

AGREEMENT



THIS AGREEMENT is made on the 3<sup>rd</sup> day of September

BETWEEN:

- (1) **BRITISH AEROSPACE REGIONAL AIRCRAFT LIMITED** (formerly British Aerospace (Commercial Aircraft) Limited), a company incorporated under the laws of England whose registered office is at Warwick House, P O Box 87, Farnborough Aerospace Centre, Farnborough, Hants GU14 6YU, England ("BAe"); and
- (2) **EASTWEST AIRLINES (OPERATIONS) LIMITED**, a company incorporated under the laws of Australia whose registered office is at 501 Swanston Street, Melbourne, Victoria, Australia ("EWA").
- (3) **ANSETT TRANSPORT INDUSTRIES (OPERATIONS) LIMITED**, a company incorporated under the laws of Australia whose registered office is at 501 Swanston Street, Melbourne, Victoria, Australia ("Ansett").

WHEREAS:

- (A) Pursuant to various aircraft purchase agreements ("the Aircraft Purchase Agreements") between BAe and Ansett and BAe and EWA, BAe agreed to sell and Ansett and EWA agreed to purchase a number of British Aerospace 146 Series 200 and 300 passenger transport aircraft ("the Aircraft") upon and subject to the terms and conditions therein contained.
- (B) Pursuant to the Aircraft Purchase Agreements, BAe warranted that relevant parts of the Aircraft (as therein defined) would conform to applicable specifications supplied by BAe and would be free from defects due to defective material or defective workmanship or defective design on the part of BAe all in accordance with and subject to the terms, conditions and limitations contained in the Aircraft Purchase Agreements.

- (C) Ansett and EWA have made certain written claims against BAe alleging defective design of the Aircraft resulting in the production of obnoxious oil and other (the "cabin environment problem") fumes affecting the passenger cabins of some or all of the Aircraft.
- (D) Following certain discussions and negotiations the parties hereto have agreed to settle such claims upon and subject to the terms and conditions hereinafter contained.

NOW IT IS AGREED in consideration of the mutual promises contained in this Agreement as follows:

1. BAe hereby agrees with Ansett and with EWA that it shall pay to EWA the sum of Australian \$750,000 (Seven Hundred and Fifty Thousand Australian Dollars) which sum shall be paid as follows:
  - 1.1 The sum of A\$300,000 (Three Hundred Thousand Australian Dollars), being an interim payment in respect of such claims, on or before 31st August 1993.
  - 1.2 The balance of \$450,000 (Four Hundred and Fifty Thousand Australian Dollars) on or before 31st January 1994.
2. Ansett and EWA hereby jointly and severally acknowledge and agree with BAe that BAe's agreement to make the payments referred to in Clause 1 hereof is made on an "ex gratia" basis and is not in any circumstances to be construed as any admission of liability on BAe's part to make such payments. Ansett and EWA hereby jointly and severally agree that the said sum of A\$750,000 shall be paid by BAe to EWA as liquidated damages in full and final settlement of any and all claims which Ansett or EWA may have against BAe either now or in the future in



respect of oil or other fumes adversely affecting the cabin environment in the Aircraft whether under the terms of the warranties contained in the Aircraft Purchase Agreements or otherwise or in respect of any failure by Bae to comply with its obligations under the Aircraft Purchase Agreements in accordance with the terms thereof and any unavailability or unserviceability of the Aircraft or any of them in respect of the cabin environment problem and any costs, expenses, losses and liabilities incurred by Ansett or EWA or either of them in connection therewith.

3. Ansett and EWA have advised BAe of their intention to seek further compensation from the respective manufacturers of the APUs and engines installed in the Aircraft in respect of Ansett's and EWA's costs and damages arising from oil fumes allegedly emanating from either or both of such APUs and engines. It is hereby agreed that BAe shall, on request, provide to Ansett and to EWA such technical data as may reasonably be required by Ansett and EWA in support of their valid claims provided that such technical information is now in the possession of BAe and is reasonably and readily available to it. For the avoidance of doubt, the total cost of any such claims by Ansett and EWA against the respective APU and engine manufacturers shall be borne exclusively by Ansett and EWA and BAe shall have no entitlement or interest in any compensation received by either Ansett or EWA as a result of such claims.
4. In the event that Ansett and EWA fail to reach settlements with the APU and engine manufacturers in respect of their claims, it is understood and agreed that EWA may invite BAe to join in a joint commercial approach to arrive at such settlements. In this event, the net compensation finally received in settlement of the claims after the deduction of all expenses reasonably incurred

in reaching such settlement shall be shared as a 50% thereof to Ansett and EWA and the remaining 50% thereof to BAe.

