.
- Differences in opinion or personality clashes that do not escalate into bullying, harassment or violence.

However, it is also emphasised in the 2017 Guidelines that all undesirable work behaviours (even one-off incidents) should be dealt with and not ignored, regardless of whether they fall within the above definition, because such behaviours can escalate.

The 2017 Guidelines contain extensive discussion of the types of behaviours that can constitute bullying and where it can arise, to assist workplaces in identifying the risk to that workplace that bullying can create. It notes that certain facts increase the likelihood of bullying flourishing.

The 2017 Guidelines set out certain control measures to address potential causes of bullying. Critically, the 2017 Guidelines emphasise that the most effective way to minimise unreasonable behaviours is to *“adjust the culture settings to expose and address such behaviours”*. This is discussed elsewhere in this Report but, for the purpose of this part of the report, we note that the control measures suggested include:

- Making anti-bullying policies, processes and systems transparent.
- Building good relationships in a respectful work environment, including having a 'no-bullying tolerated' work culture, a Code of Conduct and articulated workplace Values, recognising and promoting diversity, managing work and workloads, implementing a conflict management process, supporting workers at greater risk of being bullied or showing bullying behaviours, involving workers in change processes.
- Developing good managers through good support, training (including refreshers) and supervision, acting on feedback, mentoring new or poorly performing managers, and asking questions through exit interviews and worker surveys.
- Educating workers and managers about bullying.
- Providing support through being accompanied at interviews, Human Resources, peer support, the unions, designated peer support, external employee assistance programmes.
- Making sure everyone in the workplace knows their health and safety responsibilities.
- Making sure workers know how to report bullying including how to record instances of the unreasonable behaviour, how to know if something is bullying, how to informally report unreasonable behaviour they directly experience or see, how to make a formal complaint, and what they can expect after making a complaint.

The 2017 Guidelines emphasise that control measures should be monitored and regularly reviewed to confirm they remain effective at minimising the likelihood of bullying.

Directly relevant to this part of the Report are the recommendations of the 2017 Guidelines on investigating bullying in-house. Critically, the guidance emphasises that all informal reports and bullying complaints must be taken seriously. The guidance sets out the principles to consider when dealing with allegations of bullying, namely:

**Table 1: Principles for dealing with allegations of bullying**

Principle	What does this mean?
Treat all matters seriously	<ul style="list-style-type: none"> <li>• Take all complaints and reports seriously. Assess all reports on their merits and facts.</li> <li>• Ensure the people (internal or external) who deal with the complaint are trained to do a fair thorough investigation and use the principles of natural justice.</li> </ul>
Act promptly	<ul style="list-style-type: none"> <li>• Reports should be dealt with quickly, courteously, fairly and within established timelines.</li> </ul>
Ensure non-victimisation	<ul style="list-style-type: none"> <li>• It's important to ensure that anyone who raises an issue of bullying isn't victimised for doing so. Whoever</li> </ul>

	the complaint is made against and any witnesses should also be protected from victimisation.
<b>Support all parties</b>	<ul style="list-style-type: none"> <li>Once a complaint has been made, both parties should be.</li> <li>told what support is available (e.g. employee assistance programmes or peer support systems).</li> <li>Treat all parties involved with sensitivity, respect and courtesy.</li> <li>Anyone involved is entitled to have a support person present at interviews or meetings (e.g. HSR, contact person, the union or friend).</li> </ul>
<b>Be neutral</b>	<ul style="list-style-type: none"> <li>Impartiality towards everyone involved is critical during the process.</li> <li>Where possible, the person in charge of the investigation or resolution process should not have been directly involved in the incidents and must avoid any personal or professional bias.</li> </ul>
<b>Communicate the process and outcomes</b>	<ul style="list-style-type: none"> <li>All parties need to be told what to expect during the process, how long it will take, the reasons for any delays and what will happen at the end.</li> <li>Give them clear reasons for any actions that are taken or not taken.</li> </ul>
<b>Maintain privacy (confidentiality)</b>	<ul style="list-style-type: none"> <li>The process should ensure privacy for all parties involved. Details of the matter should only be known to those directly concerned (except their representative or support person).</li> </ul>
<b>Keep good documentation</b>	<ul style="list-style-type: none"> <li>Documentation is important to any formal investigation. Even if the issue isn't formally investigated, keep a record of all informal conversations, meetings and interviews detailing dates and times, who was present, what was discussed and the agreed outcomes.</li> </ul>

The 2017 Guidelines advocate the use of a range of response options, from a low-key approach to some form of facilitated resolution through to formal investigation. If a formal investigation is used, the importance of natural justice through the process is highlighted, namely:

- Before taking any action against the subject of the complaint, raise the allegations with that person (including if any disciplinary consequences may ensue), carry out an impartial and independent investigation, give the subject of the complaint a reasonable opportunity to respond to the allegations and genuinely consider the subject of the complaint's explanation, take reasonable steps to protect the person who complained from reprisals and decide any interim measures needed to ensure the safety and welfare of the person who complained.
- Making sure the decision-maker is as impartial as possible.
- Treating workers equally, avoiding disparity of treatment.
- Allowing support people and/or representatives to be present.
- Maintaining privacy and confidentiality.

### ***WorkSafe Guidance for Businesses and Workers on Preventing and Responding to Sexual Harassment at Work***

WorkSafe has also produced specific guidelines to prevent and respond to sexual harassment at work (the 2018 Guidelines). The 2018 Guidelines import the definition of what is sexual harassment from the Human Rights Act 1993, namely "*any unwelcome or offensive sexual behaviour that is repeated, or is serious enough to have a harmful effect, or which contains an implied or overt promise of preferential treatment or an implied or over threat of detrimental treatment.*"

Examples given by the 2018 Guidelines are offensive sexual remarks or jokes, implied or actual threats of being overlooked for work opportunities or promotions for saying no to the boss's advances, unwelcome touching, patting, or pinching by the boss, co-worker or customer, being regularly hassled for a date or being followed home by a co-worker, sexually offensive images at work, including screen savers of a sexual nature, intrusive questions about a worker's sex life. It can happen at any time and at all levels of a business, it can be spoken or written, visual or physical acts, and it can occur in person, through text messaging, or online through email, internet chat rooms or other social media channels.

The 2018 Guidelines note that certain factors mean workers at a workplace can be at greater risk of sexual harassment, including:

- Workplaces having low worker diversity (e.g. a male-dominated workforce), many young workers, power imbalances, tolerating or encouraging alcohol consumption during or around work hours or at work functions.
- Workers doing isolated or repetitive work.

To work out whether sexual harassment is occurring, and then what to do about it, the 2018 Guidelines make similar recommendations for control measures as do the 2017 Guidelines. We do not, therefore, duplicate them here.

Correspondingly, the 2018 Guidelines recommend similar steps be taken as do the 2017 Guidelines in responding to and dealing with reports of sexual harassments. Again, then, we do not duplicate them here, except to note that for certain behaviour the 2018 Guidelines note that the worker could decide to first seek help from an outside organisation such as the Police.

### ***State Services Commission Model Standards "Acting in the Spirit of Service – Positive and Safe Workplaces"***

As a state service agency, the CAA must also comply with any standards issued by the State Services Commission (the SSC). In August 2019, the SSC published the State Services Commission Model Standards "*Acting in the Spirit of Service – Positive and Safe Workplaces*".

Although we recognise that the 2019 SSC Workplace Standards are relatively recent, and were not expressly in existence through the duration of the period covered by the Terms of Reference for this review, the standards embody what the State Services Commissioner views as the minimum expectations for staff and organisations in the state services to ensure positive and safe workplaces. They also reflect many of the principles we have discussed above as set out in the WorkSafe NZ guidance. We have therefore also used these as a pertinent example of best practice against which we have conducted my review analysis.

Critically, the 2019 SSC Workplace Standards recognise that:

*"State services agencies are not immune to the challenges that all workplaces face. Sometimes people's behaviours are not appropriate, and the way we deal with that*

*is important. Building a workplace culture that promotes respect, inclusion, trust and productivity is a key part of preventing inappropriate behaviour from occurring."*

Again, aspects of culture are dealt with elsewhere in this report. Key to the remainder of the standards are the three expectations of the State Services Commissioner articulated within them:

- **Providing strong leadership** - creating diverse, inclusive and open workplace cultures; role modelling positive behaviours; recruiting and promoting people who demonstrate those behaviours; and taking action to prevent and respond to inappropriate behaviour.
- **Fostering good working relationships** - developing shared expectations and understanding around what is, and what is not, appropriate behaviour at work; ensuring people are aware of their roles and responsibilities in identifying and responding to concerns; promoting good management and employment practices.
- **Having trusted policies and procedures** - developing, implementing, using and maintaining appropriate policies and procedures. This requires monitoring their effectiveness and reviewing them to enable continuous learning.

In relation to responding to concerns of inappropriate behaviours, the 2019 SSC Workplace Standards expect that:

- Organisations have a range of informal and formal ways in which they can receive and respond to concerns about inappropriate behaviour at work. People are aware of these options, and of how to access them.
- Natural justice is respected in all instances.
- Mediation and restorative processes are available for use in appropriate cases.
- Once a concern is raised, organisations consider whether they have the skills required to respond appropriately or whether it is necessary to seek external specialist support, for example from sexual abuse support organisations.
- There are proportionate disciplinary consequences when inappropriate behaviour at work is confirmed.
- Organisations have clear and easy to understand policies and procedures on appropriate behaviour at work. These contain descriptions of what behaviour is expected. They also explain how to raise concerns and the range of options for resolution that are available. Together the policies and procedures provide a logical and consistent framework.
- An appropriate mechanism is put in place to ensure that policies are developed and periodically reviewed in a collaborative way with staff.
- Organisations regularly evaluate their own performance in preventing inappropriate behaviour and responding to complaints. This may involve gathering data and consulting with people who are particularly affected.

#### ***State Services Commission Model Standards "Acting in the Spirit of Service – Speaking up***

The 2019 SSC Speaking Up Standards were originally published in 2017 and were updated in April 2019. Again, we recognise that they have not been in force throughout the period covered by this Review but, again, they embody what can be viewed as best practice expectations of state servants and state service agencies and reflect much of what is contained in the WorkSafe guidance. They begin by emphasising the State Services Commissioner's expectation that:

*"Public servants must be able to raise concerns without fear of punishment or reprisal. If Public Servants raised genuine concerns through proper channels and*

*were then disadvantaged in any way because of it, that would be completely unacceptable and something we view very seriously”.*

There are three key elements to the 2019 SSC Speaking Up Standards:

- **Getting the foundations right from the start** – an organisational commitment to leadership, raising awareness and supporting staff and managers through regular communication and training.
- **Making sure processes are robust** - taking concerns seriously when they are raised by ensuring systems are in place for monitoring, reporting, investigation, and effectively communicating with those involved in a report or disclosure.
- **Keeping people safe** - ensure they can feel safe in making reports, trust that organisations will act upon them, and ensuring that organisations provide tailored and dedicated support and protections to staff to keep them safe from reprisal.

In terms of reporting itself, the 2019 SSC Speaking Up Standards expect:

- There are internal policies and processes readily available for people to access.
- Training on reporting is covered at inductions and regular refreshers at least every two years, as well as following any changes to policies or procedures.
- Training for managers includes receiving and dealing with conflicts, complaints, public interest disclosures and on identifying red flags.
- There is a designated person or team that people can talk to about any concerns of wrongdoing.
- There are provisions in place to ensure that any manager or supervisor can appropriately respond to a concern or report of wrongdoing that is raised with them.
- All concerns reported to organisations are assessed and acted on in a timely way.
- There is an appropriate separation of duties and well-defined roles that underpin organisations' processes.
- There is a statement of commitment and processes to protect the confidentiality of people who raise concerns as far as is reasonably possible.
- Where it may not be possible to retain confidentiality, organisations communicate with the person who raised the concern and provide any appropriate support.
- There are clear and documented responsibilities and actions for management and senior staff receiving and dealing proportionately with disclosures or allegations of wrongdoing.
- There are processes and channels to enable people to raise concerns of wrongdoing without prejudice or risk of reprisal.
- Any risk to people involved in a complaint or disclosure is assessed from the time the concern is first raised.
- There is tailored dedicated support available in each case.
- Organisations treat all wrongdoing concerns seriously, in confidence, with protections as far as is reasonably practicable.

In relation to the investigations themselves, the standards expect:

- Clear timeframes and Terms of Reference, if appropriate, are developed and shared as soon as practicable.
- People who conduct the investigations are skilled, experienced, and independent from the matter reported.

- Any person, (people) implicated in a report of wrongdoing will be provided with information about the investigation and the opportunity to respond to evidence or findings at an appropriate time, in accordance with all relevant legal considerations.
- The person who raised the issue is regularly updated and communicated with throughout the investigation through a dedicated support person and management are informed as appropriate.
- Organisations also communicate effectively with others outside the organisation who may need to be informed or provide support.
- Organisations specify who will make any decisions on investigation findings, how decisions are reached, and ensure that the resolutions and actions are fair and reasonable.

The 2019 SSC Speaking Up Standards also advocate the need for standard and tailored support to participants in the process, including as a debrief after resolution *"to ensure that they understand what the outcomes are and why."*

## 12.2. The CAA's policies relating to bullying and harassment

The CAA has a large number of policies covering all aspects of the workplace and employment law. It has put significant effort into these over the past few years in particular and also has ongoing projects in place for addressing diversity and inclusion in the workplace, and to update guidance and policies around bullying and harassment, and other employment issues (discussed below).

