



Cabinet

Minute of Decision

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Review of the Civil Aviation Act and Airport Authorities Act: Key Policy Decisions

Portfolio Transport

On 31 October 2016, following reference from the Cabinet Economic Growth and Infrastructure Committee (EGI), Cabinet:

Background

1 **noted** that on 23 July 2014, EGI agreed to the release of a consultation document on the review of the Civil Aviation Act 1990 (the CA Act) and the Airport Authorities Act 1966 (the AA Act) [EGI Min (14) 15/1];

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

2 [REDACTED]

3 **noted** that the paper under CAB-16-SUB-0568 will be publicly released at an appropriate time, subject to necessary withholdings under the Official Information Act 1982;

Aviation safety

4 **agreed** that the CA Act be amended to provide a framework which states that:

4.1 enforcement and/or administrative action should not be taken in respect of unpremeditated or inadvertent infringements of the law, which come to an enforcement agency's attention through an incident report filed under a Civil Aviation Authority incident reporting system;

4.2 these protections shall not apply to any of the following circumstances:

4.2.1 where the incident report provided is not a full and accurate account of the incident;

4.2.2 where it is believed on reasonable grounds that the person's behaviour was considered to be reckless or the person demonstrated repetitive at-risk behaviour;

4.2.3 where it is considered in the public interest to pursue enforcement action, or where the Director of Civil Aviation considers it is in the interests of aviation safety to pursue administrative action;

- 5 **agreed** that section 10(1) of the CA Act be amended to include the following matters that the Director of Civil Aviation routinely considers or takes into account as part of a fit and proper person assessment:
- 5.1 whether a person has a dependency on alcohol and/or drugs;
 - 5.2 a person's compliance history with transport security regulatory requirements in New Zealand or in another country;
- 6 **directed** officials from the Ministry of Transport to engage with the NZSIS and the Civil Aviation Authority, to determine the best approach to:
- 6.1 address the risk that arises from a person wishing to operate in the New Zealand aviation system who may pose a threat to national security, including a possible further amendment to the criteria for fit and proper person test under section 10 of the CA Act 1990;
 - 6.2 address the resource implications of implementing such a regime;
- 7 **invited** the Minister of Transport and the Minister in Charge of the NZSIS (joint Ministers) to report back to Cabinet 2017 with a recommended policy response on the issues referred to in paragraph 6;
- 8 **agreed** that section 10 of the CA Act, which sets out the criteria for fit and proper person tests, be amended to clarify that the 'seek and receive' provisions authorise an organisation to provide information to the Director of Civil Aviation, without breaching the Privacy Act 1993;
- 9 **noted** that the Civil Aviation Reform Bill will also incorporate legislative changes arising from recent Cabinet decisions:
- 9.1 to reduce the risks of alcohol and drug impairment in the commercial aviation sector [CAB-16-MIN-0020];
 - 9.2 improve aviation security as proposed in the Domestic Aviation Security Review [NSC-16-MIN 0001];

Offences and penalties

- 10 **agreed** to include a recklessness component to section 46B of the CA Act, which makes it an offence to provide fraudulent, misleading or intentionally false statements to obtain a medical certificate;
- 11 **agreed** to amend the limitation periods for the following offences relating to the disclosure of information in the CA Act to 12 months from when the offence was detected:
- 11.1 section 46 (acting without necessary aviation document);
 - 11.2 section 46A (acting without a medical certificate);
 - 11.3 section 46B (making a fraudulent, misleading or intentionally false statement to obtain a medical certificate);
 - 11.4 section 46C (failure to disclose information required by the Director);
 - 11.5 section 49 (carrying on a scheduled international air service without a licence or contrary to a licence);

11.6 section 52(B) (failure to report an accident or incident);