5. With regard to any assistance provided by BAe in respect of claims against the aforesaid manufacturers it is expressly agreed as follows:

(a) such assistance shall be provided only in respect of Ansett's and/or EWA's legally valid and justifiable claims in respect of costs actually incurred and damages actually sustained;

(b) BAe shall neither be a party to nor shall be committed to take any part in any legal proceedings which may be instituted against any manufacturer either by Ansett or EWA although this does not affect Ansett's and/or EWA's right to call upon BAe staff to act as witnesses in any such legal proceedings;

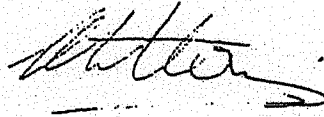
(c) BAe's obligation to provide technical data as aforesaid or to join with Ansett and/or EWA in any settlement discussions with any manufacturer shall expire two years after the date of this Agreement.

6. The existence and terms of this Agreement are confidential between the parties hereto and shall not be disclosed by any party in whole or in part to any other person or body without the prior written consent of the other parties.

7. This Agreement is governed by and shall be construed in accordance with the laws of England.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed the day and year first above written.

SIGNED for and on behalf of  
BRITISH AEROSPACE REGIONAL  
AIRCRAFT LIMITED



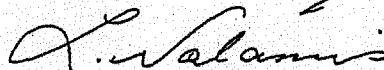
In the presence of:

P.P. Bing

SIGNED for and on behalf of  
EASTWEST AIRLINES (OPERATIONS)  
LIMITED



In the presence of:



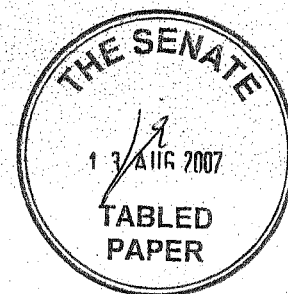
SIGNED for and on behalf of  
ANSETT TRANSPORT INDUSTRIES  
(OPERATIONS) PTY LIMITED



In the presence of:



## SETTLEMENT AGREEMENT



This Settlement Agreement is made the \_\_\_\_\_ day of \_\_\_\_\_ 1993.

**BETWEEN:** EASTWEST AIRLINES (OPERATIONS) LIMITED of 501 Swanston Street, Melbourne, Victoria, Australia (hereinafter referred to as "EWA")

**AND** ANSETT TRANSPORT INDUSTRIES (OPERATIONS) PTY LIMITED of 501 Swanston Street, Melbourne, Victoria, Australia (hereinafter referred to as "Ansett").

**AND** ALLIED SIGNAL INCORPORATED of 2739 East Washington Street, Phoenix, Arizona, United States of America (hereinafter referred to as "Allied Signal")

### WHEREAS:

- A. EWA and Ansett are the operators of certain BAe146 Aircraft incorporating Allied Signal Auxiliary Power Units ("APUs").
- B. Soon after delivery of the aircraft, it became apparent that the bleed air system in the aircraft periodically circulated an unpleasant smell throughout the cabin.
- C. After detailed and protracted investigations, it was determined that a source of the smell was oil leakage from Allied Signal APUs which entered the bleed air system through the air conditioning packs.
- D. Over the course of several years of investigation and combating the cabin smells, significant costs were incurred by EWA and Ansett (the "Loss").
- E. Allied Signal has denied that there exist any deficiencies or inadequacies in the APUs or that it has in any way contributed towards the Loss.
- F. Allied Signal and EWA and Ansett seek to settle and terminate immediately all disputes, differences and claims between them in relation to the Loss and to avoid future controversy and expense with respect to the foregoing.



