



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.

Civil Aviation Bill: Confirmation of Key Policy Decisions

Portfolio **Transport**

On 15 April 2019, following reference from the Cabinet Economic Development Committee, Cabinet:

Background

- 1 **noted** that the proposals in the paper under CAB-19-SUB-0167 are the result of a review of the Civil Aviation Act 1990 and Airport Authorities Act 1966 that was completed in 2014;
- 2 **noted** that the proposed Civil Aviation Bill will also incorporate legislative changes arising from the following Cabinet decisions:
 - 2.1 to reduce the risk of alcohol and drug impairment in the commercial aviation sector [CAB-16-MIN-0184];
 - 2.2 to improve aviation security as proposed in the Domestic Aviation Security Review [NSC-16-MIN 0001];

Section I: Confirmation of, or amendment to, policy decisions made by the previous government

- 3 **noted** that in 2016, the previous government agreed to a number of changes for inclusion in the Civil Aviation Bill covering aviation security and safety issues, and aviation economic regulation matters;
- 4 **noted** that the Minister of Transport is not recommending any significant changes to the previous government's decisions, except for:
 - 4.1 decisions relating to national security;
 - 4.2 minor changes relating to the protections of safety information 'Just Culture' policy;

Authorisation regime for airline cooperative arrangements

- 5 **agreed** that in determining whether an airline cooperative agreement is in the public interest, the Minister shall take into account the main and additional purposes of the Act;
- 6 **agreed** to the inclusion of minor or technical matters that may arise during the consultation process, including to provide interface provisions between the civil aviation legislation and the Commerce Act 1986, if required;

Ensuring issues of national security are appropriately considered

7 **agreed** that the Civil Aviation Bill include measures to enable the risks to New Zealand's national security that may arise from the civil aviation system to be mitigated as follows:

7.1 empowering the Minister, on the basis of national security concerns, to issue a notice:

7.1.1 preventing entry of an operator or operation into the civil aviation system;

7.1.2 removing any operator or operation from the civil aviation system;

7.1.3 imposing conditions on any operator or operation;

7.2 enabling the Minister to create civil aviation rules prescribing when an application for the issue or renewal of an aviation document is subject to national security considerations;

National security as part of the fit and proper assessment

8 **noted** that in October 2016, the previous government directed officials from both the Ministry of Transport and the New Zealand Security Intelligence Service to consider whether national security should be something the Director of Civil Aviation must consider as part of the fit and proper test, and the cost of doing so, before reporting back to Cabinet [CAB-16-MIN-0568];

9 **noted** that officials from the Ministry of Transport and the New Zealand Security Intelligence Service consider that such an amendment would be of limited benefit and would impose significant costs;

10 **noted** that officials consider existing aviation security requirements and controls, together with the proposed national security considerations as set out above, appropriately address the national security risks from the civil aviation system;

Withheld to maintain the constitutional conventions which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

11 [REDACTED]

12 **agreed** that, at this stage, it is not necessary to include a national security criterion as part of the fit and proper test, unless further work reveals that this is necessary;

Just Culture

13 **noted** that the Civil Aviation Bill contains provisions that state that enforcement and/or administrative action should not be taken by the Director of Civil Aviation in respect of infringements of Civil Aviation Act, or rules and regulations made under it, which come to the Civil Aviation Authority's attention through an incident report filed under the Authority's incident reporting system;

14 **noted** that these protections do not apply if the Director of Civil Aviation considers that it is in the public interest to take enforcement action, and in the interest of aviation safety to take administrative action, and when these interests outweigh the safety benefits of full, accurate and timely incident reporting;

- 15 **agreed** that the Bill include provisions that prevent the use of incident or accident reports in criminal proceedings against the individual who provided the report;
- 16 **agreed** that the Bill include a confidentiality provision, modelled on similar provisions in the Health and Safety at Work Act 2015, that dictates under what circumstances the Civil Aviation Authority may publish or disclose information it obtains or gains access to as part of its functions and powers;

Section II: New policy decisions requiring agreement

Issue 1: Definition of accident to include unmanned aircraft (drones)

- 17 **agreed** to include a definition of ‘accident’ in the Civil Aviation Bill that is consistent with Annex 13 to the Convention on International Civil Aviation, which includes unmanned aircraft;
- 18 **agreed** that the Civil Aviation Bill require notification of an accident involving unmanned aircraft, where required to do so by Civil Aviation Rules made under the Act;

Issue 2: Amendments to pilot-in-command provisions to allow for unmanned aircraft (drones)

- 19 **agreed** that the Civil Aviation Bill ensure that in the absence of a pilot, the duties, powers and responsibilities of the pilot-in-command fall to the operator of the aircraft;

Issue 3: Detention, seizure and destruction of drones

- 20 **agreed** that the commentary document includes a section that seeks stakeholder views on options to provide law enforcement agencies with powers necessary to detain, seize or destroy drones;

Issue 4: Offence provisions relating to the Civil Aviation (Safety) Levies Order 2002