Note that we have not discussed the policies in full but, rather, have identified those aspects of the policies which are relevant to the Terms of Reference. Together, they constitute the current package of policies and guidance which drive the CAA's response to reports of bullying and harassment. Note also that we have not commented in detail on the advantages and disadvantages of those policies which were in force during the period in scope of this review but are not now current.

We further acknowledge the work carried out by the CAA in the diversity and inclusion space. In March 2017, the CAA undertook a Diversity and Inclusion Diagnostic with a pilot group of 14 employees, and then for a second time in November 2018 when the survey was open to all employees and almost 40% of them completed it.<sup>39</sup>

The CAA also has a Diversity and Inclusion Policy (2018) which states the CAA's commitment:

*"to achieving a diverse workforce and inclusive workplace where every individual is respect, their contribution valued, and where everyone is free from any form of behaviour that prevents or hinders them from participating fully and openly at work."*

We note here that the CAA has had challenges to date in fulfilling this objective, although the will to do so, and the policies to support the will, are certainly there. Those who do not share that objective need to be clearly reminded of the CAA's zero-tolerance approach to inappropriate behaviour and the trust of many staff needs to be re-earned in this regard.

Further, as we have set out in more detail in our recommendations, to achieve the principles set out below, further training of all staff in matters such as unconscious bias etc is warranted if the aspirations of the Diversity and Inclusion Policy are to be truly achieved.

The 2018 Diversity and Inclusion Policy sets out principles that:

- The CAA is a safe and supportive work environment.

<sup>39</sup> Diversity Works NZ report for the CAA 2019.

- All employees have individual and collective responsibility for embracing diversity and inclusion.
- All employees must be respectful and inclusive in all that they do.
- All employees are enabled to speak up if they need to report a concern.
- Managers are equipped to lead their employees in a fair, inclusive and non-discriminatory manner.

The policy then sets out the responsibilities on the CAA itself, on leaders and employees. These provide that:

**The CAA will:**

- Understand the demographic make-up of its workforce, participants, customers and the New Zealand public.
- Develop and maintain a diversity and inclusion strategy.
- Maintain a diversity and inclusion working group with representation from across the CAA.
- Raise awareness of appropriate workplace behaviour and provide adequate support in understanding related topics.
- Use gender-neutral and inclusive language.
- Understand obligations of Te Tiriti o Waitangi, and Te Ture mo Te Reo Maori 2016 and ensure responsiveness to Maori. we note here that tikanga Maori has a significant role to play in conflict resolution principles in particular, and the CAA may wish to ensure, through independent consultation, that its policies do incorporate tikanga Maori adequately.
- Maintain non-discriminatory people policies.
- Maintain a workplace free of discrimination, harassment and inappropriate and/or offensive behaviour.
- Ensure there are safe reporting processes to report concerns.
- Ensure that people policies and practices meet all EEO legislative requirements and that where an exception is sought it meets the requirements of the Human Rights Act 1993.
- Report and evaluate on the CAA's diversity and inclusion measures.
- Regularly review policies and procedures, communicating any changes to ensure all parties are aware of their obligations.

**Leaders will:**

- Lead by example, role modelling professional behaviour.
- Apply decisions that align with CAA policy and relevant employment legislation.
- Ensure that all employees have equal opportunity and are supported to make a contribution to the CAA.

**Employees will:**

- Demonstrate and role model professional behaviour, treating others with respect.
- Raise any concerns in relation to diversity and inclusion with their manager in the first instance or, where not appropriate, their manager's manager.

The policy sits with the Diversity and Inclusion Strategy launched by the CAA in 2018 and outlining a three-year action plan to achieve a more diverse, supportive and inclusive workplace. Many of the initiatives discussed in this part of the review, including the Spot<sup>40</sup> reporting tool and the enhanced toolkit for managers and staff set to be launched shortly have occurred as part of the work of the Diversity and Inclusion Working Group under the Strategy. We commend this work and urge the CAA to continue to give it the priority, focus and resource it deserves,

We further acknowledge the current work which is being undertaken within the CAA to produce a full toolkit for staff and managers on dealing with bullying and harassment claims. The toolkit contains brochures on a number of issues (including what to do when you are the subject of a complaint, what to do when you experience bullying, what constitutes bullying and harassment and being a witness to a bullying complaint). One such booklet, the 2018 Resolving Conduct Guide, is already in operation. The rest will be rolled out in the first quarter of 2020, together with posters, tip sheets and training and workshops for staff and managers. These are excellent initiatives on the part of the CAA, in particular, the General Manager of Organisational Development and her team together with the Diversity & Inclusion Working Group. The CAA is to be commended for that work and we hope that the findings and recommendations made in this report can work to enhance the existing documentation and the ongoing projects are given priority and support at a leadership and Board-level. Because most of the toolkit material we have viewed remains in draft (albeit in a close to finalised form) and was provided to us in confidence, we have not commented on its substance in this report but we urge the CAA to ensure that those issues identified in this report are incorporated into the toolkits, training and workshops as they are eventually rolled out.

Appendix 3 to this report contains tables which compare the best practice principles for minimising the risk of bullying and harassment, implementing control measures, and conducting investigations as embodied in the WorkSafe and SSC guidelines discussed above, with the CAA policies outlined above. As can be seen, the CAA policies are sound and fit for purpose, with a minimum number of tweaks and additions required. The issue this review has found is not with the policies themselves but with their inconsistent application across the CAA.

### *The Spot Tool*

In July 2019, the CAA introduced the Spot reporting tool to enable anonymous reporting of bullying and harassment. Spot can be accessed through Te Kūaha (the CAA intranet), the Talk to Spot webpage, or a scanned QR code. The user is taken through a series of instant messages enabling the user to talk through and document any instances of workplace bullying, harassment, discrimination or inappropriate behaviour. Spot uses artificial intelligence to ask follow-up questions based on the user's responses in order to record details. At the end, the user is able to preserve his or her anonymity, and then elect to send the report to the CAA or save it for later. All communication is done through Spot, but the CAA will still be able to ask follow-up questions and let the user know what is happening with their report.

While in theory Spot should be an effective approach to help the CAA to uncover pockets of the organisation where inappropriate behaviour may be occurring, many participants to the review indicated a lack of understanding of how it works as well as a distrust of its true anonymity and confidentiality. Many people expressed distrust in Spot and told us that they would not use it to report incidents of bullying or harassment. We make the observation that a low take-up due to distrust in the system could mislead management into believing that incidents of bullying and harassment are lower than they actually are.

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<sup>40</sup> Spot is a free online chatbot based tool for reporting workplace harassment and discrimination. <https://talkspot.com/>

Staff told us they wanted a completely independent and confidential way to raise concerns out of a fear of being targeted if they did raise a complaint, especially if it involved some senior managers. We believe that the CAA needs to objectively review how effective Spot can be if there are low levels of trust in its use. Furthermore, given the varying nature of the parts of the CAA's business, recognising the numbers of staff, differing physical locations, personal preferences and ability to access computers to access Spot, it may be that providing a suite of options for raising complaints would be more effective and we, therefore, urge the CAA to further consider the best approach to supporting staff to confidently raise complaints or concerns including working with unions and delegates which may help with both understanding and trust.

We outline below the key points, relevant to the Terms of Reference, of the policies identified above.

### ***Code of Conduct 2016<sup>41</sup>***

The Code of Conduct sets out the minimum standards of integrity and conduct that apply to all who work for the CAA. Conduct that breaches or is inconsistent with the Code is misconduct and, if repeated or sufficiently serious, can result in dismissal. The Code applies to all employees of the CAA (including Avsec) and all contractors and consultants.

The Code begins with a praiseworthy statement, embodying many of the general principles we have outlined above and expressly adopting and reflecting the standards of integrity and conduct issued by the State Services Commissioner under section 57 of the State Sector Act 1988:

*"As State servants, we hold a privileged position and have an opportunity to make a positive difference in our society. But keeping our skies safe and secure, not only do we enable air passengers to safely reach their destinations we also make a positive contribution to New Zealand's overall transport system and economy.*

*We all work for the Government. New Zealanders' trust in and respect for government is based on the integrity of our institutions, including the organisations, that make up the State Services, such as the Civil Aviation Authority (the Authority).*

*Together, we implement the policies of the Government, providing and administering a wide range of public functions and services. As State servants, we are also guardians of publicly owned resources, and the public expects us to serve and safeguard its interests.*

*This is why we need a Code of Conduct. The Code provides the standards expected in how we work and best serve the interests of the public and the government of the day.*

*There are mutual responsibilities. As a Crown entity, the Authority has a responsibility to be a good employer, providing for the fair and proper treatment of all staff. More than this though, the Authority aims to encourage a culture of openness and trust, helping staff feel safe to do their job to the best of their ability.*

*When you work for the Authority, you have a responsibility to conduct yourself with integrity, professionalism and diligence. What this all means is described in this Code."*

The Code is based upon four standards that govern what staff must be:

#### **Fair:**

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<sup>41</sup> Issued February 2016.

- Treating everyone fairly and with respect, including (relevantly) showing respect for the worth and dignity of everyone staff come into contact with at work, using appropriate and professional language at work and in all communications, not discriminating against anyone on the basis of gender, sexual orientation, colour, race, ethnic or national origin, age, religious or ethical beliefs, political opinion, employment status, disability, marital status or family responsibilities,<sup>42</sup> not bullying, intimidating or threatening others, avoiding bringing things to work that could be offensive to others, protecting private information and showing respect for individual differences.
- Being professional and responsive.
- Working to make government services accessible and effective and striving to make a difference to the well-being of New Zealand and all its people.

#### Impartial:

- Maintaining the political neutrality required to enable staff to work with current and future governments.
- Carrying out the functions of the CAA unaffected by personal beliefs.
- Supporting the CAA to provide robust and unbiased advice.
- Respecting the authority of the Government of the day.

#### Responsible:

- Acting lawfully and objectively.
- Using the CAA's resources carefully and for intended purposes.
- Treating information with care and using it only for proper purposes.
- Working to improve the performance and efficiency of the CAA.

#### Trustworthy:

- Being honest.
- Working to the best of one's ability.
- Ensuring actions are not affected by personal relationships.
- Never misusing position for personal gain.
- Declining gifts or benefits that place the CAA under any obligation or perceived influence.
- Avoiding any work personal interests or activities that may harm the reputation of the CAA or the State Services.

In terms of breaches, the Code notes that the CAA *"will work to address them promptly and ensure that all those involved are treated fairly and professionally."* Specifically (and relevantly):

- A new and minor breach of the Code is usually addressed by the manager simply re-stating and explaining the expectations required.
- More significant or ongoing performance or conduct issues are addressed more formally and this may include disciplinary action.
- If a staff member is aware of a breach of a potential breach, he or she should raise the issue with his or her manager as soon as possible. This includes a belief that the CAA has not met its responsibilities under the Code, or the staff member is unsure how to handle an ethical issue. If the staff member doesn't feel able to talk to their manager,

<sup>42</sup> Note these reflect the prohibited grounds of discrimination in the Human Rights Act 1993.

or the issue remains unresolved, the staff member is advised to talk to the manager's manager, another manager they can trust or the Manager, People and Capability. Staff members are also advised they can access EAP.

The Code sets out the process for making a Protected Disclosure.<sup>43</sup>

The Code ends by advising that further information about many of the expectations mentioned in the Code is set out in specific policies and procedures, which can be accessed on the CAA intranet.

#### *Anti-Harassment, Discrimination and Bullying Policy 2015 (the 2015 Anti-Harassment Policy)*

The 2015 Anti-Harassment Policy was in force from February 2015 until September 2018. It recorded the CAA's commitment to "providing a safe place of work that is free from any form of discrimination, bullying or harassment." It applied to the conduct of all employees, and equally to the treatment of all staff, contractors, and visitors. It was not limited to the workplace or standard work hours but extends to all meetings, functions, and places that at work-related.

Key points of the policy were (relevantly):

- The CAA operates a policy of zero-tolerance which means the CAA will respond to every credible allegation of bullying and harassment and address the complaint accordingly.
- Where a manager received a complaint of discrimination or harassment or bullying, they were required to notify the Manager, People and Capability, who worked with the manager to ensure a thorough and fair process.
- The CAA was obliged to investigate complaints, reach a conclusion, and take remedial action where required.
- Where appropriate, an independent person was engaged to investigate the complaint and the principles of natural justice would be followed (all parties offered the opportunity to have support or representation and the respondent given full information as to the source and content of the complaint and allowed a reasonable time to respond).
- An allegation against another staff member which was found to be malicious/vexatious or unfounded could itself be considered an act of harassment. The policy emphasised that this should in no way discourage an employee from making a legitimate complaint (but may have contributed to an unwillingness or reluctance to report complaints).
- Advice or guidance on the process and support was provided by People and Capability (HR Advisors).
- The CAA was required to keep both parties informed throughout the process.
- Where, as a result of an investigation, misconduct was proven then the disciplinary process was applied to deal with the behaviour.

The 2015 Anti-Harassment Policy contained links to other resources, both within the CAA and external (e.g. WorkSafe and the CAA).

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<sup>43</sup> Beyond the scope of this review.

*Anti-harassment, discrimination and bullying guidelines 2015 (the 2015 Anti-harassment guideline)*

Somewhat confusingly, the 2015 Anti-Harassment Policy was supplemented by the 2015 Anti-Harassment Guideline, which set out the process for handling a complaint relating to any form of discrimination, bullying or harassment.

