TE MANATŪ WAKA
MINISTRY OF TRANSPORT

Te Kāwanatanga o Aotearoa
New Zealand Government

Summary of submissions

Civil Aviation Bill, 2019 Exposure Draft

September 2021

Contents

Engagement on the draft Civil Aviation Bill

Te Manatū Waka Ministry of Transport (the Ministry) consulted on an exposure draft of the Civil Aviation Bill between May and August 2019. This document outlines key policy areas consulted on, and indicates, in some cases, where new policy has been developed. It provides a high-level summary of key feedback received during engagement.

All feedback has been considered and, where appropriate, has been reflected in the proposed Bill for introduction to the House of Representatives. In some cases, submissions led to revised policy and some considerations have been overtaken by new policy. As is often the case with public consultation, not every view could be accounted for. Thanks to all submitters for the time and effort put into engaging on these issues.

For more information on the Civil Aviation Bill policy process and to access proactively released papers, please visit https://www.transport.govt.nz/area-of-interest/air-transport/civil-aviation/

Information about the Bill is available on the Parliament website https://www.parliament.nz/en/pb/bills-and-laws/

What did the exposure draft cover?

The exposure draft comprised almost 400 clauses, reflecting policy agreed or agreed in-principle at the time. It was published alongside a commentary document that raised specific questions, including areas where Cabinet policy decisions had not yet been made.

The exposure draft was divided into 11 Parts plus nine Schedules (three Schedules with updated provisions):

Part	Title	Part	Title
1	Preliminary provisions	8	Aerodromes
2	Civil aviation system	9	International and domestic carriage of passengers and goods by air
3	Rules	10	Investigation, intervention, compliance, and enforcement
4	Aviation documents and medical certification	11	Regulations and miscellaneous provisions
5	Requirements for particular aviation participants	Schedule 1	Transitional, savings, and related provisions
6	Aviation security	Schedule 2	Medical certificates
7	International air services	Schedule 8	Airport Authority provisions identified for removal

Overall feedback

The Ministry received submissions from over 100 individuals and groups from across New Zealand, primarily from the aviation sector.

The majority of submitters agreed that modernising New Zealand's aviation legislation is well due.

There was support for most of the policy proposals reflected in the Bill, with constructive feedback provided on how these policies (such as "Just Culture" and drug and alcohol management) should be articulated in legislation. Robust discussion around which provisions to retain from the Airport Authorities Act 1966 and how the risks associated with unlawfully operated drones should be addressed, have aided further consideration of these proposals.

Part 1 - Preliminary provisions

Part 1 deals with preliminary matters, including specifying the purposes of this Act and defining terms. There was a reasonable degree of interest in this part, from a wide range of submitters. The Ministry heard from airports, commercial airline operators, smaller airline operators, unions, oversight groups and individuals.

What submitters said

- Purpose clauses - submitters stated that the purpose statement was 'nothing more than the existing vision statement of the Civil Aviation Authority'. There was also reference to the safety focus in clause 3, and the fact that there was no mention of the system also being cost-effective or efficient – leading to a concern that a 'safety at all cost' system may be unsustainable for smaller operators.

- Interpretation provisions – aerodrome - submitters stated that to combine the definition of 'aerodrome' (as in the Civil Aviation Act 1990) and 'airport' (as in the Airport Authorities Act 1966) would create unintended consequences and interpretation difficulties.

- Interpretation provisions – pilot-in-command – submissions were mixed, with some in support and some expressing concern that the definition was not sufficiently future focused, or that responsibility was attributed back to the operator (where no natural person was in command).

Response

The 'safety at all cost' concern has existed since a 2004 amendment that removed the concept of safety 'at reasonable cost' from the Minister's functions under the Civil Aviation Act. Amendments have been made to the purpose clauses to reflect the submitter's concerns, and more closely reflect the Transport Outcomes Framework that applies across all transport modes.

The Bill includes an amended definition of 'aviation security services' to be broad enough to include services performed by a person that is not employed by the Civil Aviation Authority.

The terms are considered to be clearly defined and fit for purpose.

No changes were made to the definition of pilot-in-command. The definition is adequately future-focused and allows for scenarios without a natural person involved.