Allied Signal and EWA and Ansett **HEREBY AGREE THAT:**

1. Allied Signal will provide to EWA and Ansett a total Parts and Labour Credit of ONE MILLION TWO HUNDRED AND THIRTY-FIVE THOUSAND DOLLARS (U.S.) ((US\$1,235,000) as financial consideration associated with the operation of Allied Signal APUs on BAe146 aircraft. The applicability of the credit will be limited to APUs and APU parts including kits to convert 85-129(E) APUs to A-129(K) configuration manufactured or supplied by Allied Signal's APU Division and/or Allied Signal labour associated with the repair of APUs (the "Credit")
  
2. The Credit will become available to EWA and Ansett in three individual credit releases. The amount of (US)\$200,000 will become available immediately upon the execution of this Settlement Agreement (the "first credit release"). The first credit release is to be immediately applied towards the invoices listed on the Schedule hereto. The release of an additional (US)\$400,000 will occur on 1 January 1994 (the "second credit release"). The final credit release of an additional (US)\$635,000 will occur on 1 January 1995 (the "third credit release"). The Credit is available to EWA and Ansett at all times until the cumulative total of each of the first, second and third releases is exhausted, so long as credit under the second and third credit releases is not utilised before the respective credit release dates.

**SCHEDULE**

Invoice No.	Date	Amount
S000233286	26 March 1993	US\$94,177.00
S000235818	11 July 1993	<u>US\$137,477.00</u>
		US\$231,654.00

3. This Credit is available to EWA and Ansett and is not transferable to any other party. The Credit is to be used against any account receivable due from EWA or Ansett to Allied Signal relating to the purchase of APUs and APU parts including kits to convert 85-129(E) APUs to A-129(K) configuration and/or labour costs associated with the operation of Allied Signal APUs on BAe 146 aircraft. The amount of credit to be applied to each such purchase or labour cost will be the list or otherwise applicable price of the parts, kits or labour.

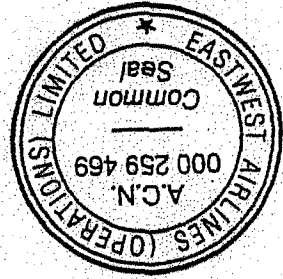
4. In consideration of the Credit, EWA and Ansett and each of them agree to release and forever discharge Allied Signal and its related or affiliated corporations and their officers, directors, employees and representatives, predecessors, successors, administrators and assigns from all actions, suits, causes of action, claims and demands of every description whatsoever which EWA and Ansett and each of them now has or at any time hereafter may have or which, but for this Settlement Agreement, could or might have had against Allied Signal arising out of or in any way connected with or relating to the matters referred to in Recitals A to F hereof.
5. This Settlement Agreement embodies the entire agreement and understanding between EWA and Ansett and Allied Signal and supersedes all prior agreements and understandings relating to the subject matter hereof, and this Settlement Agreement may not be modified or amended or any term or provision hereof waived or discharged except in writing signed by the party against whom such amendment, modification, waiver or discharge is sought to be enforced. All of the terms of this Settlement Agreement, whether so expressed or not, shall be binding upon the respective successors and assigns of the parties hereto and shall inure to the benefit of and shall be enforceable by the parties hereto and their respective successors and assigns, save for the restriction on transferring the Credit identified in paragraph 3 hereof. This Settlement Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Victoria, Australia.
6. No failure or delay on the part of any party hereto in exercising any right hereunder is to operate as a waiver thereof; nor shall any single or partial exercise of any right or the exercise of any other right hereunder preclude any other or further exercise thereof or the exercise of any other right. No right or remedy provided for herein is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right or remedy given hereunder or now or hereafter existing at law or in equity or otherwise, and shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.
7. EWA and Ansett and Allied Signals agree to maintain the existence and all terms of this Settlement Agreement in strict confidence and not to disclose any terms hereof or information relating hereto save as to the extent required by law.



THE COMMON SEAL  
SIGNED on behalf of EASTWEST  
AIRLINES (OPERATIONS) LIMITED in  
the presence of WAS HERETO AFFIXED  
IN THE PRESENCE OF:

✓ *[Signature]*

GP *[Signature]*  
Witness



THE COMMON SEAL OF  
SIGNED on behalf of ANSETT  
TRANSPORT INDUSTRIES  
(OPERATIONS) PTY LIMITED in the  
presence of WAS HERETO AFFIXED  
IN THE PRESENCE OF:

HT *[Signature]*

DI *[Signature]*  
Witness



SH *[Signature]*

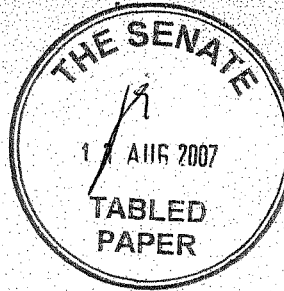
SIGNED on behalf of ALLIED SIGNAL  
INCORPORATED in the presence of:

.....