Key points of the 2015 Anti-Harassment Guideline were (relevantly):

- In order for the CAA to assist an employee when they are being discriminated against, bullied or harassed, the employee was required to bring their concerns to the attention of their manager or their manager's manager. This placed all the onus for dealing with bullying behaviour on the employee and the employee's comfort and ability to report inappropriate behaviour, which may have acted as an obstacle to bullying behaviour becoming known to the CAA.
- There were three options for dealing with discrimination, bullying or harassment in the workplace, namely self-help (telling the person to stop or discussing with manager), information approach to management (with different options available, including mediation) and formal in-house investigation. Little guidance was given as to when each was appropriate. An individual may choose which option to pursue, however, employees are expected to raise a concern with the appropriate manager prior to seeking external resolution, again putting all the onus of reporting onto an employee.
- Under the informal approach option, the respondent was asked not to discuss the matter with the complainant or anyone else (other than their chosen representative), as well as an expectation that the respondent treats the complainant the same as they do other employees (for example, the complainant was not to be isolated, ignored, exposed to sarcastic remarks or continued harassment). As will be seen, in some instances this expectation was reported by participants to the review not to have been met. The manager was advised to also keep in mind that the respondent has the right to support and advice and, during the informal discussion, was able to decide that the matter needed to be formalised to maintain the integrity of the process and outcome for both parties.

With respect to formal complaints:

- They were required to be advised immediately to the employee's manager or, where the complainant feels uncomfortable, to another CAA employee to raise the complaint on their behalf.
- Investigation was stated to possibly involve interviewing the complainant, interviewing the respondent, and interviewing witnesses or other staff as necessary. It is unclear, in a formal response, why these steps were not mandatory.
- Where, following investigation, the allegation was upheld, then a separate disciplinary meeting was held with the respondent.
- Where, following investigation, the allegation was found to be malicious or vexatious, then disciplinary action was able to be taken against the complainant. Again, juxtaposing these two options in the same guide may have operated as a disincentive to reporting.

Again, the 2015 Anti-Harassment Guideline ends by providing links to other internal and external resources.

### *Workplace Bullying, Harassment and Discrimination Prevention and Response Policy September 2018 (the 2018 Workplace Bullying Policy)*

The 2015 Anti-Harassment Policy was superseded in September 2018 by the 2018 Workplace Bullying Policy, which remains the policy in force at today's date.

The 2018 Workplace Bullying Policy takes the underlying premises of the 2015 Anti-Harassment Policy but expands the latter (which, though basically sound, was lacking in detail in many respects, and (as we have noted above) had some aspects which may have discouraged reporting of inappropriate behaviour). The purpose of the 2018 Workplace Bullying Policy is expressly stated to be:

*"to outline the [CAA's] approach to workplace bullying, harassment, and discrimination and its commitment to provide all employees with a safe work environment."*

The 2018 Workplace Bullying Policy is a full and comprehensive document, reflecting best practice. As will be seen, the issue is not with the policy itself but with aspects of its inconsistent application across the CAA.

The CAA's commitment is stated to be to:

- Create a safe work environment that is free from bullying, harassment and discrimination.
- Have zero-tolerance<sup>44</sup> for, and prompt handling of, incidents of bullying, harassment and discrimination.
- Encourage the reporting of behaviour that breaches this policy.
- Treat everyone fairly and with respect.
- Ensure the physical and psychological wellbeing of CAA people.
- Seek to resolve issues at the most appropriate level of intervention.
- Seek an outcome that deals with the issue and meets the needs of those involved and the CAA.

The 2018 Workplace Bullying Policy commendably gives a more detailed description of what constitutes bullying and harassment, appropriately reflecting the definitions used by WorkSafe and in the Human Rights Act 1993. It also laudably explains why bullying, harassment and discrimination are workplace hazards, by reference to the pertinent legislation.<sup>45</sup>

The policy then imposes responsibilities on the CAA, managers and employees.

#### **The CAA will:**

- Minimise the likelihood of bullying, harassment and discrimination in so far as is reasonably practicable.
- Provide information, guidance, training, instruction and/or supervision needed to protect all the CAA's people.
- Develop a culture where bullying, harassment and discrimination cannot thrive, including from those who our people interact with, in performing their duties.

<sup>44</sup> Defined as meaning the CAA considers any instance where bullying, harassment or discrimination is proven to be entirely unacceptable and will take appropriate action to prevent a recurrence, including education, training, or disciplinary action depending on the nature of the offending.

<sup>45</sup> Health and Safety at Work Act 2015, Human Rights Act 1993, Employment Relations Act 2000

- Create, reinforce, monitor and review control measures against bullying, harassment and discrimination.
- Ensure there are effective complaint-handling processes.
- Take complaints seriously and listen without judgement.
- Ensure an effective and timely response to complaints.
- Actively look for ways to create a positive workplace that employees feel is engaging, fair, rewarding and positively challenging.
- Encourage positive leadership styles and invest in managers to achieve this.
- Train key employees to receive bullying, harassment and discrimination reports and give support and advice.
- Provide employees who believe they have been bullied, harassed or discriminated against with a range of options to resolve the issue and a range of support options.
- Promote low key solutions before formal actions, where appropriate.
- Aim to repair the working relationship where possible and appropriate, promote positive work values.
- Ensure processes and systems are fit for purpose and regularly reviewed.
- Conduct regular employee surveys on the CAA work environment to measure increases/decreases in instances of bullying, harassment and discrimination.

#### **Managers are expected to:**

- Raise awareness of what constitutes bullying, harassment and discrimination.
- Lead by example.
- Ensure employees have clarity on what is expected of them.
- Support positive culture-change programmes.
- Seek help if they don't know what to do.
- Follow up on complaints and be proactive with solutions.
- Intervene early to call out and deal with any inappropriate behaviour before it escalates.
- Record and investigate complaints fairly and in line with CAA policies and processes.
- Look for informal solutions before escalating an issue to higher levels where appropriate.
- Escalate issues where they are sufficiently serious, or managers need support to manage them.

#### **Employees are expected to:**

- Take care of their own health and safety.
- Take reasonable care that others are not harmed by something they do or don't do.
- Cooperate with CAA policies and guidelines.
- Comply with reasonable and lawful instructions.
- Tell their manager, or a more senior manager or HR if the issue involves their manager if they experience or see any inappropriate behaviour.
- Try low-key solutions, e.g. talking to the person initially if they feel safe and comfortable to do so.

- Follow the CAA's processes when making a complaint.
- Contribute to a supportive and collegial environment.

**The Organisational Development Group will:**

- Raise awareness of the bullying policy and guidelines, and the CAA's zero-tolerance for any form of harassment, discrimination or bullying.
- Establish open communication systems that encourage and enable people to raise concerns in a safe and supported manner.
- Maintain and update the anti-bullying etc policies, processes and systems and ensure managers and employees understand them and know what is required and expected of them in contributing to a positive and productive work environment.
- Have performance management processes that measure behaviour against the expected standards of behaviour and conduct.
- Ensure that managers are trained to effectively manage and respond to allegations of harassment, discrimination or bullying.
- Have processes for both informal resolutions and formal investigations.
- Follow up on complaints in a timely manner and be proactive with solutions.
- Analyse work information (e.g. absenteeism records, exit interviews) for indicators of bullying etc and take appropriate action where indicators are identified.

The 2018 Workplace Bullying Policy ends with links to extra internal and external resources.

***Anti-Harassment, Discrimination and Bullying Guideline June 2018***

The 2018 Workplace Bullying Policy sits together with the Anti-Harassment, Discrimination and Bullying Guideline June 2018 (the 2018 Workplace Bullying Guideline). Again, the latter document builds upon the basic foundation of its 2015 predecessor but gives greater detail on each of the options for dealing with a bullying etc issue.

For self-help, the guideline explains that self-help "involves making the respondent aware that their behaviour, gestures, actions or words are unacceptable and requesting them to stop." It advocates a focus on specific incidents, keeping language-neutral, trying to see the other viewpoint, being mindful of possible reprisals, keeping a record of the conversation and putting the employee's health and safety first. The guideline notes that talking to someone the complainant trusts can give an objective viewpoint about whether the complainant is being bullied, harassed or discriminated against. The guidelines note that if colleagues have experienced the same behaviour, they can take joint action.

The guideline also states that the employee can talk to their manager (unless they are the person complained of, in which case they can use other avenues within the CAA). we note that many of the self-help suggestions involve skills which do not come naturally to all people and many would benefit from training in having difficult conversations, and de-escalating conflict before they would be able to exercise the self-help options.

For informal complaints, the guideline notes that the manager should discuss with the complainant the different options available, which include the manager speaking informally to the respondent on the complainant's behalf or arranging for independent mediation if both parties are willing to do this. Again, we note at this point that some managers may need specific training in these types of conflict resolution skills.

Under the informal approach option, the guideline states the respondent will be asked not to discuss the matter with the complainant or anyone else (other than their chosen representative), as well as an expectation that the respondent treat the complainant the same as they do other employees (for example, the complainant is not to be isolated,

ignored, exposed to sarcastic remarks or continued harassment). The manager is advised to also keep in mind that the respondent has the right to support and advice and, during the informal discussion, may decide that the matter needs to be formalised to maintain the integrity of the process and outcome for both parties.

For formal complaints, the guideline notes that an employee can escalate their concerns at any point during the process. It states that formal complaints need to be advised immediately to the employee's manager or another CAA employee, and followed up with a written statement of details, at which point a formal process will commence, the guidelines for which are contained in the Resolving Conduct and Performance Issues Guidelines discussed below. There needs to be greater clarity around when a formal process is needed and/or justified (taking into account the risk to health and safety).

### *Resolving Conduct and Performance Issues Policy June 2018 (the 2018 Resolving Conduct Policy)*

The 2018 Resolving Conduct Policy outlines the principles applied by the CAA when considering conduct and performance issues, and the procedure used for resolving such issues. Those principles are:

- The safety of the CAA employees and the general public is of primary consideration.
- Performance and conduct concerns will be addressed openly and as early as possible adopting a 'Just Culture' approach. We note that a number of participants to the Review were unable to articulate what was meant by 'Just Culture'.
- Everyone involved is treated with respect and sensitivity.
- Remedial action will be the preferred approach in the first instance for performance issues and may be an option in some cases of misconduct.
- Disciplinary or performance improvement action, if required, should not come as a surprise.
- Any action taken will be substantively and procedurally fair and decided on its merits.

### *Resolving Conduct and Performance Issues Guide for Managers 2018 (the 2018 Resolving Conduct Guide)*

The 2018 Resolving Conduct Guide forms part of the broader toolkit of resources for managers being developed by OD and sits alongside the 2018 Resolving Conduct Policy. It is a laudable development which sets out the CAA's expectations of all CAA managers when they must deal with behaviour or performance concerns.

Albeit a recent document, it is comprehensive and to be commended as an example of the wider package of resources to be rolled out in the first quarter of 2020. It is supported by checklists of process, and template documents, all available both within the document itself and on the CAA intranet. We note simply that the fact it did not exist in such a comprehensive form before 2018 may have contributed to some of the reported issues complainants reported experiencing when making bullying or harassment complaints. We also note that the application of the guide across the CAA does not appear to have been consistent, leading to some of the reported issues experienced by both complainants and respondents.

The guide is broken into three sections, namely initial assessment, information gathering and response, and includes useful and easy to follow flowcharts setting out the process to be followed at each step.

The guide outlines what is meant by the CAA's 'Just Culture' approach:

*"The [CAA] encourages a "Just Culture" approach where we have learning systems in place and we help staff make choices that produce good outcomes. This means using conduct and performance issues as opportunities for learning and system improvement.*

*Sometimes performance and conduct issues happen because people make mistakes or poor uninformed choices. The outcome considered for such cases should be different from those that involve deliberate or reckless actions.*

*It also means managers need to consider all the facts surrounding an issue and, wherever appropriate, give staff a chance to learn and improve to avoid it happening again."*

The guide sets out a number of principles to ensure all staff with conduct or performance issues are treated fairly and professionally at all times, including:

- The safety of staff and the public is the primary consideration.
- Before starting any disciplinary process, there is an initial assessment. It is important that this initial assessment does not become a de facto investigation, however, as we have found has happened in some instances in the past (see Appendix 2).
- The staff member concerned is advised of the possible consequences at the start of any disciplinary process.
- Everyone involved is treated with professional respect and sensitivity. Given the experience of some participants to the Review, there needs to be a means to ensure this occurs, perhaps by use of the peer mentoring scheme we have advocated for in the recommendations section below.
- The appropriate course of action is chosen based on relevant information or an investigation. There remains some lack of clarity as to when a particular course of action will be followed.
- All information is classified and marked as 'In-Confidence: Personal Privacy' and shared only on a 'need to know' basis. Given the lapses that have occurred in this regard in the past (see Appendix 2), it is important that staff are made aware of the consequences of a privacy breach.
- The staff member is given all the relevant information about the issue and has the opportunity to respond. Staff are treated even-handedly, with an open mind, and considering each case on its merits.
- The staff member is told of their right to request assistance and/or representation any stage of the process. They are also told of their right to pursue a personal grievance if they feel they have been treated unfairly.
- The outcome of any process is to give the staff member a reasonable chance to correct their performance or behaviour (not when the outcome is dismissal).
- Depending on the seriousness of the issue, a staff member usually receives a first warning before a final warning. We note here that, whether in this document or elsewhere, it is our view that staff need reminding of the sort of behaviours that the law considers to be serious misconduct, warranting dismissal. Although it was beyond our remit to comment on disciplinary or other outcomes of the files we reviewed, we note simply that warnings may have been used in the past in some circumstances where more serious consequences were warranted.