Part 2 – Civil aviation system

Part 2 sets out the general obligations of aviation participants (including pilots-in-command). It also covers the regulatory oversight of the system, including the governance and objectives of the Civil Aviation Authority (the CAA), along with the powers and functions of both the Director of Civil Aviation and the Secretary for Transport. It also provides for matters relating to the role of Airways, and the Register of Aircraft and the Civil Aviation Records.

There was interest in this part from a wide range of submitters. The Ministry heard from airports, commercial airline operators, smaller airline operators, unions, oversight groups and individuals.

What submitters said

- CAA-related clauses (Board of CAA, Service Charter) – Submitters were concerned that the roles of the Board and the CAA were not clear. Submitters also commented that in cases where

a person has been appointed to assist in the resolution of disputes, it should not be at the discretion of the Director (i.e. that there should be an independent mechanism for reporting system performance issues to the Director and/or the Board).

- Clause 31 – Airways to be the sole provider of certain airways services. The Bill had proposed the repeal of latent legislation that would have enabled the repeal of the provision enabling Airways' statutory monopoly. Many submitters opposed this, stating that the ability to end the monopoly needed to be retained.

Response

The roles of the Board and the CAA were reviewed and the conclusion reached was that these were sufficiently clear, so no further changes were made to these clauses from the exposure draft.

The provision at clause 25(1)(d) is not at the discretion of the Director. It is the CAA that is empowered to appoint an appropriate independent person to assist.

With regard to Airways being the sole provider of airways services, there was merit in the submissions that stated that the ability to end the statutory monopoly should be retained. This was for two reasons – because technology and service changes may create conditions where a competitive entry by a new party is feasible, and that enshrining the monopoly may weaken incentives for Airways to find efficiencies.

Noting these submissions, the Bill proposes that Airways would retain its existing monopoly, but through a different mechanism – a *Gazette* Notice by the Minister. The Minister could also revoke that Notice.

Part 3 - Rules

Part 3 provides for the making of Civil Aviation Rules. There was less interest in this part, with comments coming largely from the NZ Law Society and industry representative groups.

What submitters said

- The time taken to refresh or update the Civil Aviation Rules – some submissions commented that there was little proactive identification of issues, and rules are not updated quickly enough to be effective.

- The rule making power was very broad and could have significant legislative effect.

- Concerns were expressed that material incorporated by reference was available only at the CAA offices in Wellington. This makes it difficult for industry participants to review the material if they are not based in Wellington. Submitters contend that these documents should be made available online.

Response

The legislation does not cover proactive identification of issues, as this is covered at an operational level by the CAA.

With respect to timeframes, no changes have been made, as the rule-making processes used for aviation align with those for maritime and land. The strong preference is that transport rules be made and maintained consistently, so that consistency has been kept in the Bill.

The Bill contains an amended rule making power (clause 52, previously clause 43), to specify that the Minister may make rules 'relating to civil aviation' for the purposes specified in the clause. This narrows the previously very broad rule making power by ensuring that all rules have a direct civil aviation purpose.

Many of the documents incorporated by reference in the Civil Aviation rules are documents that belong to the International Civil Aviation Organization or the Radio Technical Commission for Aeronautics. As such, they are often subject to copyright and the CAA is unable to publish these online without falling foul of intellectual property restrictions. For that reason, the arrangements for access to material incorporated by reference are reflected in the Bill as they were in the exposure draft.

Part 4 – Aviation documents and medical certification

Part 4 contains provisions relating to the application for and granting of aviation documents if aviation rules provide that an aviation document is required for participation in the civil aviation system. It includes provisions concerning air operator certification under Australia New Zealand aviation mutual recognition arrangements. Part 4 also contains key provisions relating to the Director's powers to investigate document holders, and suspend, revoke, and impose conditions on an aviation document. It contains offences relating to medical certification, the main provisions for which can be found in Schedule 2.

This Part of the Bill is relevant to every aviation sector participant that must hold a licence, permit, certificate, or other document issued under this Act or in respect of any person, aircraft, aerodrome, aeronautical product, or aviation-related service. Medical certification requirements directly affect commercial flight crew, air traffic controllers and private pilots, who, to exercise the privileges of their aviation document, must meet those requirements.