.....  
Witness



**ANSETT AUSTRALIA**



501 Swanston Street  
Melbourne VIC 3000  
Australia

GPO Box 7276  
Melbourne VIC 3001

Tel: (03) 9623 3333

29 November 1999

**Senator John Woodley**  
Chairman  
Senate Rural and Regional Affairs and  
Transport References Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator Woodley

I write with reference to your letter of 19 November 1999, in which you asked if Ansett Australia had initiated legal action against British Aerospace, particularly in the period between 1992 and 1994. Our response is as follows:

[REDACTED]

Yours sincerely

**Capt Trevor Jensen**  
Executive General Manager  
Operations and Inflight Services

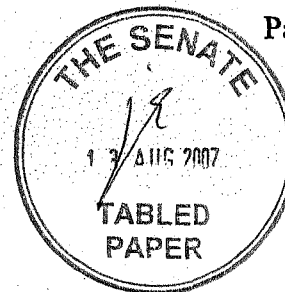
cc: **Mr Andrew Snedden, Committee Secretary**  
Senate Rural & Regional Affairs and Transport References Committee  
Fax: (02) 6277 5811



Official Airline of  
the Sydney 2000

**QUESTIONS ON NOTICE**  
**BAe 146 Aircraft**

**(Question No. 2269)**



**Senator O'Brien** (Tasmania) asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 31 July 2006:

- (1) Is the Minister aware that on 25 July 2006 a member of the House of Lords asked a written question of the British Government concerning its knowledge of any payments made by British Aerospace Regional Aircraft Limited to Ansett Transport Industries Operations Limited and East West Airline Operations Limited, under an agreement dated 3 September 1993, in connection with design flaws in the BAe 146 aircraft, allowing contamination of cabin air by oil and other fumes.
- (2) Is the Government aware of any payments pursuant to such an agreement: (a) if so: (i) what is the quantum of these payments, (ii) what are the full terms of the agreement, and (iii) can a copy of the agreement be provided; and (b) if not, will the Minister investigate the matter.

**Senator Johnston** (Western Australia—Minister for Justice and Customs)—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) Yes
- (2) No
  - (a) (i) n/a
  - (ii) n/a
  - (iii) n/a
  - (b) The Civil Aviation Safety Authority (CASA) has provided the following information with regard to cabin air quality issues associated with the BAe 146 aircraft:

CASA has maintained oversight of the issue of air quality in the passenger cabin of commercial aircraft, particularly the BAe 146. Several actions have been taken. CASA notes that the number of cabin air contamination reports in BAe 146 aircraft has declined in recent years. Only six confirmed defects were reported in 2006.

CASA has overseen a program of modifications to address the problem as well as requiring changes to the flight manual to ensure that the flight crew wear oxygen masks at the first instance of cabin air contamination to minimise the possibility of flight crew incapacitation. An airworthiness directive mandating the manufacturer's instructions and repetitive inspection procedures has also been issued.

CASA also notes that the American Society of Heating Refrigeration and Air-conditioning Engineers (ASHRAE) has drafted a standard for Air Quality Within Commercial Aircraft. CASA understands that this standard may be ready for publication in 2007. CASA will consider the implications of the new standard when it is released, noting that because new standards are usually incorporated into the design of new aircraft CASA envisages no action for existing (including BAe 146) aircraft.

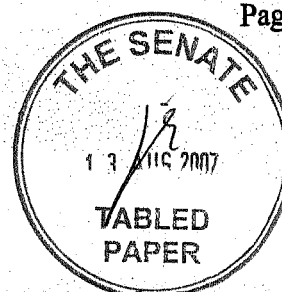
CASA will also consider any international progress on this issue, including any implications for developing equivalent Australian standards.

CASA also notes that operators of BAe 146 aircraft in Australia now use ESSO/EXXON 2380 oil.