The guide then sets out the core behaviours expected of the CAA staff. These are worthy of praise but, again, some participants to the Review were unable to articulate what the core behaviours expected are, underlining the need for further training to take place.

The guide then steps the reader through the three stages of a response, supporting the guidance with appropriate flowcharts and diagrams. Key points (relevantly) are:

#### Initial assessment:

- This stage is not part of an investigation, although some of the questions asked may be part of an investigation (note our comment above about ensuring an initial assessment does not take the place of a de facto investigation). This stage is about weighing up what the issue is so the manager can decide what path to take. The manager should discuss the issue with their HR advisor and meeting with the staff member. Critically, the guide recommends proceeding to an investigation where it is a significant performance issue that has not been resolved, or some other ongoing, significant issue. Clear guidance, checklists and examples are given of the types of issue which may lead to formal disciplinary action. A template letter of expectation is provided.

#### Investigation:

- The guide notes that it is essential that the manager undertakes a thorough and fair investigation of the issue before considering any form of disciplinary action. It also notes that often investigations simply involve the manager gathering relevant information from relevant sources. Again, when this is appropriate needs to be more clearly spelt out as, in the past, initial information gathering has replaced investigation and led to disciplinary action.
- The guide then takes the managers through the steps involved in an investigation. Relevantly, it states that *"for some types of issues, it may be helpful for the investigator to be independent from the decision-maker, such as where the manager needs a fresh perspective or if the situation is particularly sensitive (for example, a harassment complaint."* Such a person could be another manager who has no involvement with the staff member concerned, or an external engagement. The investigator should have the skills to undertake the investigation. We recommend that an independent investigation always take place for bullying and harassment complaints to ensure the trust of all participants and the integrity of the process.
- Anonymous complaints are not usually allowed and sometimes the Police may get involved either immediately or following the investigation.
- Before an investigation starts, the guide states the manager needs to arrange a preliminary meeting with the staff member concerned and provides a checklist for the manager to ensure they've covered all relevant points. These include (relevantly) comment on the Terms of Reference, the process to follow and timeframes, the staff members' right to support (including EAP), the possible outcomes, and the need for both confidentiality and no retaliation.
- The guide provides a template Terms of Reference.
- The guide provides steps to be taken by the investigator in gathering information and documentation. This, amongst other things, includes a reference for the need to provide the staff member with the opportunity to comment including through a second interview or written statement if needed. There is a checklist for the suggested order for investigation interviewees and a draft template email to witnesses and the respondent to arrange an interview.
- The guide then provides a checklist for the investigator when he or she conducts the interview. It highlights the need to keep separate the role of witness and support person, the need for the manager to keep key parties informed, and a guide to analysing the information gathered (noting the usefulness of the Just Culture approach at this point).

- The guide then sets out the steps involved in documenting the findings and giving the staff member (and anyone else specified in the Terms of Reference) the opportunity to comment on the draft report. The guide makes clear that the decision-maker receives only the final report, not a draft.
- The guide then steps the manager through the post-report course of action, namely a chance for the staff member to provide any additional information to the decision-maker that could affect the findings of the investigation, and an investigation outcome meeting with the respondent. we would add that if additional information is provided that could affect the findings of the investigation, the manager should ensure the person affected by that information is given a chance to respond. we would also urge that some debrief should occur with the complainant, notwithstanding the need to ensure the privacy of the respondent.

#### Response:

- The guide steps the manager through what should happen before, during and after a disciplinary meeting, again providing checklists and template documents. Again, there needs to be a reference to some form of debrief taking place with the complainant as well, notwithstanding the need to ensure the privacy of the respondent.
- The guide notes that the manager will need to consider carefully how to tell other staff of the outcome and that the messaging needs to be factual but should not provide more detail than is necessary for staff to be able to continue in their work. We note that in the past a failure to advise staff of any information has led to conjecture and gaps being filled inaccurately. Although there is clearly a need to protect the privacy interests of individuals concerned, the CAA may use instances of termination for inappropriate behaviour to reinforce in a general manner what behaviours are not tolerated, and/or instigate reminder training.

The guide also provides information on possible employment outcomes and the steps to be taken (e.g. suspension, warnings, dismissal etc), which are not within the scope of this review, except to note that it is important for all managers across the CAA to be consistent in their responses to disciplinary issues.

At all points, the guide emphasises that the process can stop at many points and, if an issue is resolved or is a minor issue, the manager does not have to use the full process.

#### *Confidentiality Policy January 2014 (the 2014 Confidentiality Policy)*

The stated purpose of the 2014 Confidentiality Policy is to:

*"to strengthen the [CAA's] culture of confidentiality and reinforce the obligations of staff to keep information regarding [CAA's] activities and [CAA] clients confidential, subject to the obligations of the Official Information Act 1982, Privacy Act 1993 and other relevant New Zealand law."*

We note that many staff members spoken to did not consider there to be a culture of confidentiality within the CAA.

The 2014 Confidentiality Policy contains a number of policy statements. Those which relate to this review are:

- Information must not be disclosed to any person other than for legitimate business reasons unless the CAA is required to disclose the information by New Zealand law. This has been breached on occasion in the files we have reviewed, but the CAA has always acted promptly and responsibly in response to such breaches.
- Informal communications about the progress of investigations and possible recommendations must not be released to third parties as these can be misinterpreted and used as grounds to challenge the ultimate decision or the process

applied to the decision-making. Staff need constant reminding and training about this point, as participants to the Review have reported being the subject of conjecture and gossip after either reporting or inappropriate conduct or being the subject of such a report.

- All managers and staff are responsible for upholding the Confidentiality Policy and staff must immediately inform their manager of any breach or potential breach.
- Any intentional or negligent breach of confidentiality may constitute misconduct and the staff member responsible subject to employment action. We simply note again the need to remind staff regularly of these principles and requirements.

### *2018 Privacy Policy*

Sitting with the 2014 Confidentiality Policy is the 2018 Privacy Policy, which sets out the CAA's expectations on how personal information is managed, who is responsible, what the respective tasks and responsibilities are, and what tools are available to support it. The role of the Privacy Officer at the CAA is held by the Chief Legal Counsel. We note that, in the approach to this Review, the CAA's adherence to the Privacy Act 1993 has been exemplary and has been driven at all times by the Chief Legal Counsel, to whom we give our appreciation and thanks. We have been able to reassure all participants that privacy and confidentiality rights are being treated with the utmost seriousness by the Review Team, the Ministry and the CAA.

The comments we have made above in relation to the Confidentiality Policy and the need for regular reminders and training to staff on obligations and consequences for breach apply to the Privacy Policy.

Relevant to this Review, the 2018 Privacy Policy:

- States that the CAA manages privacy breaches openly and transparently and treats every breach as an opportunity to improve privacy practices.
- Requires the Privacy Office to, inter alia, report to ALT on any current privacy issues across the CAA, including any significant breaches, complaints or investigations.
- Requires the Privacy Officer to ensure the necessary training is provided to all staff across the CAA. For staff who deal with personal information, this requires privacy training every two years. we note this training may need to be more frequent, perhaps annually.
- Staff may not access personal information held by the CAA out of personal interest, curiosity or for any other purpose unrelated to their legitimate work activities and a breach of this part of the policy may amount to serious misconduct and employment action.
- Requires the Privacy Office to take a number of steps in relation to a breach, including investigating the circumstances (internally or externally), identifying the underlying causes, identifying any training requirements, systems improvements or process/guidelines amendments to prevent further such breaches occurring, and reporting to the Chief Executive and relevant General Manager on the outcome of the investigation, including recommendations and an analysis of the harm caused to any individuals.
- Any person whose personal information is held by the CAA has the right to complain about the CAA's management of that information and the Privacy Officer will be responsible for investigating the complaint in accordance with the CAA's Complaints Policy (see below).

### ***Complaints Policy 2014 (the 2014 Complaints Policy) and associated procedure***

The 2014 Complaints Policy and associated procedure apply to all complaints received by the CAA relating directly or indirectly to its role as a Crown entity, its statutory functions under the Civil Aviation Act 1990, the regulations made under that Act, and the Civil Aviation Rules. There was a perceived confusion amongst participants to the Review around how the different policies all sit together and having a separate complaints policy in addition to bullying and harassment policies, is an example of where confusion may ensue.

For the purposes of this Review, the 2014 Complaints Policy deals with complaints about the conduct of staff members to the extent that they do not prima facie indicate a breach of the Code of Conduct and/or the Anti-Harassment Policy. The policy recognises the crossover with that policy and the Code of Conduct and emphasises that complaints alleging a breach of the Code of Conduct (including bullying and/or harassment) must be referred to the Manager People & Capability (or their delegate) and the responsible manager of the employee concerned. As we have stated above, this distinction needs greater clarity for staff.

For that reason, we have not concentrated on its detail, except to note that it is the policy which applies in the event of a complaint by a staff member about a Privacy Act breach (see above), although it states that complaints alleging a breach of privacy fall outside the scope of this policy and must be referred to the Privacy Officer who is responsible for ensuring that all such complaints are appropriately investigated.

### ***Protected Disclosure Policy 2013 (the 2013 PD Policy)***

The 2013 PD Policy provides information and guidance to the CAA employees who wish to report serious wrongdoing (i.e. that set out in the Protected Disclosures Act 2000 (the PD Act)) within the CAA. The policy incorporates the statutory processes and protections set out in the PD Act and we do not, therefore comment on those in detail except to note that "serious wrongdoing" in that legislation includes, at section 3(1) definition of such, "(d) an act, omission, or course of conduct that constitutes an offence." This may, of course, include an act of bullying or harassment (including sexual harassment). It is critical that staff are reminded regularly of this policy and their rights under it.

### ***Employment Relationship Problems Policy 2018 (the 2018 ERP Policy)***

The 2018 ERP Policy describes the situation when a formal process may be required in an employment relationship. Not all of it relates to this review. The key points that do are:

- The principle that the CAA is committed to be a good employer and ensuring employees are treated fairly and in line with the principles of good faith, and that due process is followed.
- The principle that early intervention is key and can be initiated by the employee or manager.
- Either party is entitled to advice, representation or advocacy at any time.
- Personal grievances include claims of discrimination, sexual harassment or racial harassment. We note here that bullying may also found a personal grievance.

### ***Employee Assistance Policy 2018 (the 2018 EAP Policy)***

The 2018 EAP Policy outlines the Employee Assistance Programme that is provided to all staff by an independent company, through qualified, registered and experienced counselling staff. The policy also recognises that some positions within the CAA are exposed to highly stressful situations and employees that hold these positions may also be offered specialist counselling services before, during or after their exposure to these situations. The CAA should also consider whether staff are provided with access to more

specialist assistance when dealing with alleged bullying and harassment. Some participants have made reference to the need for this.

For the purposes of this Review, we note that the 2018 EAP Policy is available to all employees at any time, with the number and content of session conversations remaining confidential. The CAA is not notified who attends unless referred by their manager and with the employee's consent. The contact details for EAP are easily accessible throughout the CAA. Again, participants have consistently reported a distrust of EAP, such that a reminder session for all staff of its benefits and the principles which govern it would be timely.

### ***Health and Safety Policy 2018 (the 2018 HS Policy)***

The 2018 HS Policy sets out the standards that support the development, delivery, monitoring and review of the CAA's health and safety system. Key for the purposes of this Review:

- The CAA is committed to providing and maintaining a healthy and safe environment, with strong safety culture in the workplace, focussing on prevention of injury and illness, providing high-quality injury management and continuously improving the CAA health and safety system.
- The policy supports the five pillars identified in the Health, Safety and Wellbeing Strategy (see below) that focus on the delivery of foundation systems, empowered leaders and effective worker engagement.
- The Board plays a key role in policy and planning, delivery, monitoring and reviewing.
- In short, all staff participate in health and safety. All employees are encouraged to continuous improvement by raising issues, generating ideas and participating in the system development, implementation, monitoring and review.
- Annual assessment of the CAA's safety system takes place against an external audit standard and review requirements.

### ***Health, Safety and Wellbeing Strategy 2017-2020 (the 2017-2020 HS Strategy) March 2018***

As stated above, the 2017-2020 HS Strategy is based around five pillars that focus on the delivery of foundation systems, empowered leaders and effective worker engagement, namely enabling the HSW strategy, strong leadership, engaged workforce, active management of risks and reducing the impact of illness and injury. The strategy recognises that a compliance-driven health and safety strategy is not a successful approach and that:

*"Compliance is not a strategy. It is an assumed base from which we must start. Our goal is to bring to life the spirit and intent of the legislation. Health and safety is about people. We have a moral and social obligation to not only keep people safe at work but support them, so they are better from being at work."*

The future strategy:

*"[CAA] must adopt a clear direction and approach to health, safety and wellbeing as one organisation. Our health, safety and wellbeing systems must be owned by our people. Accountability for work-related safety, health and wellbeing does not belong to one part of the [CAA]; it is the responsibility of everyone in our organisation. We will know we have succeeded when the [CAA] has moved beyond compliance and integrates workplace health, safety and wellness in all aspects of its business practices.*

...