Submitters on this Part ranged from industry organisations, air operators and legal commentators to pilots and other interested individuals. Submissions focused on a relatively narrow range of key themes, as outlined below.

What submitters said

- Periodic renewal of aviation documents should not be necessary where, for example, the holder's operation is unchanged, a Safety Management System (SMS) is in place or medical requirements are met.

- Someone who has already met the fit and proper person test on entry into the aviation system and has maintained a clear record should not be required to undergo the test again or resubmit information.

- The Director's powers in relation to aviation documents should be subject to tighter constraints, such as a limit on the time taken to make decisions and on the duration of any suspension of an aviation document.

- The Bill should include safeguards to ensure the right balance between the Director's ability to source and use information and the rights of the participant to whom that information relates.

- The offence of causing unnecessary danger sets the threshold for offending conduct too low, which discourages reporting of human errors and is inconsistent with Just Culture.

Response

No changes have been made to the Bill in response because:

- The duration of aviation documents, recertification requirements and the relationship with SMS are matters for aviation rules, hence are out of scope for the Bill.
- It is the condition of any aviation document that the holder and any person having control over the exercise of the privileges under the document continue to be fit and proper. The system must allow for the review of fit and proper status, e.g. when upgrading to a commercial licence or senior position, or when the CAA has concerns about a document holder.
- A time limit on the Director's decision-making to maximum time periods would compromise the ability to ensure that each decision is fully considered in its specific context. Likewise, the duration of any suspension must be flexible so that it can reflect the circumstances of the case. Rigid time limits would create a risk of perverse or unintended outcomes.
- Information shared with the CAA is subject to sufficient safeguards. The Director's use of personal information must be in accordance with the Privacy Act. Also, clause 373 of the Bill includes new provisions regarding the confidentiality of information obtained by the CAA.
- An action or omission that was sufficiently serious to have caused unnecessary endangerment would most likely be outside the intended scope of Just Culture protections of the Bill. The strict liability nature of the offence is appropriate for its public safety context.

Part 5 – Requirements for aviation participants

Subpart 1 of Part 5 specifies duties to notify accidents and incidents. It continues obligations on pilots, operators and other aviation participants that currently are contained in the Civil Aviation Act 1990.

Subpart 2 addresses the potential consequences of drug and alcohol impairment that were highlighted by the TAIC investigation into the fatal hot-air balloon crash near Carterton in 2012.

It introduces a mandatory regime for drug and alcohol management in commercial aviation. Aviation operators must have drug and alcohol management plans (DAMPs) to reduce the risk of drug and alcohol impairment. DAMPs must require random testing of staff in safety sensitive activities for the presence of alcohol and/or drugs. The Director of Civil Aviation may undertake non-notified testing in accordance with the random testing requirements of an operator's DAMP.

What submitters said

The main themes from submissions that commented on subpart 1 were:

- A classification system is needed to make accident and incident reporting obligations involving unmanned aircraft clear and avoid unnecessary reporting of trivial events.
- The CAA's ability under clause 103(6) to request further information for law enforcement investigation purposes may mean that participants are not encouraged to notify accidents and incidents as intended by the new limitations in clauses 264 and 265.

- The continuation of current reporting requirements maintains the inherent conflict of interest in the CAA's ability to use data received as safety information in its role as prosecutor. Aviation safety reports should be received and processed by a separate entity like, ideally TAIC.

The dominant theme in submissions received saw support for the introduction of the proposed DAMP regime. Many offered technical suggestions or commented on points of detail that will come within the scope of rules and guidance that support DAMP implementation. Some suggested including less detail in the statutory provisions, some wanted more. Several noted drafting omissions or errors.

Specific matters raised in relation to subpart 2 included:

- Testing for drugs should relate to impairment and the Bill should ensure that undue action is not taken in cases of mere detection.

- Non-notified testing by the Director may result in a person being unable to work. Without the DAMP operator being forewarned, this could result in a safety service being stopped if a replacement is not available.

- How is it determined that a worker is safe to return to work after refusing a test or returning a non-negative test?

- The Bill should empower TAIC to test surviving pilots or crew after an aviation accident or incident.

