

# Questions for your submission

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This submission form is intended to be used alongside the consultation document to guide your feedback. Please give reasons for your answers or in support of your position so that your viewpoint is clearly understood, and also to provide more evidence to support decisions.

You can send us a written submission focusing on the questions in this document that are relevant to you by completing all or part of this submission template.

Please email your written submission to [ca.act@transport.govt.nz](mailto:ca.act@transport.govt.nz) with the word "Submission" in the subject line, or post it to:

Civil Aviation Act Review  
Ministry of Transport  
PO Box 3175  
Wellington 6140

The deadline for all forms of submission is 31 October 2014.

## Your role

Your name

██████████

Your email address

██████████@airways.co.nz

*Why is your email needed?*

*Your email address is needed in case we need to contact you with any questions about your submission.*

### 1. What is your interest in Civil Aviation Act and Airport Authorities Act Review?

Are you:

☐ A private individual?

☒ Part of the transport industry?

### 2. If you are part of the sector, please describe your role:

Airways New Zealand is the Air Navigation Service Provider providing air traffic management services and related infrastructure.

### Part A: Statutory framework

#### Item A1: Legislative structure

**Question A1a:** Which option do you support?

- ☐ **Option 1:** Amalgamate the Civil Aviation Act and the Airport Authorities Act
- ☒ **Option 2:** Separate the provisions in the Civil Aviation Act into three separate Acts:
  - (i) an Act dealing with safety and security regulation
  - (ii) an Act dealing with airline and air navigation services regulation
  - (iii) an Act dealing with airport regulation
- ☐ **Option 3:** Status Quo – Civil Aviation Act and Airport Authorities Act maintained.
- ☐ **Some other option** (please describe):

Please state your reasons:

This would make it clearer on the issues; provide more focus and easier referencing.

### Item A2: Purpose statement and objectives

**Question A2a:** Do you support the concepts listed in Part A, paragraph 29 for inclusion in a purpose statement?

Subject area of the Act or Acts	Purpose	Do you support?
Safety and security related	To contribute to a safe and secure civil aviation system	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>
Economic - airport related	To facilitate the operation of airports, while having due regard to airport users	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>
Economic – airline related	To provide for the regulation of international New Zealand and foreign airlines with due regard to New Zealand's civil aviation safety and security regime and bilateral air services	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>
	To enable airlines to engage in collaborative activity that enhances competition, while minimising the risk resulting from anti-competitive behaviour <sup>1</sup>	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>
	To provide a framework for international and domestic airline liability that balances the rights of airlines and passengers	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>

Please state your reasons:

These provide some clarity on the purpose of the Act for people not used to dealing with legislation.

<sup>1</sup> Depending on the outcome of the review, international air carriage competition provisions may be moved out of transport legislation and into the Commerce Act 1986.

**Question A2b:** What other concepts do you think should be included in the purpose statement of the Act or Acts? (Please specify)

**Question A2c:** Should the revision of statutory objectives align with the purpose of the Act or Acts?

Yes to ensure consistency.

**Question A2d:** Do you support the revision of statutory objectives to include a requirement that decision-makers (for example, the Minister, the CAA, and the Secretary of Transport) be required to carry-out their functions in an effective and efficient manner?

Yes to ensure that decisions are made in a timely manner to ensure stakeholders can make investment and planning decisions but more importantly that operations are not impacted.

### Item A3.4: Independent statutory powers

**Question A3.4:** Should independent statutory powers continue to reside with the Director of Civil Aviation?

☒ **Yes**

☐ **No**

Please state your reasons here.

The Director of Civil Aviation must be able to make safety and security decisions independent of political influence. This provides the mechanism for compliance and removal of those powers could be detrimental.

### Entry into the system

#### Item B1: Provisions relating to fit and proper person assessment

**Question B1a:** Which option do you support?

- ☐ **Option 1:** Status quo – no change to the matters which the Director should consider when undertaking a fit and proper person test

☒ **Option 2:** Align the fit and proper person test in the act with other transport legislation (Ministry of Transport preferred option)

- ☐ **Some other option** (please describe):

Please state your reasons here.