*We will be successful when the [CAA] is an organisation where workers are equipped to identify and respond to risk, have the tools, knowledge and*

*understanding to be safe, feel comfortable reporting issues and are confident that they will be addressed. Our people leaders will be empowered to own and drive workplace safety and knowledgeable about how to do that successfully.*

*We will be clear about the risks our workers are exposed to, they will be understood across the organisation, and our actions will focus on effectively managing those risks to keep our workers safe and well. They will be at the centre of our health and safety system, and our decision making.*

*We will take a holistic approach to support worker wellbeing – focussing beyond workplace health and safety to we [sic] make a meaningful and positive contribution to the overall wellbeing of our workers, both at work and beyond the work environment.*

*We will regularly and comprehensively monitor our health and safety performance to know we are focussing on the right things, and to identify opportunities to make ongoing improvements to our health and safety systems."*

The main issue for the CAA with their health and safety strategy moving forward is to recognise the significant risk to health and safety that bullying and harassment causes, and to prioritise mental health and wellbeing in the same manner and to the same degree as physical health and wellbeing. This poses a current challenge to all New Zealand businesses and agencies and, in many ways, the CAA is ahead of the game in recognition of these aspects of its health and safety obligations. Bullying and harassment as a significant health and safety risk, and the importance of mental health and wellbeing, have been on the agenda and radar of the ELT and of the Board's Health and Safety Committee since at least mid-2018. For example:

- From as early as July – September 2017, "work-life balance" was prioritised as one of four health and safety key initiatives.<sup>46</sup> This was built upon through 2018, with a focus on *"[assisting] managers to identify and support their employees to maintain a healthy work/life balance and support them through challenging times."*<sup>47</sup>
- Mental Health Awareness Week was marked in October 2018, with daily emails, posters and booklets provided to managers (with planning to roll out some publications to all employees). Managers attended a workshop on mental health as part of a 2018 manager's forum, with a plan to organise a similar workshop in 2019 for those managers not at the 2018 one.<sup>48</sup>
- Mental health and wellbeing have been regularly addressed in the monthly Wellbeing Information Safety Health newsletter provided across the organisation.<sup>49</sup>
- In April 2019, the Umbrella organisation that specialises in mental health coaching was commissioned to develop a short conversation guide as an ongoing reference for new managers and employees which would form part of an induction process for new managers.<sup>50</sup>
- The Board Health and Safety Committee receives a number of relevant reports on performance measures, including annual reporting on participation levels in wellbeing programmes and engagement survey results, quarterly reporting of a number of incidents reported relating to stress, access to/use of EAP, and key HR metrics such as sick leave and other absences, and annual review of policies and procedures and the outcomes of internal and external audits.

<sup>46</sup>2017 Health and Safety Dashboard.

<sup>47</sup> 2018 Health and Safety Dashboard.

<sup>48</sup> Ibid note 13.

<sup>49</sup> For example, February 2019, June 2019.

<sup>50</sup> 2019 Health and Safety Dashboard.

- The Board Health and Safety Committee recognised in May 2018 that a particular health and safety incident reported to it had not had the mental health and safety implications treated and examined as a health and safety incident, *"highlighting an Authority-wide issue that health and safety incidents were not confined to physical harm. Further education of the workforce is needed to build a greater understanding of what should be reported, investigated and learned from"*. At the same meeting, the Committee noted that more could be done to encourage staff engagement in health and safety.
- In July 2018, the Board Health and Safety Committee suggested specific guidance on raising mental health concerns should be provided to staff. The Committee also sought (and received) an assurance that staff felt empowered to speak up if they observed something potentially unsafe occurring in the workplace.
- In March 2019, the Board Health and Safety Committee noted that staff mental health issues did not appear in that month's Health and Safety Dashboard reporting and enquired how the CAA assessed whether such issues were work-related and how they were reported on. The Committee noted the need to monitor staff wellbeing. A self-review undertaken by the Committee noted that:
 

*"there were opportunities for the Board to take its health and safety role more seriously by delving more deeply into issues and challenging management to provide evidence of actions taken in response to incidents to prevent recurrences."*
- In March 2018, the ELT noted a loss of focus on addressing inappropriate workplace behaviours and noted the need to progress work on diversity and include and raise awareness of the expected behaviours in a modern workplace.
- In June 2018, the ELT noted a number of reported instances of inappropriate and challenging behaviour were impacting wellbeing, work performance and the health of some staff. Suggestion boxes had highlighted uncertainty around staff on how to raise issues and a lack of confidence that if they did, actions would be taken.
- In July 2018, the ELT noted the Board Health and Safety Committee's interest in ensuring the CAA has a strong focus on mental health.
- In August 2019, the ELT noted that work was still to be done to address diversity and inclusion workplace issues and the expectations of staff in terms of behaviours and standards.

What the CAA must now do, therefore, is to build upon the work it has already done, continue to give it the priority and resourcing it requires at both Board and management-level, and ensure all staff at all levels and across the organisation recognise the importance of mental health and wellbeing, what can be done by everyone to advance and protect mental health and wellbeing, and what more can be done to address the risks to such health and safety posed by bullying, harassment and inappropriate behaviours.

### 12.3. The effectiveness of the CAA's prevention and other control measures

The 2017 WorkSafe Guidelines set out certain control measures to address potential causes of bullying. Critically, the 2017 Guidelines emphasise that the most effective way to minimise unreasonable behaviours *is to "adjust the culture settings to expose and address such behaviours"*. This is discussed elsewhere in this report but, for the purposes of this part of the report and our findings, we note that the control measures suggested, with a finding as to how the CAA is managing the risk are as follows:

- **Making anti-bullying policies, processes and systems transparent**

While there has been work undertaken within the CAA to make its anti-bullying policies, processes and systems transparent, participants to the review were consistent in reporting that they did not know where to find the information, or they

had logistical difficulties locating the information, or they were aware of the policies and processes but did not see or experience them being adhered to on a consistent basis.

We again acknowledge the currently planned workshops and training as part of the project to launch the new bullying and harassment toolkits and urge the CAA as a whole to give this project the priority and resource it deserves and needs.

- **Building good relationships in a respectful work environment**

This would include having a 'no-bullying tolerated' work culture, a Code of Conduct and articulated workplace values, recognising and promoting diversity, managing work and workloads, implementing a conflict management process, supporting workers at greater risk of being bullied or showing bullying behaviours, involving workers in change processes.

The CAA has an expressly articulated 'zero-tolerance to bullying' approach, and a comprehensive Code of Conduct with well-articulated workplace value. Again, however, it is the implementation of those tools in practice which requires focus.

The current Diversity and Inclusion Programme and Working Group are worthy developments which require the full support of all staff at all levels of the CAA to achieve its full potential.

Again, the currently planned workshops and training are a worthwhile initiative, which should include training for staff and managers on having difficult conversations, conflict de-escalation and resolution and unconscious bias. The zero-tolerance to bullying approach should be at the front and centre of all such training and initiatives.

- **Developing good managers**

Through good support, training (including refreshers) and supervision, acting on feedback, mentoring new or poorly performing managers, and asking questions through exit interviews and worker surveys.

See below in the recommendations section for our recommendations on improving support and training.

Ex-staff who have participated in the Review have reported consistently that exit interviews are not a priority for the CAA when staff depart. Although staff cannot be forced to participate in such an exit interview, they should be prioritised as one of the steps to be taken when exiting a staff member.

Staff surveys, which were previously a regular occurrence within the CAA, should be re-implemented without delay as a means to regularly take the temperature of the organisation and ascertain where pockets of inappropriate behaviour may exist within the organisation.

- **Educating workers and managers about bullying**

We refer again to the planned training and workshops in this regard and urge the CAA to consider adding to those any of the recommendations below not currently provided for.

- **Providing support to staff**

Through being accompanied at interviews, Human Resources, peer support, the unions, designated peer support, external employee assistance programmes. On the whole, the CAA provides good advice in relation to the right for participants to have support at interviews during investigations and other related meetings. However, the universal theme from participants to the Review was that the standard advice to use EAP was not helpful, and not all those who had accessed EAP found it of use or skilled enough in dealing specifically with bullying or harassment issues. We have

formulated recommendations that suggest the CAA consider the use of more skilled expertise and support in bullying and harassment cases and consider forming and training a peer support and mentoring group within the organisation and including staff from all levels of the organisation.

- **Making sure everyone in the workplace knows their health and safety responsibilities**

We acknowledge this is a priority for the CAA as set out in its Health and Safety Strategy 2017-2020. The challenge for the CAA, as for all workplaces and organisations, is conveying to staff and educating them, on the importance of workplace health and safety (including both physical and mental wellbeing) and emphasising that everyone in the workplace has a role to play.

- **Making sure workers know how to report bullying**

Including how to record instances of the unreasonable behaviour, how to know if something is bullying, how to informally report unreasonable behaviour they directly experience or see, how to make a formal complaint, and what they can expect after making a complaint.

Again, we acknowledge the training and workshops to be rolled out in this area in the first quarter of 2020.

Finally, we emphasise that all control measures should be monitored and regularly reviewed to confirm they remain effective at minimising the likelihood of bullying.

# Findings and Recommendations

The Review Terms of Reference (see Appendix 1) require that findings and recommendations be made on the following matters:

## *Findings*

- Review how previous reports and complaints of incidents of bullying and harassment were handled and to consider how those complaints were responded to by the CAA.
- Consider and report on how staff and complainants were treated by the CAA.
- Assess the CAA's existing policies and procedures relating to bullying and harassment, comparing them to best practice and identifying any actual or perceived barriers to reporting or making complaints about bullying or harassment.
- Establish whether the CAA has appropriate prevention and other control measures in place to deal with any risks arising from bullying and harassment, in accordance with the guidance issued to date by WorkSafe New Zealand and any other relevant examples of best practice guidance, policies or practice.
- Establish whether the prevention and other control measures in place are effectively managing the risks from bullying and harassment with a view to making recommendations as to how, if at all, such measures can be improved.
- Consider and comment on the CAA as a place of work with regard to ensuring the treatment of the CAA staff with dignity and respect and maintaining an open and supportive culture.

## **Recommendations for Improvement to:**

- How the CAA promotes and maintains an open and supportive culture.
- How the CAA promotes and ensures the treatment of staff with respect and dignity.
- How the CAA handles complaints including how staff and management are trained in addressing and managing complaints about bullying and harassment.
- CAA policies, systems, and procedures for dealing with complaints about bullying and harassment.
- Any other matters the Ministry considers are directly related to the purpose of this Review.

## **13. Findings**

### **13.1. How previous reports and complaints of incidents of bullying and harassment were handled and to consider how those complaints were responded to by the CAA**

As Appendix 2 shows, how reports and complaints of incidents of bullying and harassment are handled within the CAA depends very much upon whether an individual works for the CAA or Avsec, the team an individual is in, his or her particular team leader and/or manager, and within which part of the organisation that team sits.

Some managers are particularly skilled at dealing with complaints in the manner documented by the 2018 Workplace Bullying Policy (and its predecessor), the 2018 Workplace Bullying Guideline (and its predecessor), the 2018 Resolving Conduct Policy and the 2018 Resolving Conduct Guide. Others, if they are unsure, are adept at obtaining support and guidance from their particular Human Resources Advisor.

However, the sound CAA policies and processes referred to above are not applied in a consistent or uniform way by managers and decision-makers throughout the CAA and Avsec, nor does there appear to be universal familiarity with the contents of those policies.

As a subset of this finding, therefore, we note that where a complaint has been dealt with and responded to well, this reflects more upon the particular manager or individuals tasked with, or responsible for, dealing with the complaint, rather than how the CAA ensures its policies and processes are operated as a whole.

As a result, while many reports and complaints of bullying or harassment were responded to in an exemplary manner, a number of investigations into complaints of bullying and harassment reviewed displayed the following characteristics:

- Depending on the manager and part of the organisation, either a failure to properly address and investigate a complaint which constitutes possible bullying or harassment, or recourse to formal disciplinary action without the documented steps in between being followed.
- Many complaints appear to have been escalated immediately to a full formal response when low-level facilitation, resolution or mediation may have been an option. In many files, particularly since 2018 and within the CAA, the views of the complainant as to which path ought to be followed were sought and considered. However, this was not consistently so amongst all the files reviewed.
- Unwarranted delay in reaching a decision or outcome.
- A lack of communication with either the complainant or the respondent from either the CAA or from the external investigator.
- Initial assessments have been carried out, particularly within Avsec, which have become de facto investigations leading to disciplinary action being taken, without the respondent receiving the benefit of full natural justice principles being applied.
- Persons conducting investigations, whether internal or external, are not always trusted by the parties to the investigation and questions are often raised (but not always adequately answered) as to the expertise of the investigator, and the continued input into the investigation by the CAA staff.
- Investigations often being carried out by persons who do not have the requisite independence, may be seen by the parties to have demonstrated some predetermination of the outcome of the investigation, or have some perceived connection or bias (and thus a lack of impartiality) to the persons involved.
- At times, a failure to heed the advice provided by Human Resources Advisors.

We acknowledge the current Organisational Development project to update all guidance in this area via the toolkits, training and workshops to be rolled out in the first quarter of 2020. We would hope that any additional recommendations from this Review, not already covered by the pending project roll-out, will be incorporated into that programme of work. We would also observe that the nature of the work and workforces is quite different as between Avsec, the regulatory part of CAA and corporate services, so the delivery of this work and other changes will need to be cognisant of and reflect these differences.