Response

No change to subpart 1 has been made because:

- Rules will clarify the test for reporting of accidents and incidents involving unmanned aircraft.

- While information gained under clause 103(6) can be used for prosecution, the person providing the information should be protected in the circumstances specified in the Just Culture provisions of clause 265.

- The performance of the CAA's safety and security system and enforcement roles is a matter or regulatory practice, not a conflict of interest.

- A confidential reporting system has been trialled in the past and was not effective.

Drafting changes to subpart 2 have been made to correct errors and strengthen procedural requirements for testing by the Director. No further changes have been made because:

- Matters that can be addressed through rules and guidelines are outside the scope and adding prescriptive detail to the Bill could lock in measures that become outdated and difficult to change.

- Guidance will be provided regarding testable levels and operators should consult with workers or their representatives when developing DAMPs to suit their operations.

The Director testing power in the Bill gives sufficient flexibility to accommodate situations where it would be unreasonable or needlessly disruptive to undertake testing entirely without advanced notification.

- DAMPs must include a response plan, which will cover arrangements for a worker's return to safety sensitive duties.

- The Director testing power will enable testing both after an event and in circumstances where good cause for testing arises and could be delegated to TAIC investigators if that were desirable.

Part 6 – Aviation Security

This part covers the designation of 'airside security areas'. Since consultation on the exposure draft, it has also been amended to include the temporary designation of 'landside security areas'. It also covers aviation security services and aviation security screening powers. There was significant interest from commercial aviation operators, and aviation organisations in these provisions.

What submitters said

- There were mixed views on the Minister's power to designate airports into 'tiers' for security purposes.

- There was general support for clarifying aviation security powers regarding searching and seizing dangerous goods, and aviation security powers in landside areas.

- There were mixed views on the proposal to add flexibility to the layout of airport configurations, and for the Director to be able to allow groups of persons (e.g. non-passengers) to enter a security area.

- There was broad agreement that the conflict of interest in requiring AvSec to hold an aviation document issued by the Director of Civil Aviation should be resolved. However, most submitters did not agree that the proposal not to require Avsec to hold an aviation document, was the proper way to resolve the conflict.

- Feedback on adding airlines to the list of organisations that may provide aviation security services, was mostly supportive.

Response

The approach to airport security tiers was amended so that the Minister may designate an aerodrome as a Tier 1 security designated aerodrome and may designate other aerodromes as having any other tiers specified in the Civil Aviation Rules.

There were no changes to the approach of clarifying aviation security powers regarding searching and seizing dangerous goods, and aviation security powers in landside areas.

However, the Exposure Draft that was consulted on did not include the ability of the Minister to temporarily designate 'landside security areas'. 'Landside security area' powers have been added to the Bill to address the evolving aviation security threat environment. Members of the public will

have the opportunity to provide submissions in relation to the 'landside security area' powers, and the other provisions in the Bill, as part of the Select Committee process.

There were no changes to the policy to add flexibility to the layout of airport configurations, and for the Director to be able to allow groups of persons (e.g. non-passengers) to enter a security area.

There was no change in response to submissions on the Bill's proposal to resolve the conflict of interest in the Director of Civil Aviation's role by exempting AvSec from being required to hold an aviation document. AvSec is required to meet the same requirements and standards as a provider that is required to hold an aviation document. The CAA Board will be responsible for ensuring Avsec continues to meet the requirements and standards commensurate with those provided in Civil Aviation Rules. This will achieve the same outcome as requiring AvSec to hold an aviation document.

There was no change to the proposal to allow airlines to provide aviation security services.

Part 7 – International air services

Subpart one simplifies the licensing procedures for international airlines by consolidating different classes of licences and reducing the administrative requirements for licences where rights are not limited.

Subpart two improves the processes for authorising airline cooperative arrangements by making both the matters to be considered and the process more transparent.

What submitters said

- Subpart two attracted comprehensive submissions from both airlines and airports. Airlines supported the proposal to retain a sector specific regime. Airports opposed the proposal, preferring a move to a Commerce Act regime.

