

## Proactive Release

This document is proactively released by Te Manatū Waka the Ministry of Transport.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it. \*Note - N/A (see below)

Listed below are the most commonly used grounds from the OIA.

N/A - Document released in full. No information has been withheld for this proactive release

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> <li>(i) the Government of any other country or any agency of such a Government; or</li> <li>(ii) any international organisation</li> </ul>
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
9(2)(ba)(i)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public
9(2)(ba)(ii)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)



# Cabinet

## Minute of Decision

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

### Report of the Cabinet Legislation Committee: Period Ended 14 March 2025

On 17 March 2025, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 14 March 2025:

Out of Scope



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THE MINISTRY OF TRANSPORT TE MANATŪ WAKA

LEG-25-MIN-0029

**Civil Aviation (Independent Review Function)**

CONFIRMED

**Regulations 2025**

Portfolio: Acting Transport

Out of Scope



Out of Scope



Rachel Hayward  
Secretary of the Cabinet

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# Cabinet Legislation Committee

## Minute of Decision

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### Civil Aviation (Independent Review Function) Regulations 2025

**Portfolio**                      **Acting Transport (Hon James Meager)**

On 13 March 2025, the Cabinet Legislation Committee:

- 1        **noted** that in December 2024, the Cabinet Economic Policy Committee agreed that:
  - 1.1      the scope of reviewable decisions for the Independent Review Function will be the key relevant categories of decisions taken by (or on behalf of) the Director of Civil Aviation that are appealable to the District Court, and decisions on the granting of individual exemptions from regulations and the Civil Aviation Rules; and
  - 1.2      a two-tiered fixed fee be applied of \$1,000 (excl. GST) per review application for individuals, and \$1,500 (excl. GST) per review application for organisations;

[ECO-24-MIN-0314]
- 2        **noted** that the Civil Aviation (Independent Review Function) Regulations 2025 (the Regulations) will give effect to the decisions in paragraph 1;
- 3        **authorised** the submission of the Civil Aviation (Independent Review Function) Regulations 2025 [PCO 27052/6.0] to the Executive Council;
- 4        **noted** that a waiver of the 28-day rule is sought:
  - 4.1      so that the Regulations can come into force on 5 April 2025, in line with commencement of the Civil Aviation Act 2023;
  - 4.2      on the ground that the Regulations only confer a benefit on the public;
- 5        **agreed** to waive the 28-day rule so that the Regulations can come into force on 5 April 2025.

Tom Kelly  
Committee Secretary

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**Attendance (See over)**

**Present:**

Rt Hon Winston Peters  
Hon Louise Upston (Chair)  
Hon Brooke van Velden  
Hon Judith Collins KC  
Hon Simon Watts  
Hon Casey Costello  
Hon Chris Penk  
Hon Penny Simmonds  
Stuart Smith, MP  
Jamie Arbuckle, MP  
Tod Stephenson, MP

**Officials present from:**

Officials Committee for LEG

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**IN CONFIDENCE****In Confidence**

Office of the Acting Minister of Transport

Chair, Cabinet Legislation Committee

**CIVIL AVIATION (INDEPENDENT REVIEW FUNCTION)  
REGULATIONS 2025****Proposal**

- 1 This paper seeks authorisation to submit the Civil Aviation (Independent Review Function) Regulations 2025 (the Regulations) to the Executive Council.

**Policy**

- 2 The Civil Aviation Act 2023 (the 2023 Act), which comes into force on 5 April 2025, introduces a new Independent Review Function (IRF) to enable applicants to seek expert independent reviews of certain decisions made by (or on behalf of) the Director of Civil Aviation (the Director).
- 3 The function was created in response to stakeholder concerns – expressed in submissions on the Civil Aviation Bill – about the time and costs of appealing decisions made by the Director through the courts, and the court system’s lack of expertise on civil aviation matters. Submissions asserted that it can take three to four years before a hearing in the District Court, and costs can exceed \$300,000.
- 4 The IRF is intended to provide an expert, independent review option that is faster and less costly than the court system. It will also promote transparency, timeliness, and accountability, and support improvements in decision-making over time.
- 5 The 2023 Act leaves the scope of decisions to be covered by the IRF to be specified in regulations. In December 2024, the Cabinet Economic Policy Committee agreed to the scope of reviewable decisions and applicant fees for the IRF [ECO-24-MIN-0314 refers]. The Regulations give effect to these decisions, and set the scope of reviewable decisions as:
  - 5.1 the key relevant categories of decisions taken by (or on behalf of) the Director that are appealable to the District Court; and
  - 5.2 decisions taken by (or on behalf of) the Director on the granting of individual exemptions from regulations and the Civil Aviation Rules.
- 6 The Regulations also set a two-tiered fixed fee for applicants, of \$1,000 (excl. GST) per IRF review application for individuals, and \$1,500 (excl. GST) per IRF review application in any other case (such as for organisations).