This would be consistent with other transport legislation. It would ensure drug and alcohol issues align with aviation industry actions on these areas in regard to safety critical functions.

**Question B1b:** Are there any issues with the provisions in Part 1 or 1A of the Civil Aviation Act 1990 that you think should be addressed? If so, what options do you propose to address the issue(s)?

### Participant obligations

**Question B2:** Are there any issues in relation to participant obligations and Director's powers in Part 2 of the Civil Aviation Act 1990 that you think should be addressed? If so, what options do you propose to address the issue(s)?

### Medical certification

#### Item B3: Certification pathways and stable conditions

**Question B3a:** Which option do you support?

☐ **Option 1:** Status quo – two pathways for medical certification

☒ **Option 2:** Develop a third pathway for medical certification for individuals affected by stable, long-term or fixed conditions.

☐ **Some other option** (please describe):

Please state your reasons

This would be consistent with a risk based approach and cater for long term, stable medical conditions.

**Question B3b:** What savings would likely occur from a third pathway to medical certification?

### Item B4: Provision for the recognition of overseas and other Medical Certificates

**Question B4a:** Should the Act allow the Director to recognise medical certificates issued by an ICAO contracting State?

☐ Yes

☐ Yes, but only those without any operational endorsements issued by States with a robust aviation medical certification regime

☒ No

Please state your reasons

There are large variations in the issue of medicals by other ICAO states. It is possible to effectively buy a medical certificate in some countries and we could have people working who would not qualify for a NZ medical.

The current system of applying for an Exemption allows the Director to look at individual cases and assess the medical certificate quality.

If there were to be recognition it would have to be a rigorous assessment of other State's system with a selective agreement. There would need to be ongoing assessment and review of the overseas State's medical process and this would add additional cost.

**Question B4b:** Should the Director of Civil Aviation or the State that has issued the medical certificate provide oversight?

This is the problem that would be associated with overseas medicals in regard to oversight and how are endorsements and changes to medical conditions handled.

**Question B4c:** If you agree that the Director of Civil Aviation should provide oversight, what provisions in Part 2A of the Civil Aviation Act should apply?

### Item B5: Medical Convener

**Question B5a:** Which is your preferred option?

☒ **Option 1:** Status quo continue: Medical Convenor retained (Ministry of Transport preferred option)

- ☐ **Option 2:** Status quo continues and a separate fee for the Medical Convener is charged to applicants
- ☐ **Option 3:** Disestablish Medical Convener role
- ☐ **Other option:** please describe

Please state your reasons here

Process has improved in the last few years to be more efficient.

**Question B5b:** How much would you be prepared to pay to have your case reviewed by the Medical Convenor?

Are there any other issues with the provisions in Part 2A of the Civil Aviation Act that you think should be addressed? If so, what options do you propose to address the issue(s)?

## Offences and penalties

### Item B6: Penalty levels

**Question B6a:** Which is your preferred option?

☒ **Option 1:** Status quo – penalty levels remain unchanged

- ☐ **Option 2:** Increase penalty levels
- ☐ **Other option:** Please describe

**Question B6b:** If you consider that increases to penalty levels are necessary, which penalties, and by how much?

### Item B7: Acting without the necessary aviation document

**Question B7:** Which is your preferred option?

☐ **Option 1:** Status quo

☒ **Option 2:** Amend the provision to separate out the offences (Ministry of Transport preferred option)

☐ **Other option:** Please describe

Please state your reasons

Agree need to remove ambiguity.

## Appeals

### Item B8: Appeals process

**Question B8a:** Should a specialist aviation panel or tribunal be established in addition to the current District Court process?

☒ **Yes**

☐ **No**

Please state your reasons:

This would allow an easier appeals process to a panel that is aware of the issues and impacts.