There does not appear to be any systematic oversight or reporting to the ALT/ELT or the Board on outstanding investigations, their nature or their resolution. HR advised us that there is no regular reporting to the ALT on open complaints. While some members of the ALT/ELT spoke of some discussion relating to the most severe cases, we were told that the nature of these discussions was limited.

### 13.2. Consider and report on how staff and complainants were treated by the CAA

Again, how respondents and complainants are treated by the CAA when a report or complaint of bullying or harassment has been made is not consistent across the organisation and depends very much on the team an individual is in, and that person's team leader and/or manager. This is despite the guidance provided by the relevant policies and the advice provided by Human Resources Advisors.

A consistent theme with interviewees, whether they were complainants or respondents in the process, was that they did not receive sufficient support from the CAA. Uniformly, participants would be informed of their right and ability to access EAP support. Those who did take up such support, however, often found it wanting and unhelpful, particularly where issues of bullying and harassment were involved. Within the CAA, particularly since 2018, support beyond EAP was offered and provided to both complainants and respondents (including access to clinical and organisational psychologists and specialist counselling services). This is to be commended, but it is noted that this was not uniform across the files reviewed and the organisation as a whole.

We were advised that a common response by managers to whom bullying or harassment was reported was to invite the person complaining about the behaviour to move desks, change their manager, or consider working from home. In one case we consider the proposed change in line manager to have been wholly inappropriate, leading to additional and unnecessary stress being placed by the CAA on the complainant.

We were told by a number of people who had made complaints, where this had been their experience, that this resulted in them feeling isolated and anxious particularly where they were told they could not discuss their complaint or their experience with anyone else. Others reported experiencing negative consequences and comments from their peers or managers once they worked different hours, less hours, or from home. While such steps may have been taken with the best of intentions, as already noted a number of participants in the review reported feeling isolated and regretted speaking up.

Some current and former staff who raised complaints or concerns reported that they were advised by management and HR that they could not discuss their complaint with anyone else in the CAA nor talk about what they had alleged had happened to them. This was both during the investigation stage and following the finalisation of any investigation, including where the outcome was dismissal. While we agree that during an investigation all parties should be encouraged not to discuss the matter, we can see no particular legal or other reason why the CAA would want staff to maintain secrecy about the nature of their complaint, or about their views on how the CAA handled their complaint.

This had the effect of further isolating victims of bullying or harassment and fuelled conjecture about the behaviour of both victims and perpetrators which is unfair to both. This appears to be based on a misguided and fundamentally wrong interpretation of the Privacy Act, as requiring employees to maintain confidentiality before, during and after complaints have been dealt with. We do not agree with this position. However we note this is a somewhat tricky area because there needs to be a clear differentiation between staff talking about their direct experience (as someone who has been impacted by the behaviour of a colleague/manager), and that of an employee who is aware of matters through their official role, e.g. HR advisors, investigating managers, investigators, etc.

In terms of privacy, we note the recent advice released by the Privacy Commissioner in his blog on a complainant's right to access personal information during an investigation of workplace bullying. The Privacy Commissioner has stated that, in recent months, his Office has investigated multiple complaints related to workplace bullying where complainants wanted access to information about their bullying investigation that, for one reason or another, the workplace decided to withhold. The Commissioner has criticised agencies for withholding an investigation report from a complainant, even though it contained the

complainant's personal information and the Terms of Reference expressly held the complainant could receive a copy. The Commissioner noted the balancing exercise required by section 29(1)(a) of the Privacy Act 1993, whereby the employer must balance the privacy interests of the person seeking the information against the interests of other people involved (i.e. not just apply a blanket refusal). The Commissioner further noted that:

*"[from] a natural justice perspective, people who make complaints of workplace bullying should be entitled to see the results of the workplace investigation often – including statements their managers, co-workers or alleged bullies have made about them."*

We recommend the CAA follow this guidance and, where they are uncertain as to how much information should be provided to a person requesting it, they seek the advice of the Privacy Commissioner.

In many situations, participants (both complainants and respondents) spoke of a lack of communication as to the next steps in the process and a lack of transparency around those next steps. In some investigations, participants felt the need to contact their manager (or HR) of their own accord to find out the progress of any investigation. We note that, in one example, where senior management was made aware of poor timeliness, steps were taken to hasten the process of what had been a very lengthy investigation and milestones were imposed on the investigator to bring the investigation to a resolution. Other investigations, however, have not been subject to such discipline, leading to uncertainty and increased stress and anxiety for participants.

Finally, on a small number of occasions, complainants who went through an investigation process subsequently became aware of Privacy Act breaches in relation to the disclosure and use of their personal information, leading to further investigations needing to be carried out. While the CAA acted robustly in dealing with those breaches, it is of concern that the breaches occurred in the first place, signifying a lack of understanding from the staff involved (who were senior staff members) of the law and their obligations around privacy and confidentiality.

### **13.3. Assess the CAA's existing policies and procedures relating to bullying and harassment, comparing them to best practice and identifying any actual or perceived barriers to reporting or making complaints about bullying or harassment**

It is fair to say that, over the period of the Review, the CAA's policies and procedures relating to bullying and harassment have evolved significantly and improved as a result. As Tables 1 and 2 at Appendix 3 show, the current policies and procedures, on the whole, embody best practice guidance and are fit for purpose (with some relatively minor recommended changes discussed below in this report).

However, as previously noted it is the inconsistent application and practice of those policies and procedures that have led to inequitable treatment of some staff. Overall, the policies we have reviewed set out an appropriate foundation for responding to reports and complaints, and these will be further enhanced by the planned roll-out of workshops and training accompanying the revised toolkits planned for the first quarter of 2020.

There are a number of barriers to reporting inappropriate conduct, these include:

- The fear of becoming a target and being isolated from colleagues.
- Witnessing poor treatment of other staff who have previously reported inappropriate conduct.
- Lack of knowledge as to the steps involved and how to access information.
- A lack of trust in management's ability to respond appropriately and provide adequate support to complainants.

Where a complaint is made, it is critical that complainants and respondents are clear as to the process they can expect will follow, and that they are kept informed as to all the steps in the process, including clarity around possible outcomes, and the limits on conveying those outcomes to complainants for privacy reasons. Where there is a lack of information about where a process is at, individuals are likely to fill the gaps with rumour and gossip, and this appears to have been a feature of many investigations undertaken within the CAA.

Delay is also a barrier, with participants reporting expectations that if they do raise an issue, the process is likely to be long and drawn-out, creating further stress for all involved.

#### **13.4. Establish whether the CAA has appropriate prevention and other control measures in place to deal with any risks arising from bullying and harassment, in accordance with the guidance issued to date by WorkSafe New Zealand any other relevant examples of best practice guidance, policies or practice**

As previously noted, the CAA's policies and procedures relating to bullying and harassment have evolved significantly and improved as a result. As Tables 1 and 2 at Appendix 3 show, the current policies and procedures, on the whole, embody best practice guidance and are fit for purpose (with some relatively minor recommended changes discussed below in this report).

The 2017 WorkSafe Guidelines set out certain control measures to address potential causes of bullying. Critically, the 2017 Guidelines emphasise that the most effective way to minimise unreasonable behaviours is to *"adjust the culture settings to expose and address such behaviours"*. Our findings as to the implementation of control measures within the CAA are:

- **Making anti-bullying policies, processes and systems transparent.**

While there has been work undertaken within the CAA to make its anti-bullying policies, processes and systems transparent, participants to the review were consistent in reporting that they did not know where to find the information, or they had logistical difficulties locating the information, or they were aware of the policies and processes but did not see or experience them being adhered to on a consistent basis. We acknowledge (again) the currently planned workshops and training as part of the project to launch the new bullying and harassment toolkits and urge the CAA as a whole to give this project the priority and resource it deserves and needs.

- **Building good relationships in a respectful work environment, including having a 'no-bullying tolerated' work culture, a Code of Conduct and articulated workplace Values, recognising and promoting diversity, managing work and workloads, implementing a conflict management process, supporting workers at greater risk of being bullied or showing bullying behaviours, involving workers in change processes.**

The CAA has an expressly articulated 'zero-tolerance to bullying' approach, and a comprehensive Code of Conduct with well-articulated workplace values. Again, however, it is the implementation of those tools in practice which requires focus.

There should also be a greater emphasis within the CAA on the fact that a complainant should only approach the person whose behaviour concerns them if they feel safe to do so, recognising that, when issues of bullying, harassment or discrimination are involved, there may be a natural power imbalance between complainant and respondent, whether created by relative positions, gender, race, other issues, or a combination of these. Complainants should not be criticised if they elect to raise such an issue with another person in the organisation and, as we have recommended below, the creation of a trained peer support network comprised of staff across all levels of the CAA may assist in this regard.

The recent introduction by the CAA of the Spot anonymous reporting tool is a worthy means of capturing reports where a person does not feel comfortable enough to raise an issue face-to-face with his or her manager or the person concerned.

However, at present, it is our considered view that there is insufficient trust across the organisation to fully engage with this tool reducing its reliability as a barometer of organisational health and staff wellbeing. We consider it is highly likely this lack of trust has contributed to a lack of uptake of it to date.

Access to where to find the policies can be problematic especially for Avsec ground and operational staff, who may have limited time and access to a computer. There is a great need for better information and communication to all individuals, accompanied with regular training, across all levels and parts of the CAA so they know at all times where they can access assistance and information.

Ex-staff who have participated in the Review have reported consistently that exit interviews are not a priority for the CAA when staff depart. Although staff cannot be forced to participate in such an exit interview, they should be prioritised as one of the steps to be taken when exiting a staff member.

Staff surveys, which were previously a regular occurrence within the CAA, should be re-implemented without delay as a means to regularly take the temperature of the organisation and ascertain where pockets of inappropriate behaviour may exist within the organisation.

- **Educating workers and managers about bullying.**

We refer again to the planned training and workshops in this regard and urge the CAA to consider adding to those any of the recommendations below not currently provided for.

- **Providing support through being accompanied at interviews, Human Resources, peer support, the unions, designated peer support, external employee assistance programmes.**

On the whole, the CAA provides good advice in relation to the right for participants to have support at interviews during investigations and other related meetings. However, the universal theme from participants to the Review was that the standard advice to use EAP was not helpful, and not all those who had accessed EAP found it of use or skilled enough in dealing specifically with bullying or harassment issues. We have formulated some recommendations below that the CAA consider as a matter of course. The use of more skilled expertise and support in bullying and harassment cases and consider forming and training a peer support and mentoring group within the organisation and including staff from all levels of the organisation.

- **Making sure everyone in the workplace knows their health and safety responsibilities.**

We acknowledge this is a priority for the CAA as set out in its Health and Safety Strategy 2017-2020. The challenge for the CAA, as for all workplaces and organisations, is conveying to staff and educating them, on the importance of workplace health and safety (including both physical and mental wellbeing) and emphasising that everyone in the workplace has a role to play.

- **Making sure workers know how to report bullying including how to record instances of the unreasonable behaviour, how to know if something is bullying, how to informally report unreasonable behaviour they directly experience or see, how to make a formal complaint, and what they can expect after making a complaint.**

Again, we refer to our findings above in this regard and acknowledge the training and workshops to be rolled out in this area in the first quarter of 2020.

### 13.5. Consider and comment on the CAA as a place of work with regard to ensuring the treatment of staff with dignity and respect and maintaining an open and supportive culture

It is a given that culture is the by-product of behaviours modelled by leaders, management and staff reinforced by clear expectations reinforced by consistent and clear action where these are out of alignment with expectations. Through our interviews and the review of material we have identified that successful organisations have the following attributes supporting an effective and appropriate culture:

- Systems, processes and structure that reinforce the defined culture including clarity of Board expectations and consistent implementation by senior leadership.
- Staff are actively engaged in the culture and performance of the organisation.
- A learning organisation environment is promoted with people actively enabled to succeed.
- Roles and ways of working provide confidence to staff and external stakeholders are mutually reinforcing and support transparency of decision-making and communications.
- The business outcomes are clearly articulated and impact on business processes is clearly understood.
- All staff understand the path to change, it well communicated, resourced and integrated within operational business plans.
- The change is relevant and timely, with risks well understood and management strategies employed to address these.

#### *Worker engagement and participation*

Worker engagement is an important part of growing a positive workplace culture. Research has shown that worker participation (and union participation) leads to better health and safety outcomes. All workers should be encouraged to contribute to continuous improvement by raising issues, generating ideas, and participating in system development, implementation, monitoring and review.

Participation practices can be flexible – an organisation and its workers should choose a worker participation model that works for them. What is appropriate will depend on the nature of the risks, the size of the organisation and the views and needs of the workers.

As already noted, the CAA's role has two distinctly different parts and therefore two distinctly different workforces and leadership and governance structures. Engagement will need to reflect and be tailored to these differences if it is to be effective and a one-size approach is unlikely to achieve the change needed to the culture in all parts of the organisation.

## 14. Recommendations

We make the following recommendations in line with our Terms of Reference:

Our recommendations are:

### 14.1. Leadership and management

1. The Board, Chief Executive and ALT acknowledge past failings to consistently identify and respond to poor workplace culture and the negative impact these failings have had on former and current staff, the organisation and the industry and stakeholders. This should include an acknowledgement that statements made about the culture being good and questioning the motives of complainants whilst

made in good faith were not accurate and that this had the effect of further eroding the trust staff had in the Board and senior management of the CAA.