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*The scope of reviewable decisions has been clarified in response to consultation with the Civil Aviation Authority (CAA)*

- 7 The Regulations were drafted to include the key relevant categories of decisions taken by (or on behalf of) the Director that are appealable to the District Court, including the issue of improvement notices.<sup>1</sup> However, these decisions are generally made by inspectors, not the Director (or their delegate). This means they would not generally be reviewable, as the IRF can only review decisions made by the Director (or their delegate). The Director has the power to issue improvement notices but the CAA expects such use of the power to be rare.
- 8 I have therefore decided to retain the provision in the Regulations enabling decisions made by the Director to issue improvement notices to be reviewable in circumstances where the Director uses this power. The Regulations now clarify that this review right will apply only where an improvement notice decision is made by the Director (or their delegate) rather than an inspector.

### Timing and 28-day rule

- 9 The Regulations will come into force on 5 April 2025, in line with the Civil Aviation Act 2023 coming into force.
- 10 I seek a waiver of the 28-day rule that secondary legislation made by Order in Council must not come into force until at least 28 days after it has been notified in the New Zealand Gazette.
- 11 The IRF will only confer a benefit on the public by providing a more affordable alternative review process to the court system. On this ground I seek a waiver of the rule, which is consistent with the Cabinet Manual 2023.

### Compliance

- 12 The Regulations comply with:
- 12.1 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee
  - 12.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
  - 12.3 the principles and guidelines set out in the Privacy Act 2020
  - 12.4 relevant international standards and obligations
  - 12.5 the principles of the Treaty of Waitangi.

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<sup>1</sup> An improvement notice requires a person or organisation to take a specific action to remedy or prevent a contravention of civil aviation legislation. They are a regulatory tool that enables a graduated approach to ensuring compliance, providing an intermediate step between a warning and more serious regulatory or enforcement actions.

### Regulations Review Committee

- 13 There are no grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives as a Standing Order requirement.

### Certification by Parliamentary Counsel

- 14 The draft Regulations were certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

### Impact Analysis

- 15 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet policy approval relating to the Regulations was sought [ECO-24-MIN-0314 refers].

### Publicity

- 16 The Regulations will be notified in the New Zealand Gazette.

### Proactive release

- 17 I intend to proactively release this paper within 30 business days of final decisions being taken by Cabinet, subject to any redactions appropriate under the Official Information Act 1982.

### Consultation

- 18 The following agencies were consulted: the Ministry of Justice, the Treasury, the Parliamentary Counsel Office and the Civil Aviation Authority. The Department of the Prime Minister and Cabinet was informed.

### Recommendations

The Acting Minister of Transport recommends that the Cabinet Legislation Committee:

- 1 **note** that on 18 December 2024 the Cabinet Economic Policy Committee agreed that:
- 1.1 the scope of reviewable decisions for the Independent Review Function will be the key relevant categories of decisions taken by (or on behalf of) the Director of Civil Aviation that are appealable to the District Court, and decisions on the granting of individual exemptions from regulations and the Civil Aviation Rules; and
  - 1.2 a two-tiered fixed fee be applied of \$1,000 (excl. GST) per review application for individuals, and \$1,500 (excl. GST) per review application for organisations [ECO-24-MIN-0314 refers];
- 2 **note** that the Civil Aviation (Independent Review Function) Regulations 2025 (the Regulations) will give effect to the decisions referred to in paragraph 1;



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- 3 **authorise** the submission of the Regulations to the Executive Council;
- 4 **note** that a waiver of the 28-day rule is sought:
  - 4.1 so that the Regulations can come into force on 5 April 2025, in line with commencement of the Civil Aviation Act 2023;
  - 4.2 on the ground that the Regulations only confer a benefit on the public;
- 5 **agree** to waive the 28-day rule so that the Regulations can come into force on 5 April 2025.

Authorised for lodgement

Hon James Meager

Acting Minister of Transport

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