**QUESTIONS ON NOTICE**  
**BAe 146 Aircraft**

**(Question No. 2270)**



**Senator O'Brien** (Tasmania) asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 31 July 2006:

- (1) How many reports have been made to the Civil Aviation Safety Authority (CASA) since 27 September 2002 relating to air contamination in BAe 146 aircraft.
- (2) In each case (a) when was the report lodged (b) who lodged the report and (c) what action was taken by CASA in response.
- (3) Are all instances of suspected contamination reported to CASA.

**Senator Ian Campbell** (Western Australia—Minister for the Environment and Heritage)—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) A total of 90 reports were received by CASA during the period 27 September 2002 to 5 October 2006.
- (2)
  - (a) Refer attached table.
  - (b) All reports were lodged by National Jet Systems.
  - (c) Cabin air contamination reports in BAe 146 aircraft have declined over the years. CASA has overseen a program of modifications to address air contamination problems as well as requiring changes to the flight manual to ensure that the flight crew wear oxygen masks at the first instance of cabin air contamination to minimise the possibility of flight crew incapacitation.
- (3) The Civil Aviation Regulations 1988 require the reporting of defects, such as noxious fumes in the cabin, to the Civil Aviation Safety Authority.

<b>Item Number</b>	<b>Date Report Lodged yyyy-mm-dd</b>	<b>Corrective Action By Airline</b>
<b>Reports lodged between 27 Sep and 31 Dec 2002</b>		
1	2002-11-05	Engine changed
2	2002-11-05	Maintenance action carried out
3	2002-11-25	Engine changed
4	2002-11-25	#APU Cooling fan replaced
5	2002-11-27	*MEL applied
6	2002-11-27	Engine changed
7	2002-11-27	Engine changed
8	2002-11-27	#APU replaced
9	2002-12-03	Engine changed
10	2002-12-03	Seal changed
11	2002-12-03	Maintenance action carried out
12	2002-12-03	#APU replaced
13	2002-12-03	#APU replaced
14	2002-12-03	Maintenance action carried out
15	2002-12-03	Engine changed
16	2002-12-03	Engine changed
17	2002-12-04	Seal and face plate replaced
18	2002-12-04	Seal and face plate replaced
19	2002-12-04	Engine changed
20	2002-12-04	Inspected
21	2002-12-04	Engine changed
22	2002-12-04	Maintenance action carried out
23	2002-12-04	Maintenance action carried out
24	2002-12-04	Engine changed
25	2002-12-05	Engine changed

26	2002-12-06	Engine changed
27	2002-12-06	#APU Cooling fan replaced
28	2002-12-16	#APU Cooling fan replaced
29	2002-12-16	#APU oil cooler changed
30	2002-12-16	#APU Cooling fan replaced
31	2002-12-16	#APU Seal changed
32	2002-12-16	Engine changed
33	2002-12-16	Maintenance action carried out
34	2002-12-16	#APU Starter motor replaced
35	2002-12-17	Inspected
36	2002-12-17	Engine changed
37	2002-12-17	Engine changed
38	2002-12-17	Engine changed
39	2002-12-17	*MEL applied
40	2002-12-17	Inspected
41	2002-12-17	#APU Cooling fan replaced
42	2002-12-17	Engine changed
43	2002-12-17	Inspected
44	2002-12-17	Engine changed
<b>Year 2003 - Reports Lodged</b>		
1	2003-01-22	#APU Cooling fan replaced
2	2003-01-23	Engine changed
3	2003-01-23	Engine changed
4	2003-01-23	#APU Cooling fan replaced
5	2003-03-01	Inspected
6	2003-04-01	Engine changed
7	2003-04-08	Engine changed
8	2003-05-01	Engine changed
9	2003-05-01	Engine changed
10	2003-05-08	*MEL applied
11	2003-05-26	Engine changed
12	2003-05-27	Inspected
13	2003-06-04	Engine Seal replaced
14	2003-06-11	Engine changed
15	2003-06-23	Engine changed
16	2003-06-24	Seal and face plate replaced
17	2003-08-25	Maintenance action carried out
18	2003-08-26	Engine changed
19	2003-08-29	*MEL applied
20	2003-09-12	Seal changed
21	2003-10-09	#APU Cooling fan replaced
22	2003-10-31	Engine changed
23	2003-11-20	Seal changed
24	2003-12-29	#APU replaced
<b>Year 2004 - Reports Lodged</b>		
1	2004-01-20	Engine changed
2	2004-01-30	Engine changed
3	2004-02-18	#APU replaced
4	2004-05-24	Engine changed