2. The Board determine whether the organisation's leadership is operating effectively to deliver the culture change desired and where this is not the case, the Board should implement changes in order to do so. The Board should set clear expectations for the Chief Executive to implement changes to achieve the desired levels of leadership cohesion and performance across all levels of the CAA and request regular reporting from the Chief Executive to ensure delivery.
3. The Board review and revise its health and safety strategy to expressly recognise bullying, harassment and discrimination as a significant health and safety risk and set out the Board's zero-tolerance policy to the Chief Executive and ALT to ensure they consistently and proportionately respond to every occasion where standards have not been met, and request regular reporting from the Chief Executive to ensure delivery.
4. The Board review what information and reports it receives regarding the health, safety and wellbeing of staff to ensure it has access to timely, accurate and appropriate levels of information about staff wellbeing. This should be included as a specific item on the Board's Health and Safety Committee agenda
5. The Board require the ALT to systematically report to it on conduct issues and complaints and any health and safety risks associated with them. Similarly, the CAA's ALT and ELT should also be receiving systematic and full reporting and advice on open complaints in relation to bullying and harassment, including sexual harassment or sexual assault.
6. The Board, ALT and the unions formalise their commitment to eliminating bullying and harassment from the CAA and commit to adopting a partnership approach to working together. This approach should be taken in working together to review complaints about bullying and harassment, the review of policies and procedures for managing complaints and a review of the code of conduct.
7. The Board develop an engagement plan to ensure it has a direct line of communication to staff and unions in order to assure itself that it is appropriately aware of the state of the culture and any health and safety risks in relation to workplace practices/behaviours.
8. Using the results of this report the ALT initiate an organisation-wide culture change programme. This programme should be jointly designed and led by management, staff, and the unions, supported by appropriate experts. The Board should approve this programme and monitor progress against expected milestones.
9. The Board work with the ALT to refresh the CAA's values and behaviours and ensure these are aligned to the culture the Board expects to see operating within the CAA as a result of the culture change programme.

#### 14.2. Keeping staff engaged and safe

10. The ALT undertake a staff engagement survey as a matter of urgency and report the results and proposed action plan to the Board, staff and unions. Following which the ALT should implement regular pulse surveys to assess progress against the baseline survey and take appropriate corrective action to ensure the culture continues to move to the desired state.
11. The ALT make clear again to all staff its zero-tolerance policy for inappropriate behaviours and ensures staff consistently and proportionately respond to every occasion where standards have not been met and that any inappropriate behaviour is reported to the ALT for oversight.

12. The ALT establish a peer support network consisting of trained staff at all levels of the organisation to assist with the reporting of issues, and the mentoring and support of staff going through the process. Staff involved should be trained in all aspects of complaints procedures, privacy and confidentiality issues, and support mechanisms to be able to adequately support and mentor those who approach them. The ALT consider the introduction of a welfare manager to its staff complement for the foreseeable future.
13. The ALT review how it can promote healthy conversations (including about specific incidents where appropriate and whilst maintaining privacy and confidentiality) to encourage staff to discuss what being treated with dignity and respect means in order to promote a culture that is open and truly diverse and inclusive.
14. The ALT strengthen an early intervention/de-escalation approach with processes to deal with less serious issues by initiating appropriate bullying and harassment complaint management training for all managers. This training is to be recorded and refreshed regularly. Managers should also have access to skilled facilitators either internally or externally through a specialist dispute resolution unit established internally.
15. The ALT improve the support it provides to participants going through the complaints process. This should include improved communication with participants on timelines and progress, consistent advice and support from HR and advice on the outcomes of such an investigation. It should also continue to include the provision of specialist services beyond EAP to those who request or need such services and ensure support is provided by suitably trained people through the complaints process. This should include regular follow-ups with the participant to ensure concerns are addressed.
16. The ALT implement a "safe space" protocol whereby, while a complaint of bullying or harassment is being investigated, complainants and respondents are not in proximity to each other either physically or in their reporting lines.
17. The ALT ensure that all persons who have responsibility for receiving and resolving complaints of bullying and harassment receive adequate information or training in the delivery of the CAA procedures and practices and that their competency to manage complaints is appropriately and regularly assessed, at a minimum annually.
18. The ALT has a policy that only people who are experienced in carrying out investigations can be appointed to undertake investigations and that conflicts of interest are declared and, if needed, managed such as the appointment of a new Manager to undertake the investigation.
19. Where appropriate, the ALT consider undertaking facilitated restorative sessions with participants following the resolution of investigations to support the normalisation of relationships where possible. This may require the use of skilled external facilitators.
20. The Board and ALT undertake a review and consider whether the Spot tool can be an effective channel for making a complaint and consider alternative options such as an external hotline or an externally hosted helpline staffed by independent professionals able to provide initial advice and guidance to staff.
21. The ALT ensure there is effective worker and union consultation, participation and engagement when updating any policy, processes or systems relating to bullying or harassment.

### 14.3. Policies, procedures and guidelines

22. The ALT ensure that the Code of Conduct, and its articulated values, and the CAA's 'Just Culture' approach be referenced and included in job descriptions, recruitment

- documents, training materials, employment agreements, and in the performance framework as individual accountability.
23. The ALT review and amend all performance agreements to ensure the requirement to promote a healthy culture and to respond to inappropriate behaviours is a core accountability requirement.
  24. The ALT ensure that all references are removed in policies or other documents to having to inform one's manager first if raising an issue. Any employee should be able to go straight to Human Resources, a member of the peer support network recommended above to be established, or to another senior manager, they trust with an issue or a complaint and know it will be dealt with consistently and with adequate support.
  25. The ALT implement a policy that when a complaint or report of bullying and harassment proceeds to a formal investigation when the seriousness of the complaint warrants this elevation in response, that the investigation is conducted by an external investigator, with no input from the CAA, except for the participation in interviews, document gathering, and communications regarding timelines and progress of the investigation.
  26. The ALT ensure that the Terms of Reference for external investigations into bullying and harassment issues include deadlines for undertaking the investigation as well as timelines for providing both complainants and respondents with progress updates. Further that the ALT ensure there is standardisation in approaches through the development and mandatory use of templates in this regard.
  27. The ALT ensure the bullying and harassment policies and guidelines are easily locatable and accessible to all staff, including Avsec operational staff. Training on these policies should be a core part of induction for all new staff and training should be refreshed on a regular basis and at least annually. The training must include education in what constitutes bullying, harassment and discrimination, the risks to health and safety of bullying and harassment, having difficult conversations, bystander intervention training, conflict de-escalation and resolution, privacy and confidentiality principles, unconscious bias training, and what employment law classifies as misconduct and serious misconduct.
  28. The Board and ALT conduct regular and scheduled reviews, with the engagement of unions, to ensure complaint management training is effective in supporting the desired culture. To support this, reporting will be mandatory to the Board and ALT for all bullying and harassment complaints.
  29. The ALT ensure exit interviews are undertaken for all departing staff (where they agree), where appropriate using an independent party and that the information from these interviews is collated, examined for themes and used as part of a continuous improvement approach to culture building.

#### 14.4. General

30. We recommend that the Board and ALT undertake effective management, staff, union and sector consultation, participation and engagement prior to implementing the above recommendations, as appropriate.
31. In implementing these recommendations, the Board should ensure change management plans take account of the different nature of the roles performed by Avsec and the regulatory part of the CAA and that the leadership and engagement approaches used are tailored to the different workforce profiles to ensure change is effectively embedded across all parts of the CAA. A one size fits all approach will not be effective.



# Appendix 1 – Terms of Reference

## Terms of Reference

### Independent Review into the Organisational Culture of the Civil Aviation Authority

#### *Background and purpose*

Allegations have been made by a number of people of bullying and sexual harassment at the Civil Aviation Authority (the CAA).

The Minister of Transport, the Hon Phil Twyford (the Minister) is reviewing whether the CAA has appropriate policies, systems and practices in place to deal with allegations of sexual harassment and bullying and that the CAA has responded appropriately to the complaints and allegations made to it (the Review).

The Minister has directed the Ministry of Transport (the Ministry) to conduct the Review on the Minister's behalf with the assistance of independent external specialists.

The Review is to be carried out under section 132 of the Crown Entities Act 2004.

#### *Objectives*

The objectives of this Review are:

- review how previous reports and complaints of incidents of bullying and harassment were handled and to consider how those complaints were responded to by the CAA
- consider and report on how staff and complainants were treated by the CAA
- assess the CAA's existing policies and procedures relating to bullying and harassment, comparing them to best practice and identifying any actual or perceived barriers to reporting or making complaints about bullying or harassment
- establish whether the CAA has appropriate prevention and other control measures in place to deal with any risks arising from bullying and harassment, in accordance with the guidance issued to date by WorkSafe New Zealand<sup>1</sup> and any other relevant examples of best practice guidance, policies or practice
- establish whether the prevention and other control measures in place are effectively managing the risks from bullying and harassment with a view to making recommendations as to how, if at all, such measures can be improved
- consider and comment on the CAA as a place of work with regard to ensuring the treatment of the CAA staff with dignity and respect and maintaining an open and supportive culture
- make recommendations for improvements to:
  - how the CAA promotes and maintains an open and supportive culture
  - how the CAA promotes and ensures the treatment of staff with respect and dignity
  - how the CAA handles complaints including how staff and management are trained in addressing and managing complaints about bullying and harassment
  - CAA policies, systems, and procedures for dealing with complaints about bullying and harassment

- Consider, and make recommendations, for any other matters the Ministry considers are directly related to the purpose of this Review.

### *Scope*

- References to the CAA in this Terms of Reference include staff in the Aviation Security Service.
- The period to which this Review applies is from 1 January 2015.
- All current CAA staff will be offered the opportunity to participate in this Review. Former staff may participate if they wish to do so.
- The Minister reserves the right through the course of the Review to amend these Terms of Reference. In particular, this could include clarification in response to any possible issues of overlap between the separate Independent Investigation into Allegations Regarding the Aviation Security Service commissioned by the CAA Chief Executive, being undertaken by David Laurenson QC under Terms of Reference dated 2 September 2019.

### *Out of scope*

- No existing avenue of complaint open to current or ex-CAA staff will be affected by this Review. Those who take the opportunity to share their experiences will be given details of any existing avenues of available support or counselling services or other pathways for the resolution of such complaints.
- The Review will not reopen past complaints of alleged or upheld bullying and harassment or investigate new reports of bullying or harassment incidents or complaints against specific individuals. Those wishing to raise or discuss any new complaints will be advised of the pathways for the resolution of such complaints.
- The Review will not make any findings nor make any comment on the conduct, performance or competence of any individual who is a complainant or the subject of a complaint.
- The Review will not consider nor advise on the regulatory performance of the CAA, or how it has discharged its role as a regulator. This is being separately assessed by the Ministry as part of its monitoring role under section 27A of the Crown Entities Act 2004 and as part its regulatory stewardship responsibilities under section 32 of the State Sector Act 1988.

### *Approach and methodology*

- The Review will examine all relevant policies and any other material relevant to the terms of the Review, including reviewing documentation relating to previous complaints which are within the scope of this Review.
- Relevant current and former staff, management and Board members will be interviewed and provided with the opportunity to share their relevant perspectives by outlining in person, or in writing, their experiences of perceived bullying and harassment, including sexual harassment.
- Channels of communication will be established to ensure former CAA staff know how to participate in this Review if they wish to do so.
- The Review will engage with any relevant external agencies and experts as the Ministry considers necessary. Without limiting who the Ministry may wish to engage with, this may include the State Services Commission.

- The Ministry will ensure that appropriate support options are available to those participating in the Review and that these are explained, as appropriate, to participants in the Review.
- For the avoidance of doubt, no CAA staff (current or past) can, or will, be compelled to participate in this Review.

#### *Confidentiality and Protection of Privacy*

- All personal information collected through the Review from the CAA, from CAA staff and ex-staff is subject to an obligation of confidence (to the CAA, its current and former staff).
- The obligation of confidentiality referred to in paragraph (a) above is owed by the recipients of the confidential information, including the Ministry-appointed reviewers, and any staff in the Ministry who may be involved in the Review.
- All people interviewed or spoken to as part of this Review will be advised that notwithstanding the above commitment to confidentiality, the Ministry's report, its findings and recommendations are intended to be released by the Minister in due course. However, findings will not identify any individual or make reference to facts that could reasonably lead to the identification of any complainant or the person about whom a complaint has been made.

#### *Deliverables/Reporting*

The Ministry will keep the Minister updated on the progress of the Review including providing one or more drafts of the report on the Review. The Ministry will consult with the CAA before the report is finalised.

#### *Timing*

The indicative dates (subject to change) for the Review are:

- Commencement of Review – 20 September 2019
- Delivery of final report – 13 December 2019.

## Appendix 2: Analysis of Complaint files

30 redacted and anonymised files for the CAA and Avsec were reviewed from within the Terms of Reference timeframe. Of these, 17 CAA files and 10 Avsec files were in relation to issues of bullying/inappropriate conduct, one CAA and five Avsec files related to issues of sexual harassment, and two CAA files and one Avsec files related to Privacy Act breaches.

From that review, the processes followed in 13 CAA files and four Avsec files met what we considered to be good practice (albeit with minor issues present in some files). This amounts to 57% of files following good practice, a statistic that can be significantly improved (especially considering the issues present in the 43% of files which we consider did not follow best practice).