Aviation security

- 12 **agreed in principle**, subject to further consideration of the appropriate thresholds and protections around when and how those powers can be exercised, to amend the CA Act to clarify that the Aviation Security Service has authority within a security designated aerodrome to:
- 12.1 search vehicles and unattended items;
 - 12.2 use Explosives Detection Dogs to support the Aviation Security Service in carrying out its functions, duties and powers under the Act;
 - 12.3 better align the requirements relating to search in the landside with those in the airside parts of any security designated aerodrome, including requirements relating to:
 - 12.3.1 when searches are permitted;
 - 12.3.2 how searches are conducted;
 - 12.3.3 what happens with anything that is found in the course of a search;
- 13 **agreed** to amend the CA Act to allow aviation security officers to retain dangerous goods for the purposes of evidence;
- 14 **agreed** to amend the CA Act to clarify that:
- 14.1 if dangerous goods have been detected by aircraft crew or a border agency, the Director of Civil Aviation, or any other person authorised by the Director, may seize and retain those goods to determine whether it was lawful to carry them;
 - 14.2 subject to this enquiry, the Director may retain the goods for enforcement purposes;
 - 14.3 any enforcement decision would be at the Director's discretion;
- 15 **agreed** to amend the CA Act to improve the airport identity card (AIC) regime to:
- 15.1 require people in security and security enhanced areas to produce, on request by authorised employees of the Civil Aviation Authority, including the Aviation Security Service, the AIC or other identity documents;
 - 15.2 give the Aviation Security Service the authority to seize an AIC or other identity documents when they are being used:
 - 15.2.1 in breach of the CA Act or Civil Aviation Rules; or
 - 15.2.2 in circumstances where authorisation has been withdrawn or where the AIC has expired;
 - 15.3 define the term 'airport identity card';
 - 15.4 address minor inconsistencies in terminology between the CA Act and Civil Aviation Rules;

- 16 **agreed** to amend the CA Act to require:
- 16.1 an aerodrome operator to seek the approval of the Director for any proposed aerodrome layout (within a security designated aerodrome) that would allow the entry into any security area of persons contrary to the requirements in the Act and Rules;
 - 16.2 that the approval must be published in the Gazette;
 - 16.3 that the Director must issue a Notice under section 77B of the Act directing the Aviation Security Service to screen and conduct searches at that aerodrome;
- 17 **agreed** to amend the CA Act and any associated Civil Aviation Rules to:
- 17.1 remove the requirement for the Aviation Security Service to hold an aviation document;
 - 17.2 specify that the Aviation Security Service is required to meet requirements and standards commensurate with those provided in Civil Aviation Rules;
 - 17.3 repeal any provisions relating to the Aviation Security Service that are necessary to support this proposal;
 - 17.4 remove conflicts of interest and simplify institutional arrangements within the Civil Aviation Authority for the provision of Aviation Security Services;
- 18 **noted** that there is not a strong case to move to a contestable service delivery model at this time;
- 19 **agreed** to amend the CA Act to make it explicit that the Aviation Security Service can search hold baggage (checked luggage) without the consent of the passenger, where there is a risk to aviation safety or security that requires an immediate response;
- 20 **agreed** to amend the definition of ‘aviation security officer’ in the CA Act, to facilitate the use of New Zealand Defence Force personnel in accordance with the Defence Act 1990;
- 21 **agreed** to amend section 77A of the CA Act to allow the Minister of Transport to delegate to the Director the power to exclude any flight from any screening requirements in a section 77A Notice when the Director considers it unnecessary in specific circumstances;

National security

- 22 **agreed** to amend to the CA Act to include measures to enable the risks to New Zealand’s national security and/or national interest that may arise from aircraft operations within the civil aviation system, to be mitigated as follows:
- 22.1 allow the Minister to make Civil Aviation Rules to preserve New Zealand’s national security and/or national interest;
 - 22.2 allow the Director of Civil Aviation to make emergency Civil Aviation Rules to preserve New Zealand’s national security and/or national interest;
 - 22.3 before making any decision to make emergency Civil Aviation Rules, the Director of Civil Aviation must consult with, and have the support of, the Minister Responsible for the Government Communications Security Bureau or the Minister in Charge of the New Zealand Security Intelligence Service;