**Questions B8b:** How much would you be prepared to pay for a panel review?

The cost should be less than the current District Court costs.

### Rules and regulatory frameworks

#### Item B9: Rule making

**Question B9a:** What enhancements could be made to the rule-making process?

The rule making process must support aviation system developments not be a barrier. The process should be effective and enable consultation but not be overly lengthy.

**Question B9b:** Which is your preferred option?

- ☐ **Option 1:** Status quo – no change
- ☐ **Option 2:** Power for Civil Aviation Authority Board (CAA Board) to make temporary rules
- ☒ **Option 3:** Power to enable the Minister to delegate some of his/her rule-making powers to the Director or CAA Board
- ☐ **Option 4:** Creation of a new tertiary level of legislation (e.g. Standards)
- ☐ **Some other option:** Please describe

**Question B9c:** If you prefer Option 3 (Delegation of some of the Minister's rule-making powers to the CAA Board or Director), what matters should the Director or CAA Board be delegated to make rules for?

The regulatory framework should be such that minimal changes or of a technical specialist nature e.g. equipment specifications are able to be done by the CAA/Director. Aviation policy related regulatory requirements should go through a more robust process with full public consultation and Ministry of Transport involvement.

Option 4 may work but this needs more information on what this would look like and if this would provide a better outcome for technical matters than rules.

Given the New Southern Skies Programme is dependent on regulatory changes to ensure implementation whatever is done needs to support this Programme and ongoing system development.

**Question B9d:** Is a 'first principles' review of rule-making required to consider the out of scope options (paragraphs 183 – 187) in more detail?

☒ **Yes**

☐ **No**

Please state your reasons:

The current aviation system based on the Swedavia-McGregor Report from 1988 and there has been no review of the NZ civil aviation system model since then. It is important that the NZ civil aviation regulatory system meets the current and future civil aviation system requirements especially with advancing technology. In the 1990s the NZ regulatory system was world leading and is currently lagging due to an outdated model.

Rule development needs to meet the aviation system needs in an effective and efficient manner. CAA needs to be properly resourced and have trained staff to progress and provide oversight of new technology. Performance Based Navigation is an example where the rules and CAA resourcing are impacting on implementation and operation causing delays and unnecessary costs to industry.

A comprehensive review of the NZ regulatory framework is needed to ensure the aviation system meets future needs.

### Item B10: Possible amendments to Part 3

**Question B10:** What matters should the Minister take into account when making rules? Please specify and state your reasons.

Economic impact, international benchmarking/standards, compliance costs and enforceability.

### Information management

#### Item B11: Accident and incident reporting

**Question B11a:** What are the barriers to fully reporting accidents and incidents to CAA?

The barriers to fully reporting accident and incident information to CAA are:

1. The CAA is the regulator and people believe the information reported to the CAA may result in prosecution with a consequent reluctance to report or fully report;
2. The CAA reporting process is not user friendly and needs to be improved;
3. Poor understanding of what happens to a report and what it is used for;
4. The information provided may have to be publicly disclosed by the CAA under the Official Information Act and then used by other parties for purposes that are counter-productive to aviation safety.

As the Ministry's consultation document makes clear (paragraph 226), there is a distinction between accident and incident information (Annex 13) and safety data collection, analysis, protection and exchange (Annex 19).

With regard to Annex 13 information current New Zealand law is not appropriate. If TAIC carries out an investigation the extensive protection relating to disclosure and use of information set out in the TAIC Act applies. However the CAA does most no blame accident investigations. If CAA is the investigator there are no statutory protections against information disclosure and use. Instead the Official Information Act contains a presumption requiring disclosure unless there are good reasons for information to be withheld. In the case of CAA investigations therefore New Zealand law is not consistent with Chapter 5.12 of Annex 13.

**Question B11b:** What could be done to overcome the barriers in Question B11a?

Simple on-line reporting.

