



Ministry of **Transport**
TE MANATŪ WAKA

Ministry of Transport

Guidelines to the Convener Process

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1 Introduction

1.1 Background

A new aviation medical certification system came into effect on 1 April 2002. The change was made by the Civil Aviation (Medical Certification) Amendment Act 2001 which amended the Civil Aviation Act 1990 (the Act).¹

Section 27J of the Act provides for the Minister of Transport to appoint a convener and deputy convener to review medical certification decisions. The appointments can be for no longer than 3 years, and may be renewed for one or more periods, each of which may not exceed three years.

Dr Martin Peterson is the convener. Dr David Black is the deputy convener.

This guide is general in its terms and is intended as a guide only to the role and processes of the convener. It is intended to be used as a reference only and is not to be taken as a substitute for the provisions of the Act or relied on as legal advice. Whilst every care has been taken in its preparation, the Ministry of Transport accepts no liability for reliance on or error in this guide.

1.2 What qualifications must a convener or deputy convener have?

Under section 27J of the Act the convener and the deputy convener must:

- (a) be registered medical practitioners who are suitably qualified, and experienced or knowledgeable in civil aviation; and
- (b) be able to represent the public interest in aviation safety.

1.3 Functions of convener

Under sections 27L and 27M of the Act, the convener, or deputy if the convener is not available, has two functions:

- (a) to review certain decisions in relation to a medical certificate; and
- (b) to advise the Director of Civil Aviation on applications for a medical certificate as a result of a joint referral by the applicant and the Director.

1.4 Review of decisions

Section 27L(1) of the Act sets out the decisions a licence holder may ask the convener to review. Essentially, these are:

- (a) Any decision in relation to the issue of a medical certificate other than a decision to call for tests and examinations. [s27B other than s27B(5)(b) – essentially s27B(1), (2) and (4)]
- (b) A decision to revoke a medical certificate. [s27I(2)(b), s27I(3)(a)(ii), s27I(7)(d), s27I(11)]
- (c) A decision by the Director, following an initial action to impose conditions or suspend a certificate, to impose or amend conditions, restrictions, or

¹ Part 2A Medical Certification of the Civil Aviation Act 1990 can be found at http://www.legislation.govt.nz/libraries/contents/om_isapi.dll?clientID=87991&infobase=pal_st_atutes.nfo&jump=a1990-098%2fpt.2a&softpage=DOC#JUMPDEST_a1990-098/pt.2a

endorsements on a medical certificate; withdraw any conditions etc.; disqualify the person from holding a medical certificate. [s27I(7)(a), s27I(7)(b) and s27I(7)(c)]

1.5 Decisions that may not be referred to the convener for review

Section 27L(1)(b) sets out the decisions that may not be referred to the convener for review. These are temporary measures that the Director may impose for no longer than 20 working days, as follows:

- (a) A decision by the Director to suspend a medical certificate or to impose or amend any conditions, restrictions, or endorsements on the certificate if the Director has reasonable grounds to believe that a licence holder may be (or is) unable to exercise safely the privileges of that licence. [s27I(1), s27I(2)(a), s27I(2)(c)]
- (b) A decision by the Director to suspend a medical certificate or to impose or amend any conditions, restrictions, or endorsements on the certificate if the Director has reasonable grounds to believe that a person who has been delegated authority under section 27O to issue a medical certificate has issued it incorrectly. [s27I(3)(a)(i), s27I(3)(a)(iii)]

1.6 Referral to convener by agreement

The Director and the applicant may jointly refer an application for a medical certificate to the convener for advice. [s27M]

The referral is made by agreement in writing between the Director and the applicant. [s27M (1)]

1.7 Statutory considerations for reviews and joint referrals

The procedure for a review or joint referral must take into account the following matters contained in the Act:

