Appendix 1

Questions for your submission

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 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 [redacted]

[redacted]

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:

Executive Officer of Gliding New Zealand Incorporated, which is an aviation recreational organisation certificated under CAR Part 149.

Elected member of the Aviation Community Advisory Group (ACAG).

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:

Clarity of purpose and improved navigability.

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	☑ Yes ☐ No
Economic - airport related	To facilitate the operation of airports, while having due regard to airport users	☐ Yes ☐ No
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	☐ Yes ☐ No
	To enable airlines to engage in collaborative activity that enhances competition, while minimising the risk resulting from anti-competitive behaviour[1]	☐ Yes ☐ No
	To provide a framework for international and domestic airline liability that balances the rights of airlines and passengers	☐ Yes ☐ No

Please state your reasons:

"To contribute to a safe and secure civil aviation system" implies a high level scope that recognises that the CAA is rightly a broad contributor to (not responsible for) a safe and secure civil aviation system.

[1] 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)

To set standards for participation

To control who participates

To encourage participant responsibility for safety and security

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

Yes

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, but care needs to be taken not to fetter the CAA Director's independent statutory powers unduly.

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.

For the reason set out in paragraph 83.

CAA Board members would generally be ill-equipped to exercise the necessary technical judgement.

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):

Option 2 as detailed in paragraph 40, but with the addition of elements to consider the person's knowledge of the applicable civil aviation system regulatory requirements (27.3) and any history of serious behavioural problems or recklessness in the aviation context.

Please state your reasons here.

Any history of incompetence or recklessness in the aviation context needs to be considered. Compliance history with road or maritime transport safety related regulatory requirements has limited relevance in the aviation context.

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 is a logical approach that should reduce time and cost for some participants.

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 is nothing special about the NZ aviation environment that justifies a need for medical certificates to be issued by NZ only for NZ aviation document holders.

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

Oversight should be provided by the State of issue, but with an obligation on the holder to advise the Director of any adverse change in medical condition pending resolution in accordance with the rules of that State.

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

People using the Medical Convenor process are likely to be professionals earning their living from their aviation documents, and thus more able to bear the cost than the much larger number of non-professional pilots. Agree with the statement in paragraph 99.

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

Remove the 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:

The small number of cases does not justify the establishment of a specialist panel, which seems likely to be more expensive than the existing Court processes. The history of appeal outcomes set out in paragraph 134 suggests that the Director's decisions stand up very well and little would be gained by further examination by aviation specialists.

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

Rules and regulatory frameworks

Item B9: Rule making

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

Anything that improves the speed of rulemaking would be beneficial.

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

This should provide about the right balance to address the main problems with the existing process. Option 4 would run the risk of returning to the coherency problems of the old 3-tier system of Act-Regulation-Safety Order that existed prior to 1990 (ref 1988 Swedavia-McGregor report). The Director's making of Civil Aviation Safety Orders (CASO) under this pre 1990 system was generally done with less rigorous consultation than is now the norm for making Rules; and this would need to be addressed so that any efficiency gains may be questionable, as noted in paragraph 181.3. Presumably, Option 4 would also entail a recasting of the present Rules to split them into Rules (deemed regulations) and Standards – a big and expensive job.

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?

All rules for entry into the civil aviation system and for operating within it – sections 29 and 30 of the current Act.

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:

A purely performance-based regulatory regime would put NZ out of step with the way aviation is safety regulated internationally and could cause difficulties in NZ meeting its ICAO obligations. It could also lead to difficulties for NZ pilots and NZ registered aircraft operating overseas.

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.

"199.2 considering best international practice and standards when proposing change" should be added to section 33. The other aspects of good regulatory practice enumerated in paragraph 199 should be addressed administratively.

Information management

Item B11: Accident and incident reporting

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

- **Personal embarrassment of revealing own human errors to peers**
- **Not fully appreciating the value of CAA's gathering of data to inform potential interventions to improve safety – leading to a culture of "can't be bothered with the paperwork"**
- **Perception that CAA will prosecute or take some adverse administrative action.**

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

Continue to educate participants about the value of reporting and not to be ashamed of making human errors, which are perfectly normal ("the downside of having a brain", as human errors have been described).

Replace the strict liability offences of sections 43, 43A and 44 with provisions that require the culpability of the participants in a safety-failure to be considered in a systematic way. Prosecution should depend on the display of recklessness (a conscious disregard of a significant and unjustifiable risk). "Participants" in this context should include aviation organisations that fail to participate in error management processes, such as SMS, or those that condone or create incentives for risk-taking behaviour of their staff.

With reference to paragraph 220:

220.1 – yes

220.2 – yes

220.3 – no, impossible to gauge in the context of a FPP assessment

220.4 – no practical use

220.5 – yes, but in all situations where recklessness has been established, not just those where the participant neglects to fully report.

[Any temptation to promote confidential reporting schemes as a means of avoiding personal embarrassment or adverse CAA reaction to a safety failure should be avoided, as experience has shown that such schemes are of negligible value in promoting safety overall. Confidentiality inhibits meaningful CAA follow-up to establish the facts and root cause(s) of the event, and third-party attempts to do this without CAA involvement have failed to produce anything useful (eg the CAA/Airways funded ICARUS scheme of about 15 years ago). CAR Part 12 already provides for confidential reporting, but is almost never used.]

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?

See response to question B1.

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:

But only if the Director has reasonable grounds to suspect that the person may not be fit and proper.