<b>5</b>	<b>2004-11-25</b>	<b>#APU replaced</b>
<b>Year 2005 – Reports Lodged</b>		
<b>1</b>	<b>2005-03-14</b>	<b>Engine replaced</b>
<b>2</b>	<b>2005-04-12</b>	<b>#APU replaced</b>
<b>3</b>	<b>2005-05-12</b>	<b>Seal and face plate replaced</b>
<b>4</b>	<b>2005-05-18</b>	<b>Seal changed</b>
<b>5</b>	<b>2005-11-16</b>	<b>#APU replaced</b>
<b>Year 2006 – Reports Lodged up to 5 October 2006</b>		
<b>1</b>	<b>2006-10-03</b>	<b>Inspection carried out but defect not confirmed</b>
<b>2</b>	<b>2006-10-03</b>	<b>Inspection carried out but defect not confirmed</b>
<b>3</b>	<b>2006-10-03</b>	<b>Inspection carried out but defect not confirmed</b>
<b>4</b>	<b>2006-10-03</b>	<b>Seal changed</b>
<b>5</b>	<b>2006-10-03</b>	<b>Engine replaced</b>
<b>6</b>	<b>2006-10-03</b>	<b>Maintenance action carried out</b>
<b>7</b>	<b>2006-10-03</b>	<b>Seal and face plate replaced</b>
<b>8</b>	<b>2006-10-03</b>	<b>Inspection carried out but defect not confirmed</b>
<b>9</b>	<b>2006-10-03</b>	<b>Inspection carried out but defect not confirmed</b>
<b>10</b>	<b>2006-10-03</b>	<b>Inspection carried out but defect not confirmed</b>
<b>11</b>	<b>2006-10-03</b>	<b>#APU replaced</b>
<b>12</b>	<b>2006-10-03</b>	<b>Maintenance action carried out</b>

## NOTES

\* MEL" refers to action allowed per CASA Airworthiness Directive AD/BAe146/86 to continue operations for a limited period with the problematic component isolated.

# "APU" is Auxiliary Power Unit.

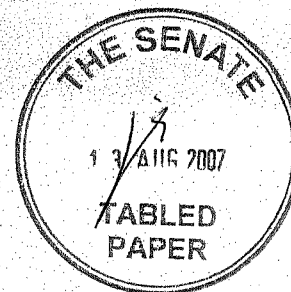


**Senate Rural and Regional Affairs and Transport Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Budget Estimates May 2006**

**Transport and Regional Services**



**Question No: CASA 25**

**Division/Agency: Civil Aviation Safety Authority**

**Topic: Cabin Air Quality Reference Group**

**Hansard Page: 46 (23/05/06)**

**Senator O'BRIEN**—In response to this Committee's Inquiry into Air Safety and Cabin Air Quality, the Government undertook to establish a reference group. This group was to undertake a range of activities, including the continuing monitoring of cabin air quality issues. When was the air safety and cabin air quality reference group formed?

**Mr Byron**—I will have to take the precise question on notice. I can give you a perspective. I was actually an invited member of industry on that when it was formed. From recollection, it was in about 2002. But I will have to get back to you.

**Answer:**

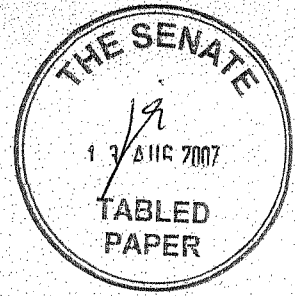
The first meeting of the Cabin Air Quality Reference Group was held on 21 October 2002.

**Senate Rural and Regional Affairs and Transport Legislation Committee**

**ANSWERS TO QUESTIONS ON NOTICE**

**Budget Estimates May 2006**

**Transport and Regional Services**



**Question No: CASA 26**

**Division/Agency: Civil Aviation Safety Authority**

**Topic: Cabin Air Quality Reference Group**

**Hansard Page: 46 (23/05/06)**

**Senator O'BRIEN—When did it last meet?**

**Mr Byron—Again, I will have to give you the details on notice, Senator.**

**Answer:**

The last meeting was held on 21 May 2003.