- Airports and other submitters proposed that approval of airline cooperative arrangements should move to the Commerce Commission and the economy wide competition regulator. These submitters considered that the Commerce Commission had both the expertise and powers to best fulfil this function. If the power was to remain with the Minister, these submitters suggested there needed to be specific reference to the impact in competition.

- Airlines and other submitters welcomed the improvement in the process for decision making and considered that retaining the Minister of Transport as the decision maker was appropriate given the importance of aero-political considerations.

Response

No changes were made to the institutional arrangements set out in the exposure draft. The Bill retains the Minister as the decision maker. Aero-political considerations were the key considerations here. Air Services Agreements, which are international treaties, and the international regulatory regime more broadly, constrain airlines from expanding markets or undertaking mergers. The expertise on these lies with the Minister, advised by the Ministry.

A requirement has been added for the Minister to be satisfied that the arrangements will result in a benefit to the public that would outweigh any lessening in competition that would result from giving effect to the provisions of the arrangements.

Part 8 – Aerodromes

This part contains provisions relating to airport authorities and joint venture airports.

What submitters said

- Submitters hoped that wider regulatory challenges would be addressed, particularly those observed in relation to regulation under the Commerce Act for some airports. Several submitters stated that they would like to see negotiate-arbitrate regulation introduced through the Bill as a requirement for New Zealand's international airports.

- Some airport operators and representative groups suggested that the use of the term "aerodrome" be reviewed and instead refer to "airports" to retain consistency between the current legislation and the Bill.

- Major comments relating to airport regulation are addressed in the section on Schedule 8.

Response

Consultation on this section attracted a number of comments on economic and funding questions that are beyond the scope of the Bill. While submissions in these areas were noted, they have not been actioned in further work for this reason, such as negotiate-arbitrate regulation for international airports in the Bill. The three main international airports are regulated though the Commerce Act which provides a pathway for additional regulation if deemed necessary.

The term "aerodrome" has been removed from this Part in the Bill and has been replaced by the term "airports". This is consistent with the provisions of the Airport Authorities Act that are set to be repealed and is more consistent for operators and across other legislation.

Notably, since public consultation but in consultation with industry, the regulatory regime for airports has been amended in the Bill. As a result, many comments on this section were superseded by later policy decisions. Airport authority status will be discontinued and is to be replaced by airport operator registration administered by the Secretary for Transport.

The Bill will provide for airports to be exempt from consulting customers on charges and capital expenditure under the Civil Aviation Act if they are subject to further regulation under the Commerce Act.

Part 9 – International and domestic carriage of passengers and goods by air

This part sets out provisions relating to airline liability in certain instances for international and domestic aviation.

What submitters said

- Two submitters opposed provisions for delay in airline services unless it is applied to other modes of transport. Another submitter considered airlines were wrongly identified as the sole responsible party where delays could be caused by other aviation providers

- One submitter suggested that a new provision empowering regulation regarding liability would be more appropriate than carrying over old provisions.

Response

No further changes to the Bill were considered necessary. The Bill primarily carries over the existing provisions but introduces the possibility of a claim being pursued in the Disputes Tribunal, which should make it easier for passengers to access.

Part 10 – Investigation, intervention, compliance, and enforcement

This part contains the inspection, monitoring and enforcement powers of the Director, and powers of the Minister to take action on the grounds of national security. It contains protections in relation to the reporting of safety information (Just Culture). It also contains provisions relating to aviation offences.

The commentary document also included consultation on options to address unlawful drone use. Some of the submissions received were endorsed by other submitters. Submitters ranged from model plane hobbyists and UAV operators, to airlines and airports.

What submitters said

The primary concerns raised were on the new power to seize, detain and destroy unlawfully operated drones were:

- the power may not be broad enough to accommodate airport employees and other non-Government entities looking to protect their airspace, and

- taking action against a drone in-flight may create additional hazards to people and property.

These perspectives were used to shape the analysis and the final policy proposal, which is now reflected in the Bill.

Response

The power to seize, detain or destroy a drone has been framed to ensure that a response officer can be any person (including an expert who is not employed by Government) who is deemed suitably trained and qualified by the Director of Civil Aviation, and who is appointed by the Director to perform that function. Implementation of this proposal will include further thought on how best to intervene against drones in different contexts. The final proposal agreed by Cabinet, following consultation, includes a power to seize the controlling mechanism from a drone operator, in recognition that this will often be safer than acting against the drone itself.