- 22.4 where a person is subject to a Civil Aviation Rule that requires a national security assessment before issuing a licence (of some kind), the Director of Civil Aviation must consult with Security Ministers. If the Ministers referred to in paragraph 20.3 above issue a certificate that the activity poses a risk to national security, the Director of Civil Aviation must not issue the licence;
- 22.5 the Director of Civil Aviation may suspend, revoke, and impose conditions on an aviation document on national security/national interest grounds on the written advice of the Minister Responsible for the Government Communications Security Bureau or the Minister in Charge of the New Zealand Security Intelligence Service;
- 22.6 any person whose aviation document was suspended, or revoked, or had conditions put on it; may lodge a complaint to the Inspector-General of Intelligence and Security;

Airline cooperative arrangements

- 23 **agreed** to amend the CA Act to replace the existing section 88, which sets out the authorisation arrangements for airline cooperative arrangements, with new provisions which provide for:
- 23.1 an explicit requirement that the Minister of Transport assess the costs and benefits, and whether the arrangements are in the public interest;
- 23.2 a transparent process the Minister of Transport and Ministry of Transport must follow to make a decision, including requirements to consult stakeholders and publish decisions;
- 23.3 providing for time limits and conditions to be attached to any approval, and for approval to be varied or revoked;

International airline licensing regime

- 24 **agreed** to amend section 87D of the CA Act to designate the Secretary of Transport as the licensing authority for allocation of routes and/or capacity rights where these are unlimited, for scheduled international air services licenses for New Zealand international airlines;
- 25 **agreed** to amend section 87ZE of the CA Act to include a new category of international air services, to cater for commercial non-scheduled international services;

Airports

- 26 **agreed** to repeal section 4A of the AA Act 1966, which allows airport companies to set charges as they see fit;

Legislative framework

- 27 **noted** that the review referred to in paragraph 1 above consulted on the structure of the CA Act and the AA Act, and whether there was value in amalgamating the two Acts;
- 28 **noted** that officials will engage with the Parliamentary Counsel Office and the Legislation Design and Advisory Committee to ensure the final shape of the legislation reflects best practice legislative drafting;
- 29 **agreed** to include in the new Act a purpose statement covering the following dimensions:
- 29.1 to facilitate/contribute to the operation of a safe and secure civil aviation system;

- 29.2 to provide for the regulation of foreign and international New Zealand airlines;
 - 29.3 to provide a framework for international and domestic airline liability;
 - 29.4 to provide a framework of functions and powers relevant to establishing, developing and operating airports;
 - 29.5 to preserve New Zealand's national security and national interest;
 - 29.6 to implement New Zealand's international obligations, including treaties and other international agreements relating to civil aviation;
- 30 **agreed** that the existing objective statements in the CA Act be amended to align with the purpose statement;