From that review, the processes followed in 13 CAA files and four Avsec files met what we considered to be good practice (albeit with minor issues present in some files). The following themes were evident in those files:

- Good application of natural justice requirements in terms of provision of information and draft report to parties.
- Independent skilled investigator appropriately appointed.
- Good advice sought by a team leader/manager from Human Resources.
- Good support and communication throughout to both complainant and respondent.
- Good use by team leader/manager of template documents.

From those files where the process followed did not meet what we considered to be good practice, the following themes emerged:

- Recourse to formal response without adequate consideration of a lower-level facilitative resolution in appropriate cases.
- Serious allegations not investigated by an external, skilled investigator but an investigation conducted internally by a team leader or manager, sometimes with connections to the parties, or by an external investigator not sufficiently skilled in the issues the subject of investigation.
- No Terms of Reference used for investigation.
- "Preliminary investigation" used for fact-finding but took the place of full investigation leading to disciplinary action, without appropriate support for respondent and application of natural justice principles.
- Eventual decision-maker also involved in "preliminary investigation" leading to blurring of roles and risk of bias/pre-determination.
- No apparent input from Human Resources.
- Terms of Reference allowed investigator to make recommendations, rather than just fact-finding and leaving decision-making to separate decision-maker.
- Terms of Reference did not allow investigator to make recommendations, but investigator still did or made recommendations beyond scope of Terms of Reference.
- Draft report went to decision-maker.
- Long time frames and delays for investigation.
- Complainant poorly treated while investigation proceeding and felt blamed/stigmatised/experienced retaliatory behaviour, as a result, e.g. changing of hours or roster, or place of work.

- Complainant still reporting to a respondent while an investigation proceeded/power imbalance reported.
- A complainant told they were unable to discuss the complaint with anyone.
- Comments on the draft report from Human Resources went beyond factual accuracy and into substantive issues.
- Poor communication with and support beyond access to EAP for complainant and respondent.
- No follow-up/debrief with/support of complainant/complainant felt shut out of the process.

# Appendix 3: Best Practice Comparison with WorkSafe Principles

TABLE 1: WORKSAFE 'PLAN-DO-CHECK-ACT' APPROACH COMPARED TO THE CAA

WorkSafe Principle	The CAA Approach – Principle Met?
<b>Plan:</b> Assess whether bullying/harassment is a risk.	<b>Yes:</b> identified as a risk in Health and Safety Strategy and minutes of Health and Safety Committee of Board
<b>Plan:</b> Engage workers and representatives to identify reasonably practicable control measures	<b>In part:</b> Need to engage workers identified but more work to do in encouraging workers to be part of the process
<b>Do:</b> Implement control measures to effectively minimise the likelihood of bullying <sup>51</sup>	<p><b>In part.</b> Control measures implemented:</p> <ul style="list-style-type: none"> <li>• Code of Conduct</li> <li>• Diversity &amp; Inclusion Programme and Working Group</li> <li>• Zero-tolerance approach</li> <li>• Some support e.g. EAP</li> <li>• Toolkit project</li> </ul> <p><b>Work needed on:</b></p> <ul style="list-style-type: none"> <li>• Articulated workplace Values.</li> <li>• Making policies and processes more transparent and accessible.</li> <li>• Building trust of staff</li> <li>• Emphasising and training on a zero-tolerance approach</li> <li>• Managing workloads</li> <li>• Better support e.g. Peer mentoring, specialised support</li> <li>• More training on what bullying is, unconscious bias, bystander intervention training, conflict resolution, health and safety obligations</li> </ul>
<b>CHECK:</b> implement appropriate means for workers to report bullying.	<p><b>In part:</b></p> <ul style="list-style-type: none"> <li>• Excellent policies and procedures.</li> <li>• Spot anonymous reporting tool (but evaluate other confidential options such as an external hotline).</li> <li>• Work needed on staff education and access to policies and procedures.</li> </ul>

<sup>51</sup> See also 2019 SSC Workplace Standards: strong leadership, good working relationships, appropriate behaviour at work, taking action to prevent and respond to inappropriate behaviour, ensuring people are aware of their roles and responsibilities and 2019 SSC Speaking Up Standards: raising awareness, supporting staff and managers through regular communication and training, robust processes.

WorkSafe Principle	The CAA Approach – Principle Met?
<b>ACT:</b> Routinely review the effectiveness of control measures at scheduled periods.	<b>In part</b> – more frequent reporting to ELT and Health and Safety Committee. Regular review (annually) of implementation of toolkit.
<b>ACT:</b> Review incidents and talk to workers to check the control measures are effectively minimising the risk; use the results of reviews and investigations into incidents to improve control measures.	<b>Work needed:</b> <ul style="list-style-type: none"> <li>• Debrief all participants in bullying and harassment complaints.</li> <li>• Re-institute regular staff survey.</li> <li>• Prioritise exit interviews.</li> <li>• Encourage worker engagement.</li> </ul>

TABLE 2: WORKSAFE INVESTIGATION PRINCIPLES COMPARED TO THE CAA APPROACH

WorkSafe Principles <sup>52</sup>	CAA Policies & Processes – Principle Met?
<b>Treat all matters seriously:</b> <ul style="list-style-type: none"> <li>• Take all complaints and reports seriously.</li> <li>• Assess all reports on their merits and facts.</li> <li>• Ensure the people (internal or external) who deal with the complaint are trained to do a fair thorough investigation and use the principles of natural justice.</li> </ul>	<b>Treat all matters seriously:</b> <ul style="list-style-type: none"> <li>• Yes: Code of Conduct, 2018 Workplace Bullying Policy, 2018 Workplace Bullying Guideline and 2018 Resolving Conduct Policy all reference and emphasises complaints and reports of bullying and harassment being taken seriously.</li> <li>• Yes, as above.</li> <li>• Yes: 2018 Resolving Conduct Policy states the investigation should have the skills to undertake the investigation and sets out the natural justice steps.</li> </ul> <b>Recommendations:</b> <ul style="list-style-type: none"> <li>• Independent external investigator always used for complaints of bullying and harassment.</li> <li>• Greater clarity of, and guidance to when an informal process used vs formal investigation.</li> </ul>
<b>Act promptly:</b> <ul style="list-style-type: none"> <li>• Reports should be dealt with quickly, courteously, fairly and within established timelines.</li> </ul>	<b>Act promptly:</b> <ul style="list-style-type: none"> <li>• Yes: need to address reports promptly referenced in Code of Conduct, 2018 Workplace Bullying Policy, and the 2018 Resolving Conduct Guide.</li> </ul> <b>Recommendations:</b>

<sup>52</sup> See also 2019 SSC Workplace Standards: Range of informal and formal ways (including mediation and restorative processes) to receive and respond to concerns and people know these and how to access them; respect natural justice; consider seeking external support; proportionate disciplinary responses; clear and easy to understand policies and procedures on behaviours and how to raise concerns; periodic and collaborative review of policies and procedures and 2019 SSC Speaking up Standards: Internal policies and processes readily accessible; training and refresher training on reporting; training for managers; designated person or team people can talk to; act and respond in a timely way; separation of duties and roles; confidentiality; no risk of prejudice or reprisal; tailored dedicated support; all concerns taken seriously; clear timeframes and ToR for investigations; skilled and independent investigators; natural justice; communication and updates given; debrief to participants after resolution.

WorkSafe Principles <sup>52</sup>	CAA Policies & Processes – Principle Met?
	<ul style="list-style-type: none"> <li>• Terms of Reference for formal investigations contain established timelines through to final report.</li> <li>• Participants to the process to be regularly and pro-actively updated on progress.</li> </ul>
<p><b>Ensure non-victimisation:</b></p> <ul style="list-style-type: none"> <li>• It's important to ensure that anyone who raises an issue of bullying isn't victimised for doing so. Whoever the complaint is made against and any witnesses should also be protected from victimisation.</li> </ul>	<p><b>Ensure non-victimisation:</b></p> <ul style="list-style-type: none"> <li>• Yes: referenced in 2018 Workplace Bullying Policy, 2018 Workplace Bullying Guideline, 2018 Resolving Conduct Guide.</li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>• Consider implementing and training a Peer Support Scheme within the CAA to give people a safe place to raise concerns and obtain advice and support through the process.</li> </ul>
<p><b>Support all parties:</b></p> <ul style="list-style-type: none"> <li>• Once a complaint has been made, both parties should be told what support is available (e.g. employee assistance programmes or peer support systems).</li> <li>• Treat all parties involved with sensitivity, respect and courtesy.</li> <li>• Anyone involved is entitled to have a support person present at interviews or meetings (e.g. HSR, contact person, the union or friend).</li> </ul>	<p><b>Support all parties:</b></p> <ul style="list-style-type: none"> <li>• Yes, access to EAP available and referenced in 2018 Workplace Bullying Policy, 2018 Workplace Bullying Guideline, 2018 Resolving Conduct Guide.</li> <li>• Yes, the treatment of all parties with sensitivity and respect stated in Code of Conduct, 2018 Workplace Bullying Policy, 2018 Workplace Bullying Guideline, 2018 Resolving Conduct Policy.</li> <li>• Yes, referred to in 2018 Resolving Conduct Guide.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>• Consider implementing and training a Peer Support Scheme within the CAA to give people a safe place to raise concerns and obtain advice and support through the process.</li> <li>• Consider the provision of specialist support, other than EAP, for those going through the process of a bullying and/or harassment complaint.</li> </ul>
<p><b>Be neutral:</b></p> <ul style="list-style-type: none"> <li>• Impartiality towards everyone involved is critical during the process.</li> <li>• Where possible, the person in charge of the investigation or resolution process should not have been directly involved in the incidents and must avoid any personal or professional bias.</li> </ul>	<p><b>Be neutral:</b></p> <ul style="list-style-type: none"> <li>• Yes, referenced in 2018 Resolving Conduct Guide.</li> </ul> <p><b>Recommendation:</b></p> <ul style="list-style-type: none"> <li>• Independent external investigator always used for complaints of bullying and harassment.</li> </ul>
<p><b>Communicate the process and outcomes:</b></p>	<p><b>Communicate the process and outcomes:</b></p>

WorkSafe Principles <sup>52</sup>	CAA Policies & Processes – Principle Met?
<ul style="list-style-type: none"> <li>All parties need to be told what to expect during the process, how long it will take, the reasons for any delays and what will happen at the end.</li> <li>Give them clear reasons for any actions that are taken or not taken.</li> </ul>	<ul style="list-style-type: none"> <li>In part: the need for communication referenced in 2018 Workplace Bullying Policy and 2018 Resolving Conduct Guide.</li> <li>In part: the 2018 Resolving Conduct Guide steps the manager through the post-report course of action.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Terms of Reference for formal investigations contain established timelines through to final report.</li> <li>Participants to the process to be regularly and pro-actively updated on progress.</li> <li>Debrief to be held with complainants.</li> </ul>
<p><b>Maintain privacy (confidentiality):</b></p> <ul style="list-style-type: none"> <li>The process should ensure privacy for all parties involved. Details of the matter should only be known to those directly concerned (except their representative or support person).</li> </ul>	<p><b>Maintain privacy (confidentiality):</b></p> <ul style="list-style-type: none"> <li>Yes, referenced in 2018 Resolving Conduct Guide and separate 2014 Confidentiality Policy and 2018 Privacy Policy.</li> </ul>
<p><b>Keep good documentation:</b></p> <ul style="list-style-type: none"> <li>Documentation is important to any formal investigation. Even if the issue isn't formally investigated, keep a record of all informal conversations, meetings and interviews detailing dates and times, who was present, what was discussed and the agreed outcomes.</li> </ul>	<p><b>Keep good documentation:</b></p> <ul style="list-style-type: none"> <li>Yes, referenced in 2018 Resolving Conduct Guide.</li> </ul>
<p><b>Have a range of responses:</b></p> <ul style="list-style-type: none"> <li>Low-key approach, to some form of facilitated resolution through to formal investigation.</li> </ul>	<p><b>Have a range of responses:</b></p> <ul style="list-style-type: none"> <li>Yes, referenced 2018 Workplace Bullying Policy, 2018 Workplace Bullying Guideline, 2018 Resolving Conduct Policy, 2018 Resolving Conduct Guide.</li> </ul> <p><b>Recommendations:</b></p> <ul style="list-style-type: none"> <li>Guidance on when a particular approach is appropriate to be better articulated and backed up by training.</li> <li>Greater recourse to external specialists in restorative dispute resolution where parties consent and such resolution is appropriate.</li> </ul>
<p><b>Natural justice through the formal investigation process:</b></p> <ul style="list-style-type: none"> <li>Before taking action, raise the allegations with the person who is the subject of the complaint (including if any disciplinary consequences may ensue).</li> <li>Carry out an impartial and independent investigation.</li> <li>Give the subject of the complaint a reasonable opportunity to respond to</li> </ul>	<p><b>Natural justice through the formal investigation process:</b></p> <ul style="list-style-type: none"> <li>Yes, natural justice principles fully articulated in 2018 Resolving Conduct Guide.</li> </ul>

WorkSafe Principles <sup>52</sup>	CAA Policies & Processes – Principle Met?
<p>the allegations and genuinely consider the subject of the complaint's explanation.</p> <ul style="list-style-type: none"><li>• Take reasonable steps to protect the person who complained from reprisals and decide any interim measures needed to ensure the safety and welfare of the person who complained.</li><li>• Make sure the decision-maker is as impartial as possible.</li><li>• Treat workers equally, avoiding disparity of treatment.</li><li>• Allow support people and/or representatives to be present.</li><li>• Maintain privacy and confidentiality.</li></ul>	