Submission

This submission is lodged by Aviation New Zealand. We welcome the opportunity to comment on the exposure draft. Given the time that has passed since submissions were made on the desired content of a new CAA Act, we congratulate Ministry of Transport in presenting industry with an exposure draft before a Bill enters the House, and for running member workshops with us.

We are only addressing changes directly relevant to the General Aviation sector. We appreciate other aspects of the draft Act will impact on the total industry including GA, but the time allowed for submissions has required that we focus on a limited number of areas in the draft Act.

1 SUMMARY

The draft Act gives us a once in thirty year opportunity to set the scene for future growth of the aviation sector. It should allow us to borrow unashamedly from international best regulatory practice. This suggests some new elements be added to the draft Act: the philosophy behind it, reasonable cost and an independent appeals authority. We also see some changes to the draft which would improve and future proof it. Significantly, a number of our suggestions should help improve the relationship between CAA and the industry as well as improve regulator performance. We appreciate that some of these concepts, enshrined in law, could give us comparative advantage and restore some of the historic claims about New Zealand having an internationally competitive regulatory regime.

2 BACKGROUND: AVIATION NEW ZEALAND

Aviation NZ is an aviation industry association with over 300 members and 1422 stakeholders. Founded in 1950, we exist to support the safe growth of aviation in New Zealand.

Members range from large companies such as Air New Zealand, medium sized companies (The Airwork Group, Oceania/Salus Aviation Group, Fieldair) to tertiary education research and training institutions and a diverse range of small owner operated businesses. We understand that Air New Zealand is submitting on the draft Act - its views are not reflected in this submission.

Members include agricultural companies, air operators (fixed wing and rotary), aircraft design organisations, aircraft maintenance organisations and manufacturers, the UAV industry, airports, aviation education and research institutes, flight trainers, emergency and medical services companies, helicopter companies, and parts manufacturers.

60 Part 137 companies belong to us (including all of the large operators), 70 Part 119, 57 Part 135 (including all the large operators), 31 Part 141 (including all Government funded EFTs providers), 31 Part 145, 9 Part 148 and 24 Part 102. Aviation NZ represents about 90% by weight of the fertilisers and sprays delivered by the agricultural aviation industry, and over 60% of the rotary capability in New Zealand.

3 FORM OF RESPONSE

This response focuses on those parts of the draft Act directly relevant to General Aviation. We appreciate there are wider issues but do not comment on them in this response. Our reply is in two parts. Part 1 identifies areas we believe should be included in the draft Act. Part 2 comments on the draft Act.

4 PART 1 TO BE INCLUDED IN THE DRAFT

4.1 Philosophy

The new Act will set the foundations for aviation growth over the next 30 or so years. Given the age of the current Act, we have an opportunity to make significant changes in a new Act. We can learn from what works internationally now, adopt more flexibility and nimbleness, and encourage future innovation.

- *In our view, we should be adopting more best international practice, implementing (borrowing) learning from recognised international regulators, encouraging the development of a more nimble and fit for purpose CAA, and including concepts of collaboration and cooperation to address resource issues that we know now will compromise future regulator performance. We are not, at this time, suggesting appropriate wording.*

4.2 Concept of Reasonable cost and best international practice

The concept of reasonable cost is not currently incorporated in the CAA Act. The benefits of doing something must be greater than the costs. A consequence of this omission from the current Act is that safety, regardless of the risk or cost, can be required. Consequently, our regulatory regime now, and as proposed in the draft Act, is not aligned to international best practice. This idea is picked up again in 5.1.

- *In our view, the draft Act should incorporate a more international approach to safety and cost and include the concept where 'safety is aligned to best international practice and incorporates reasonable cost and sustainability'. We are not, at this time, suggesting appropriate wording.*

4.3 Independent Appeal or Complaints Authority

If General Aviation has a difficulty with CAA rulings or CAA interactions with companies, the available option has been to take CAA to Court. This is very expensive and has generally been ruled out as an option. Alternatively, companies can take CAA decisions to the Ombudsman

but this is time consuming, means that a non aviation expert looks at technical cases and there is an industry expectation that recommendations will not go against the regulator.

A consequence is that trust in CAA has declined. This has been exacerbated by the difficulties CAA has had, for many years, in providing consistent responses to companies, and across the aviation sector. There has been too much variation and this has lead to further mistrust. Borrowing from Australian and Canadian 'best practice' an independent appeals authority could actually help CAA improve performance.

- *In our view, an independent complaints authority is required. This could be along the lines of the CASA Administrative Appeals Tribunal or The Transport Canada's 'Expert Panel'. We are not, at this time, suggesting appropriate wording.*

An additional benefit is that it would provide CAA with independent, authoritative advice on where its systems and processes could be improved.

4.4 SMS and 5 yearly re-entry

Aviation companies are now required to have SMS systems in place by February 2021. SMS is performance based and not prescriptive. It is therefore, intended to take some regulatory burden off CAA. SMS is also an international best practice concept. The philosophy behind and benefits of a good functioning SMS system are not reflected in the draft Act.

Section 68 of the draft Act gives the Director the ability to require companies to renew aviation documents. The Rules use this to determine that AOCs should be renewed every 5 years. By ignoring SMS and continuing regular renewals, the draft Act builds in more cost and more bureaucracy for companies. International best practice in this area is reflected in the FAA approach where companies are examined on entry to the aviation system, the FAA maintains a maintenance relationship with the company while it remains in the system (SMS is an integral part) until it exits the aviation system. We should follow this precedent.