- The convener must review the decision, or assess an application, as soon as practicable. [s27L(2), s27M(2)(b)]
- The convener must call on the advice and expertise of at least one other person who is suitably qualified and experienced. [s27L(3)(a), s27M(2)(b)(ii)]
- The convener may call for additional tests and examinations (at the applicant's expense). [s27L(3)(c), s27M(2)(b)(iii)]
- The convener must have regard to the purpose and scheme of the Act and the Director's duties. Therefore the convener must take into account all matters that the Director must have regard to in exercising his or her decision making power. [s27L(3), s27M(2)(b)(iv)]
- The licence holder and the Director may participate in the process by providing relevant evidence regarding any medical matter at issue with respect to the decision, or application, that is under review. [s27L (6), s27M (5)]. The convener will hold a copy of the medical manual and other advisory material produced by the Director and will use it as appropriate.
- The convener must receive and consider the relevant evidence mentioned above. [s27L(3)(d), s27M(2)(b)(vi)]
- The convener may not review a decision, or assess an application, where the convener has a conflict of interest. [s27L(7), s27M(6)]

1.8 Deputy convener

Under section 27J(5) if the convener is not available for any reason, the deputy convener will act for the convener to conduct a review or joint referral until the convener is available or the Minister of Transport has appointed a new convener.

1.9 Annual report to the Minister of Transport

Although the Act does not require the convener to report annually to the Minister of Transport, the Minister has invited the convener to present an annual update on issues encountered during the year and any changes the convener might recommend to the medical certification requirements.

1.10 Fees and charges

Currently there is no fee for an application for a review or joint referral. The Act provides for a fee to be set by regulation for filing an application for a review or joint referral. [s38] A fee is likely to be set. Costs incurred by an applicant or licence holder will be the responsibility of that person.

1.11 Ministry of Transport's role

The Ministry of Transport provides administrative support to the convener. All inquiries should in the first instance be made to the medical convener administrator at the Ministry of Transport who is responsible for assisting the convener.

Medical Convener Administrator
Phone: 04 439 9337
Fax: 04 439 9004
Email: medicalconvener@transport.govt.nz

The medical convener administrator monitors the progress of reviews and communicates with the Director of Civil Aviation and applicants, on the convener's behalf.

1.12 Applications to the convener

An application form is available on the Ministry's website
<http://www.transport.govt.nz/aviation-medical-convener-review/>

Applicants should send their completed form and any supporting documentation to:

The Convener
c/- The Ministry of Transport
PO Box 3175
WELLINGTON

2 Process for a review

2.1 Provision in the Act

Section 27L of the Act sets out the requirements for review of decisions regarding medical certificates, and the decisions that can be reviewed.

2.2 Application for review by licence holder of applicant for a medical certificate

A licence holder or an applicant may, **within 20 working days of a decision being made**, ask the convener, in writing, to review a decision made by the Director about his or her medical certificate or application [s27L (1)]. The convener **cannot** review a decision, if the request has been made outside this timeframe.

It is advisable that any person intending to apply for a review of a decision should discuss this with his or her aviation medical examiner as soon as possible. The medical examiner should be able to provide advice on the type of information that would support the application.

The licence holder or applicant should submit information with their application form to the convener that supports the review. [s27L 6] This may include:

- submissions on why a review is sought
- expert opinions and information demonstrating comparable situations
- details about the nature of the operations the licence holder or applicant intends to engage in
- anything else the applicant considers necessary to support his or her position.

A licence holder or applicant can obtain a copy of his or her file from the Director. This may assist in the preparation of supporting material for the review.

The convener copies the application and supporting material to the Director.

The licence holder or applicant needs to inform the convener promptly of any change in their state of health that might impact on his or her eligibility for a medical certificate.

2.3 The Director of Civil Aviation

The Director may participate in the review process by providing relevant information to the convener. Current practice is that the Director sends to the convener, as soon as practicable, all relevant medical documents from the licence holder or applicant's medical file. The Director aims to provide the convener with this information within 10 working days. This includes the relevant medical information held by a medical examiner in his/her capacity as the Director's delegate. [27L(6)]

The Director also sends the convener a submission on each application giving the reasons for the initial decision and may provide an opinion on the decision under review.

The convener copies this material to the licence holder or applicant.

2.4 Responding to submissions by the applicant or the Director

The licence holder or applicant and the Director may respond to the material submitted to the convener by the other party.