Better CAA education on the accident and incident reporting process and outcomes.  
Industry education on the separation between safety reporting and enforcement.

In addition, proposals for legislative amendment need to be developed now so that New Zealand will be in a position to comply with ICAO's current proposals for amendment to Annex 19.

For instance, Airways endeavours to operate a just safety culture to facilitate full reporting of all safety related incidents. However this policy cannot be fully effective when the safety data collection and analysis is subject to compulsory public disclosure under the Official Information Act.

The disclosure and subsequent inappropriate use of the safety information under present law can seriously undermine Airways' just safety culture. Airways' attempts to withhold safety-related information under existing Official Information Act provisions have usually been overruled by the Ombudsman even after the safety grounds for withholding have been strenuously advanced. Additional legislative protection or guidance is necessary.

Airways have a critical role as repository of safety information and holder of safety data important for aviation safety. In this role Airways provides important safety information to CAA as the safety regulator including data which may not be reported by the responsible aviation system participant. It is important this role and the protection of safety data is recognized so that Airways can continue to hold and collect this data without barriers from public disclosure requirements. This will allow Airways to continue to facilitate a proactive

safety culture

### Item B12: Accessing personal information for fit and proper person assessments

**Question B12a:** What information does the Director need to undertake a fit and proper person assessment?

Relevant previous experience, background criminal check, job description and understanding of accountabilities.

**Question B12b:** Should the Director be able to compel an organisation to provide information about a person in order to undertake a fit and proper person test?

☒ **Yes**

☐ **No**

Please state your reasons:

It is important that the Director has all the information needed to allow a person to hold the status of a fit and proper person.

## Security

### Item B13: Search powers

**Question B13a:** Should the Aviation Security Service (Avsec) be allowed to search unattended items in the landside part of the aerodrome?

☐ **Yes**

☒ **No**

Please state your reasons here.

AvSec should only be undertaking searches related to security designated areas.

The Police are the appropriate authority in non-security designated areas and can authorise AvSec as required to undertake the search.

This recommendation would provide AvSec with too great a power which is outside their primary area of responsibility.

**Question B13b:** Should Avsec be allowed to search vehicles, in the landside part of the aerodrome, using non-invasive tools such as Explosive Detector Dogs (EDD)?

☐ Yes

☒ No

Please state your reasons here.

The Police are the appropriate authority in non-security designated areas and can authorise AvSec as required to undertake the search.

**Question B13c:** Do you support the use of EDD within a landside environment of an airport, including public car parks and airport terminals generally? In particular, do you consider it appropriate for EDD to be used around people, including non-passengers?

☐ Yes

☒ No

Please state your reasons:

AvSec should only be undertaking activities related to security designated areas. There is no supporting case for an extension of AvSec powers especially as this could be interpreted or impact differently at each aerodrome. The Police should be the responsible authority and central point of contact and decision making.

### Issue B15: Security check procedures and airport identity cards

**Question 15:** Do you have any comments regarding Security Check Determinations (sections 77F and G) and the Airport Identity Card regime?

The current time to obtain a security pass is inconsistent. It takes 2 weeks in Christchurch and 6 weeks in Auckland. There appears to be no common process and it can become very bureaucratic – we recently had a person from an organisation where they had an Airport ID card and was employed for 21 years resign and join Airways. After handing back their Airport ID pass they applied for a new one a week later with Airways – the process will still take 6 weeks.

### Item B16: Alternative terminal configurations

**Question B16a:** Should alternative airport designs or configurations be allowed in the future, for example, a common departure terminal?

☒ **Yes**

☐ **No**

Please state your reasons here.

Yes provided this does not disrupt passenger processing time and access.