- *In our view the wording of the draft Act should be amended, reflecting the existence of SMS, so that a company joins the aviation system and then leaves it but does not have to renew documents at intervals determined by the director. We are not, at this time, suggesting appropriate wording.*

5 PART 2 CHANGES TO THE DRAFT

5.1 Purpose

The Act is to set the foundations of growth in the aviation sector for the next 20 to 30 years. Safe and sustainable economic growth of the sector is vitally important, as are concepts around innovation, flexibility and agility.

- *In our view, the purpose needs to be more visionary and it needs to recognise the economic and social development permitted by a dynamic aviation sector. We are not, at this time, suggesting appropriate wording.*

5.2 Pilot in Command

We support this definition being extended to include drone operators. The one question, given the way drone technology is developing, is whether the definition is sufficiently futuristic? It reflects what we know now.

- *In our view, the definition could be future proofed more by being less prescriptive. We are not, at this time, suggesting appropriate wording.*

5.3 Protection of Safety Information

We support the inclusion of the Just Culture concept in the draft Act as a way to encourage companies to report. But the Just Culture concept is fundamental to all aspects of the aviation system. It must be demonstrated by the regulator at all levels of the organisation.

- *Just Culture is defined in the discussion document but in terms of ongoing understanding, and to avoid re-interpretation by the regualtor, the definition must be included in the draft Act.*
- *There are clearly significant training implications for CAA and these need to be spelt out more clearly in the draft Act. It will also be necessary to update Rules to reflect the adoption of 'Just Culture'. We are not, at this time, suggesting appropriate wording.*

We recognise the importance of good reporting by industry as a means of improving aviation safety. Just culture is an important step. It is also important that industry reports 'in good faith' and CAA acts on such reports 'in good faith'.

- *In our view, safety from prosecution should be enshrined in the draft Act along with the inclusion of 'in good faith'. We are not, at this time, suggesting appropriate wording.*

5.4 Drug and alcohol management

We support random drug and alcohol testing. We also support this requirement being extended to operators of drones. It appears though that individual operators, while theoretically included, are dependent on CAA for random tests. It is comparatively easy to set up random testing regimes for companies but it is not so easy with individual operators.

- *In our view, the wording should be developed to put an obligation on CAA to undertake a specific number of random tests on single operators in a year. We are not, at this time, suggesting appropriate wording.*

5.5 Offences

This section needs to be considered in the context of Just Culture. There appears to be a provision in the draft Act that even if a pilot or company reports correctly, they could still be liable for criminal prosecution.

- *In our view, this section should be tightened to reflect the dangers of willful, reckless, deliberate or gross negligence to avoid meeting the requirements of Rules. We are not, at this time, suggesting appropriate wording.*

The draft Act gives CAA up to 12 months to take action against a company. As we see it, justice delayed is justice denied.

- *In our view, this section should be aligned more closely with the time given to other agencies across the government sector to take action against perceived offenders. We are not, at this time, suggesting appropriate wording.*

To improve the prospects of good reporting, acknowledging the impact of Just Culture and reflecting on what should be a constructive relationship between the regulator and industry, Section 266 could be extended considerably.

- *In our view, a new sub section could be added to require the Director, before any action is taken against a company, to be satisfied that any person who action may be taken against is aware that this might happen, has been informed in writing, has a written summary with the Director's reasons for contemplating action, has been given an opportunity to respond within a given time, and where an explanation has been provided and is rejected, is informed in writing why the Director has not accepted that explanation. We are not, at this time, suggesting appropriate wording but support the detailed drafting of some other submitters.*

5.6 Fit and Proper Person

FPP requirements in other MoT regulatory agency legislation for consistency, openness and transparency, should be included in the draft Act. The current wording gives considerable discretion to the director and, as we have seen, when this discretion is delegated, variation exists in the way it is applied.

- *In our view, the new Act should limit this discretion more effectively and could also include checks into whether a person is a disqualified director or an undischarged bankrupt. We are not, at this time, suggesting appropriate wording.*

5.7 Aviation Medicals

The draft Act gives power to the Director (PMO) to refuse a medical if he has reasonable grounds to believe an applicant may not be fit to fly. This is despite the applicant having met the standards prescribed in the rules.

- *Schedule 2 5 (2) should be amended: 'If the Director is satisfied that the applicant meets the medical standards prescribed in the rules, the Director must issue a medical certificate unless the Director has reasonable grounds to believe that the applicant has any other characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.'*

The inclusion of the word 'other' retains the Director's power but reduces that power to intervene where an applicant passes the standards set out in the Rules.

We support the Aviation Federation submission on medicals.

5.8 Rules process

The rules development process is broken. Fast development of Rule Part 102 took two years. Amendment of Rule Part 61 took 13 years. This is unacceptable and reflects poorly on New Zealand's rule making processes. When introduced, the process was to be agile, flexible and responsive to accommodate changes in a rapidly changing environment. It is none of these things. The new Bill should reflect the dynamic nature of the aviation industry so that NZ does not become a backwater in global aviation activity.

- *In our view, the rules development process needs to be decoupled from the MoT funding system with a rules process streamlined to reflect the needs of the industry, not the funding of the Ministry. We are not, at this time, suggesting appropriate wording.*

5.9 Drones

We endorse procedures that ensure the safe integration of drones into the aviation system. We are concerned however, by many of the inaccurate and false statements in the Discussion Document that accompanies the draft Act. These inaccuracies are clearly articulated for example, in submissions from Model Flying New Zealand and Fly UAV.

A consequence of these inaccurate statements is that they are used to justify proposed powers to seize, detain, destroy and intercept drones. There needs to be a clear, factual and unambiguous problem definition with some sensible solutions proposed accordingly. This is not apparent in the draft Act.

6 COMMENT

We would be happy to develop any of these points further.

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