Part 11 – Regulations and miscellaneous provisions

Part 11 contains provisions relating to regulation making powers, including the power to make regulations concerning fees, charges, and levies. It also contains the Director's powers to make airworthiness directives and transport instruments.

Part 11 also contains provisions relating to the Minister's power to authorise airline cooperative arrangements.

Miscellaneous provisions include rights of appeal, powers of delegation, confidentiality of information and information disclosure and confidentiality and information disclosure.

What submitters said

The submissions on Part 11 focused more on individual concerns than wider themes, Airport submissions favoured retention of the Airport Authorities Act as a known quantity, while other submitters favoured its repeal and replacement as part of a wider Civil Aviation Act, as the Bill proposes. Specific matters raised included:

- Information disclosure regulations relating to passenger rights, if proposed in future, will need thorough consultation with industry to ensure requirements are achievable and internationally consistent.
- There should be more prescriptive procedures for determining fees and levies and oversight of revenue, together with specific arrangements for disputing charges.
- Consultation on transport instruments must be robust, the Director's ability to make instruments need to be subject to clear limits and instruments should not add to existing regulatory layers.
- Rights of appeal should be made more efficient and effective.
- All data and voice recordings, including air traffic control transcripts, should be protected in their entirety, to be consistent with 'Just Culture'.

Response

Consultation with stakeholders is standard procedure for any regulatory proposal and would be essential to ensure that any proposed information disclosure regulations were fit for purpose.

The fee and levy setting provisions in the Bill do not stand alone: they are complemented administratively by the more detailed transport system funding principles and government cost recovery impact requirements that guide the conduct of fee and levy reviews. As such measures apply generally and are subject to change, it would be anomalous to lock provisions of this nature into a single modal statute.

The Bill explicitly makes transport instruments subject to consultation with appropriate persons and organisations and it requires the scope of instruments to be determined by the empowering rule. Instruments will take the place of CAA notices rather than add to the quantum of regulatory measures.

The Bill has been amended to protect recordings from any type of approved data recorder installed on an aircraft from use in criminal proceedings against flight crew. Protection is not

extended to air traffic control transcripts, as these involve external communications, as opposed to a record of a flight crew's on-board actions.

Schedule 1 – Transitional, savings, and related provisions

The transitional, savings, and related provisions deal with the arrangements for transitioning between the current Act, and the incoming Bill. There was only one submission on these provisions, but it is worth noting that, at the time the exposure draft was released, Schedule 1 only covered the drug and alcohol management plan provisions. The transitional and savings provisions for other parts of the Bill have been developed after the exposure draft was released.

What submitters said

- The length of time for a transition for the coming into effect of the DAMP provisions is seen as being too long. The two-year period seemed excessive and a 12-month period would be preferable.

Response

Larger organisations may need the time to provide a DAMP for each of their employees, so no amendments were made to the transition period for the development of DAMPs. The provisions are drafted such that they will come into force on a date specified by Order in Council, however no later than 30 June 2023. The latest that a DAMP may be approved is two years after the commencement date. If an operator presents a DAMP to the Director for approval before that two year deadline, it will be in effect from the date of approval.

Schedule 2 – Medical certificates

Schedule 2 continues the detailed suite of provisions relating to medical certification that are currently contained in Part 2A of the Civil Aviation Act 1990. The Bill makes no substantive changes to these provisions, which were originally developed in close collaboration with the aviation community and provide a well-established scheme that all participants are familiar with.

Every person who holds an aviation document or is permitted under aviation rules to operate an aircraft solo as a pilot must meet medical certification requirements if required by the rules. Schedule 2 contains the framework for establishing that a person is medically fit to safely exercise the privileges of their aviation document and provides for review of, and appeal against decisions taken.

What submitters said

- Submissions on Schedule 2 raised a variety of mostly individual points, most being of a technical nature.

- There is no legislative reason for keeping the medical certification section of the existing Act in the body of the Bill, so it has been shifted into a Schedule of the Bill.