In order for the convener to comply with the obligation to review the decision as soon as practicable the convener needs to receive this response promptly. The licence holder or applicant is given 20 working days to respond to the material submitted by the Director. If the licence holder or applicant does not supply the convener with additional information to support their application within the 20 working day timeframe, the convener will commence the review on the information to hand.

The convener will decide whether or not to accept new medical evidence after this stage in his or her discretion on a case by case basis.

2.5 Convener consideration of submissions

The convener must review the decision as soon as practicable. [s27L (2)]
Due to the complexity of the medical issues involved and the requirement to consult other specialists, convener reviews can take a significant amount of time to complete.

In considering the submissions, the convener must call on the advice and expertise of at least one other person who is suitably qualified and experienced. [s27L (3)(a)]

The convener needs to be informed promptly of any change in the licence holder's or applicant's state of health that might impact on his or her eligibility for a medical certificate.

The convener may decide that additional reports, tests or examinations are required. These may be to ensure the case has merit, or to clarify details. [s27L (3)(c)]

The applicant is responsible for the payment of any additional reports, tests or examinations called for by the convener. [s27L (3)(c)]

The convener will be accountable to the Ministry of Transport for the costs of expert advice on interpreting reports obtained by the convener.

2.6 Review to be conducted on written submissions

The convener will conduct a review on the written submissions. The convener may, however, contact either party to seek clarification of a submission.

2.7 Convener's report

At the conclusion of the review the convener must report the results of his or her review to the Director, as soon as is practicable. [s27L (4)]

The Director must within 10 working days implement the results of the review or otherwise notify the applicant or licence holder, in writing, of his or her reasons for not doing so. [s27L (5)]

The Director will copy the convener's report to the licence holder or applicant with his or her decision and will also notify the convener of the decision.

3 Process for a joint referral

3.1 Provision in the Act

Section 27M of the Act sets out the requirements for referral to the convener for advice before the Director of Civil Aviation makes a decision on an application for a medical certificate.

The referral is made by agreement in writing between the Director and the applicant.

3.2 Convener consideration of submissions

The convener must assess the application as soon as practicable. [s27M(2)(b)(i)]

The Director may (as well as the applicant) participate in the review process by providing relevant information to the convener. The Director will send the convener all relevant medical documents from the applicant's medical file. [s27M (5)]

In considering the application, the convener must call on the advice and expertise of at least one other person who the convener is satisfied is suitably qualified and experienced to assist in the convener's assessment of the application. [s27M (2)(b)(ii)]

The convener may decide that additional reports, tests or examinations are reasonably necessary to carry out his or her assessment of the application, and if so require the applicant to undertake them. [s27M (2)(b)(iii)]

The applicant is responsible for the payment for any additional reports, tests or examinations called for by the convener. [s27M (2)(b)(iii)]

If the convener seeks expert advice on interpretation of reports, the cost is the responsibility of the Director.

3.3 Convener's report

At the conclusion of the review the convener must report the results of his or her assessment to the Director, in writing. [s27M (2)(b)(v)]

Within 10 working days the Director must:

- consider the convener's report; and
- make his or her decision in writing; and
- provide the applicant with a copy of the convener's report; and
- a copy of the Director's decision.

[s27M (3)]

3.4 Applicant may not seek a review of the Director's decision

Under Section 27M (4) if an application for a medical certificate is referred to the convener jointly by the Director and the applicant, then the applicant may not ask the convener to review the Director's eventual decision.

Summary of timeframes for key steps in the convener review process

To ensure reviews are completed in a timely period, all participants in the review process should work within the following timeframes.

Step	Statutory requirement	Guideline
Application for convener to review Director's decision	Within 20 working days of a decision being made by the Director	
Director provides convener with relevant medical records and submission		Within 10 working days of receiving application
MOT copies Director's submission to applicant on behalf of convener		Within 5 working days of receiving Director's submission
Applicant may respond to material submitted by Director		Within 20 working days
Convener review		Within 1-6 months depending on case complexity
Director implements results or otherwise notifies applicant of reasons	Within 10 working days of receiving convener's report	

Medical Convener (MC) Review