Minor issues

- 31 **agreed** to the amendments to the CA Act and the AA Act as outlined in Appendix 1 to the paper under CAB-16-SUB-0568, including to:
- 31.1 add the term 'security' in sections 17, 18 and 21 of the CA Act, to ensure the Director of Civil Aviation has the explicit authority to use his/her powers in the interests of aviation security;
 - 31.2 amend, as appropriate, sections 10(6) and (7), and 19(6)(a) of the CA Act to allow the Director of Civil Aviation to withhold prejudicial information consistent with the Privacy Act 1993 and Official Information Act 1982;
 - 31.3 amend the title of section 65D in the CA Act from 'Foreign aircraft outside New Zealand' to 'Liability for offence on foreign aircraft outside New Zealand' to better reflect what the offence covers;
 - 31.4 add the word 'aerodrome' in sections 21(1) and 21(2) of the CA Act to provide the Director of Civil Aviation the necessary powers to impose prohibitions and conditions on aerodromes where the Director believes on reasonable grounds, action is necessary to prevent danger to persons or property;
 - 31.5 insert a new provision in the CA Act to allow tariffs to be submitted for authorisation where required by the other government and the relevant air services agreement;
 - 31.6 repeal the Commission Regime provisions in section 89 of the CA Act;
 - 31.7 amend section 72I(3)(b) of the CA Act to clarify that the Director of Civil Aviation can take action in relation to the safety and security provisions only;
 - 31.8 amend the CA Act to ensure consistency in how the terms 'on reasonable grounds' and 'reasonable grounds to believe' are expressed in the Act;
 - 31.9 amend the CA Act to:
 - 31.9.1 reduce the timeframe the Director of Civil Aviation can suspend an aviation document if there is an overdue fee from 6 to 4 months, to encourage timely payment of fees and charges and assist in the Civil Aviation Authority's process of debt collection [sections 41(1) and 41(2)];

- 31.9.2 clarify that the Civil Aviation Authority may decline to process an application or provide a service until an outstanding debt has been paid to remove uncertainty and prevent disputes [section 41(4)];
- 31.9.3 allow the Civil Aviation Authority to require a limited audit of levy payers at the Authority’s own cost, to ensure that the information it receives is accurate [section 42B];
- 31.9.4 clarify that fees and charges can be prescribed for reimbursing the Civil Aviation Authority for a broad range of costs associated with the Director and Medical Convenor’s functions, relating to medical certification, to make it clear that the provision is intended to cover a broad range of services and corporate overheads associated with the Director and Convenor’s functions under Part 2A of the CA Act [section 38(1)(ba)];
- 31.9.5 repeal section 72F(3), which states that no provision specifying any liabilities the Authority intends to incur may be included in a statement of intent without the concurrence of the Minister of Finance, as this provision is outdated;
- 31.9.6 repeal section 72CA, which states that the Aviation Security Service may pay to the Crown any surplus funds, as this provision is not consistent with the Crown Entities Act 2004 or a 2014 Cabinet decision that allows the Service to carry a reserve within a range of \$6–12 million (which then acts as a trigger to amend the passenger security charge);
- 31.10 amend the definition of ‘specified airport company’ in the AA Act from a threshold based on annual revenue to one based on passenger movements;
- 31.11 amend the AA Act to require all airport companies to consult on certain capital expenditures, to mitigate the risk that airport companies undertake capital expenditure to increase profit, without providing additional services or facilities that are wanted or sufficiently valued by airport users;
- 31.12 amend the AA Act to provide for the following thresholds:

Annual passenger and/or aircraft movements	Threshold for consultation
< 1 million	> \$5 million
> 1 million but < 3 million	> \$10 million
> 3 million	> \$30 million

- 31.13 repeal section 3BA and 4(2) in the AA Act because changes in the commercial and regulatory environment airports operate in have made these provisions redundant, and commercial incentives and other legislation provide adequate safeguards and coverage;
- 31.14 define in the AA Act what ‘publicly available’ means for the purposes of information disclosure under that Act;
- 31.15 amend the definition of a joint venture airport in the AA Act, to ensure that it is clear that the provisions of Part 10 apply to the Crown’s existing joint venture partners;

- 32 **agreed** to repeal sections 35(1) to (3) of the Civil Aviation Amendment Act 1992 relating to the Airways Corporation, as this is unused or latent legislation that has not been brought into force since enactment, and there is no ongoing reason for its retention;

Legislative implications

- 33 **invited** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the relevant paragraphs above, including any necessary consequential amendments (including to Civil Aviation Rules), savings and transitional provisions;
- 34 **authorised** the Minister of Transport to make decisions, consistent with the overall policy decisions in the paper under CAB-16-SUB-0568, on any issues which arise during the course of drafting.

Michael Webster
Secretary of the Cabinet

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