- 21 **agreed** that the Civil Aviation Bill include offences for:
- 21.1 failure to keep or maintain records as required by a levy order;
 - 21.2 failure to submit an activity order as required by a levy order;
 - 21.3 knowingly providing an activity return that is false or misleading;

Issue 5: Addition of ‘airlines’ to the list of organisations permitted to provide aviation security services

- 22 **agreed** that in order to enable future flexibility in the delivery of regulated aviation security services, the Civil Aviation Bill include ‘airlines’ as a third authorised provider of regulated aviation security services;

Issue 6: Replacing ‘consent’ requirements in section 79A of the Civil Aviation Act 1990 with ‘consult’

- 23 **agreed** that the Civil Aviation Bill require the Minister to consult with a relevant aviation document holder and the Director of Civil Aviation before a notice is issued specifying that only the Aviation Security Service can provide aviation security services at a security designated aerodrome or installation;

Issue 7: Assaulting an Aviation Security Officer and killing, injuring or obstructing an Aviation Security Service dog

- 24 **agreed** that the Civil Aviation Bill establish specific offences, consistent with similar offences found in other regulatory regimes, for:
- 24.1 assaulting an Aviation Security Officer;
 - 24.2 killing or injuring a dog used by the Aviation Security Service;
 - 24.3 obstructing a dog used by the Aviation Security Service;

Issue 8: Infringement offence for being found in a security area without being screened, or without authorisation

- 25 **agreed** that the Civil Aviation Bill create an infringement offence for being found in a security area without being screened, or without authorisation;

Issue 9: Transport instruments

- 26 **agreed** that the Civil Aviation Bill create an additional power for the Director of Civil Aviation to make 'transport instruments' pursuant to Civil Aviation Rules and regulations;

Issue 10: Minor changes relating to levies

- 27 **agreed** that the Civil Aviation Bill:
- 27.1 provide for the ability for levy regulations to prescribe the basis on which the levy is to be calculated, in addition to the ability to set a levy rate;
 - 27.2 omit the requirement that levy orders must be confirmed by the House of Representatives (while preserving the disallowance process);
 - 27.3 omit the requirement that the Minister must be satisfied that the Civil Aviation Authority's income from other sources is not or will not be sufficient to enable it to perform its functions under the Act without the imposition of a levy at the rate recommended;
 - 27.4 expand the levy making power to allow levies to be imposed on aviation participants;

Issue 11: Airline liability

- 28 **agreed** that the Civil Aviation Bill:
- 28.1 make clear that the Disputes Tribunal has jurisdiction over claims made under civil aviation legislation for lost, delayed and damaged baggage, and for delayed flights;
 - 28.2 clarify how proceedings may be brought under provisions relating to airline liability for delay, and for damaged, lost and delayed baggage;
 - 28.3 include new regulation making powers that can require the disclosure of information regarding passenger rights;

Issue 12: Simplification of licensing provisions

- 29 **agreed** that the Civil Aviation Bill:
- 29.1 omit reference to a separate category of open aviation market licence;
 - 29.2 amalgamate provisions relating to issuing licences to New Zealand and foreign airlines;

Issue 13: Modernise airport authorities regime

- 30 **agreed** that the Civil Aviation Bill omit provisions that are outdated or obsolete in light of the Local Government Act 2002 and other legislation;

Section III: Consultation and release of an exposure draft of the Bill

- 31 **agreed** to the release of an exposure draft of the Civil Aviation Bill and an accompanying commentary document to ensure proper engagement with the sector;
- 32 **agreed** that minor or technical changes may be made to the exposure draft and commentary document prior to release;
- 33 **authorised** the Minister to approve changes, consistent with the Cabinet-approved policy, to the Civil Aviation Bill, including changes to:
- 33.1 the arrangement of the Bill and its provisions;
 - 33.2 improve consistency within the Bill and with other equivalent legislation, including framing of offences, liability and penalty levels, in consultation with the Ministry of Justice;
 - 33.3 ensure the legislation is technology neutral and is able to cater for new technology and digital processes;
 - 33.4 remove or update redundant, confusing or inconsistent requirements;
- 34 **agreed** to release, at the appropriate time, following a review for consistency with the Official Information Act 1982:
- 34.1 the paper under CAB-19-SUB-0167, and the relevant previous Cabinet paper on the policy decisions reflected in the Civil Aviation Bill;
 - 34.2 any analysis of submissions developed as part of the public consultation on the exposure draft of the Civil Aviation Bill;
- 35 **noted** that if any significant issue arises during the consultation on the exposure draft, the Minister of Transport will report back to Cabinet before finalising the Bill for introduction;
- 36 **authorised** the Minister of Transport to make decisions that are consistent with the decisions the paper under CAB-19-SUB-0167, provided that these decisions are confirmed when the Bill is considered for introduction;

Legislative implications

- 37 **invited** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above proposals, including any necessary consequential amendments (including to Civil Aviation Rules), savings and transitional provisions.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:

Prime Minister
Deputy Prime Minister
Minister of Transport

Released by the Minister of Transport