**Question B16b:** If yes, how should processing costs be funded?

### Airport Authorities Act

#### Item E1: Specified airport companies

**Question E1a:** Which is your preferred option?

- ☐ **Option 1:** Status quo – specified airport companies are defined as an airport company that in its last accounting period received revenue exceeding \$10 million.
- ☐ **Option 2:** Revise the threshold – specified airport companies are defined as an airport company that in its last accounting period received revenue exceeding \$15 million.
- ☐ **Option 3:** Amend the threshold to be based on revenue from identified airport activities – for example, specified airport companies are defined as an airport company that in its last accounting period received revenue from identified airport activities exceeding \$10 million.

☒ **Option 4:** Amend the threshold from annual revenue to passenger movements – for example, airport company that in its last accounting period had in excess of one-million passenger movements (Ministry of Transport preferred option)

- ☐ **Some other option** (please describe):

Please state your reasons:

Passenger movements are a better measure than revenues.

**Question E1b:** Is changing the threshold for a 'specified airport company' the most effective way to distinguish between airports that are in a position to exercise significant market power and those which are not?

☒ **Yes**

☐ **No**

Please state your reasons:

Passenger numbers seem to best identify an airport company success and growth which allows easier comparison against other airports without external financial factors distorting e.g. inflation, high revenue but with high costs.

### Item E2: Redundant provisions

**Question E2a:** What impact, if any, would removing section 3BA have?

No impact.

**Question E2b:** Do you support repealing section 3BA?

☒ Yes

☐ No

Please state your reasons:

### Item E3: Consultation on certain capital expenditure

**Question E3a:** Which is your preferred option?

☐ **Option 1:** Status quo - specified airport companies are required to consult substantial customers before approving certain capital expenditures

☒ **Option 2:** Require all airport companies to consult on certain capital expenditures (Ministry of Transport preferred option)

☐ **Some other option** (please describe):

Please state your reasons:

Capital expenditures impact on other stakeholder and operator costs to operate at an aerodrome and should be consulted on.

**Question E3c:** What would be the costs and benefits of expanding this provision to cover all airport companies?

The cost of consulting would be limited assuming an appropriate level of due diligence is done before the investment is made. The benefits would outweigh the cost as consulting would help ensure the investment was fit for purpose for the airline requirements.

### Item E4: Threshold for consultation on certain capital expenditure

#### Options for amending the threshold for consultation on certain capital expenditures

Passenger volumes	OR Annual revenue	Option 1	Option 2	Option 3
< 1 million	< \$10 million	> \$5 million	10% of identified airport assets (excluding land)	The lower of 30% of identified airport assets or \$30 million
> 1 million but < 3 million	> \$10 million but < \$50 million	> \$10 million		
> 3 million	> \$50 million	> \$30 million		

**Question E4:** Which is your preferred option?

☒ **Option 1:** Stepped thresholds

☐ **Option 2:** 10 percent of identified airport assets (excluding land)

☐ **Option 3:** The lower of 30 percent of identified airport assets or \$30 million

☐ **Some other option** (please describe):

Please state your reasons:

Option 1 is sensible as it allows the threshold to change for the size of the airport recognising changing operational scale.

**Question E4b:** If you prefer Option 1, where do you consider the thresholds for consultation should be set and why?

Don't have enough info to meaningfully comment on this.

### Item E5: Termination of leases without compensation or recourse for compensation

**Question E5:** Which is your preferred option?

- ☐ **Option 1:** Status quo - airport authorities may terminate a lease at any time if the property is required for the “purposes of the airport”, and lessees may not seek redress through the Courts for damages or compensation, except where compensation is provided for under the lease.

☒ **Option 2:** Amend the Act to clarify the reasons for which airport authorities can terminate leases without compensation or recourse for compensation

- ☐ **Some other option** (please describe):

Please state your reasons:

There should be transparency around the reasons why commercially agreed terms have been terminated. Contracts are entered with the expectations of the contractual obligations being executed by both parties. There should be some transparency when obligations will no longer be met.

Question E5b: Are there any other issues with section 6 of the Airport Authorities Act that you think should be addressed? If so, what options do you propose to address the issue(s)?