- There need to be safeguards in the Bill where information making adverse allegations against a participant's medical fitness is provided to the CAA/medical examiners by ex spouses or estranged family members.

- The subjective language 'reasonable grounds to believe' the Director's decision-making power under clause 5(2) reduces the prospect of a successful District Court challenge to a Director's decision and should be replaced by an objective 'belief on reasonable grounds' test.

- Submitters would like to see recognition of foreign medical certificates and on-going acceptance of medical certificates issued by foreign jurisdictions.

- Protection from liability for decisions taken in good faith should apply to all health practitioners (e.g. psychologists, nurses), who are in a position to know relevant aeromedical information on their patients that should be reported.

Response

The medical certification provisions are a self-contained code that fits more comfortably into a schedule. The change does not alter the legislative effect of these provisions.

The CAA established procedures for processing information received regarding a participant's medical fitness. The CAA carefully considers this information before any action is taken.

The Bill has been amended as proposed, to replace the subjective test with the objective belief on reasonable grounds test.

In the absence of any international agreement on the mutual recognition of medical certificates, automatic acceptance of foreign medical certificates is not proposed.

At this stage, there is no specific evidence that protection for decisions taken in good faith by health practitioners generally rather than doctors should be extended to other health practitioners, noting that health practitioners have scope to report under the health practitioners' code of conduct.

Schedule 8 – Airport Authority provisions identified for removal

The Schedule listed provisions that were proposed to be deleted from the new Act. Some of these provisions were considered obsolete, particularly in light of changes to local government legislation. Others hindered reaching commercial arrangements between airports and airlines.

Both the airline and airport sectors made comprehensive submissions on these provisions. Generally, airlines supported the approach being taken, while airports considered that the changes would upset vital existing ways of operating.

What submitters said

- Airlines strongly supported the proposal to remove the provision that airports can set prices as they see fit. They considered that the provision reinforces monopoly power by the airlines. Airports strongly opposed the change. They argued that the change would introduce considerable uncertainty into the price setting process and could lead to airlines refusing to pay charges.

- Airlines supported the proposal to remove the ability for airports to terminate leases without compensation. They argued that airports could negotiate leases with such clauses in them if necessary. Airports argued that given the complexity of undertaking development in an operational airport with multiple tenants such provisions were essential. They also noted that

all existing leases (some of which are very long term) had been negotiated with the existing legislation as background.

- Submitters recognised that some smaller airports were not able to operate fully commercially, but some opposed the blanket removal of the statutory requirement for airports to do so – arguing that it would have a negative impact on incentives.

- Airports thought in general that some of the provisions that were considered redundant were still needed. One extensive submission argued that additional provisions could be removed.

Response

Following consideration of the submissions, Ministers have agreed to retain the provision that airports could set prices, while removing the phrase "as they see fit".

Proposals have been developed for a new "Enforceable Regulatory Undertaking" regime after consultation on the exposure draft. As part of strengthening the requirements on airports to work with government agencies to accommodate government spatial requirements at airports, Ministers agreed to reinsert the ability of airports to terminate leases.

The default provision is that airports should be operated as a commercial undertaking. Cabinet has now provided an exception for aerodromes that are council-controlled organisations. This recognises that some councils own and operate their aerodromes as a public service.

In general, it is not necessary to replicate in the Bill powers that companies or local authorities have under other legislation.

Latent Legislation

This part covers legislative provisions to authorise in-flight security officers (IFSOs) to board and operate on flights, currently contained in the Civil Aviation Amendment Act 2007. These provisions are "latent" (not in force) and will not be commenced unless an Order in Council is made for that purpose.

What submitters said

- There were mixed views on these latent provisions, and submitters encouraged caution in using these powers.

Response

There have been some drafting changes, but no substantial changes to the latent provisions to authorise IFSOs to board and operate on flights. It is currently not the policy of the New Zealand Government to authorise the boarding and operation of IFSOs on flights to, from or within New Zealand, or operated by a New Zealand registered airline.

If an Order in Council to commence this latent legislation is to be considered, policy analysis will be necessary to consider mitigations and alternatives to the use of IFSOs, and (subject to security considerations) affected stakeholders will need to be fully consulted on the possibility of such arrangements.