### Item E6: Bylaw making powers

**Question E6a:** Which is your preferred option?

☒ **Option 1:** Status quo – the existing bylaw making powers of airport companies, airport authorities, and local authorities are retained

☐ **Option 2:** Repeal some bylaw making powers

☐ **Some other option** (please describe):

**Question E6b:** For what purposes do you consider it necessary for local authorities, airport authorities, and airport companies to have bylaw making powers, and why?

**Question E6c:** If airport authorities did not have bylaw making powers, how would or could they manage the matters covered by section 9(1)(a-ff) of the Airport Authorities Act?

**Question E6d:** If bylaw making powers are retained, what is the appropriate level of oversight for local authorities, airport authorities and airport companies seeking to make bylaws?

### Item F1: Airways' statutory monopoly

Section 35 of the Civil Aviation Amendment Act 1992 provides for the repeal of Airways' statutory monopoly on a date to be appointed by the Governor-General by Order in Council.

We recommend:

- repeal of Section 35 of the Civil Aviation Amendment Act 1992; and
- the retention of Section 99 of the Civil Aviation Act 1990 (which provides for Airways to be the sole provider of area control services, approach control services, and flight information services).

**Question F1:** Do you agree with our recommendation?

☒ **Yes**

☐ **No**

Please state your reasons:

Any changes would have a major impact on the NZ aviation system and should be only done through an act of Parliament. The New Zealand aviation system is vital to the country's economy and although small in size requires a comprehensive infrastructure. Airways invest considerable amounts in air traffic management infrastructure including communication, navigation and surveillance systems for both current and future needs.

Section 99 provides Airways with certainty on air traffic management provision to enable large, long term investment decisions on aviation infrastructure systems and improvements.

### Item F3: Length of time before the Director can revoke an aviation document because of unpaid fees or charges

**Question F3:** Which is your preferred option?

- ☐ **Option 1:** Status quo – the Director of Civil Aviation may revoke an aviation document if the related fee or charge is overdue by six months

√ **Option 2:** Reduce the threshold from six to four months

- ☐ **Some other option** (please describe):

Please state your reasons:

Four months brings this in line with reasonable debt collection practices.

### Item F4: Power to stop supplying services until overdue fees and charges have been paid

**Question F4:** Which is your preferred option?

- ☐ **Option 1:** Status quo – Section 41(4) the Civil Aviation Act provides for the CAA, the Director and other persons to decline to process an application or provide a service under the Act until the appropriate fee or charge has been paid (or arrangements for payment made).

√ **Option 2:** Amend section 41(4) to clarify its intention – to explicitly provide for the CAA, the Director and other persons to decline to process an application or provide a service under the Act until the appropriate fee or charge or outstanding debt has been paid (or arrangements for payment made).

- ☐ **Some other option** (please describe):

Please state your reasons:

It is reasonable and fair to expect services to stop if they are not paid for. This is normal business practice.

### Item F5: The Civil Aviation Authority's ability to audit operators that collect levies

**Question F5:** Which is your preferred option?

- ☐ **Option 1:** Status quo – the Act does not allow the CAA to require an audit of operators from which it collects levies.

☒ **Option 2:** Amend section 42B to include a power for the CAA to require an audit of operators from which it collects levies at the CAA's own cost

- ☐ **Some other option** (please describe):

Please state your reasons:

### Item F6: Fees and charges for medical costs

**Question F6:** Which is your preferred option?

- ☐ **Option 1:** Status quo – section 38(1)(b) of the Civil Aviation Act allows the Governor-General to make regulations prescribing the fees and charges for the purpose of reimbursing the CAA for "costs directly associated with" the Director and Convener's functions under Part 2A of the Act.

☒ **Option 2:** Clarify section 38(1)(b) that this section is intended to cover a broad range of services and corporate overheads associated with the Director and Convener's functions under Part 2A of the Act

- ☐ **Some other option** (please describe):

Please state your reasons: