

Independent Review Function

Review of Director of Civil Aviation's decisions

Guidance for applicants

April 2025

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Preface

The purpose of this guidance document is to provide aviation sector participants with an overview of the Independent Review Function, how to apply for an independent review and how the review process will be carried out.

The Independent Review Function, enabled by the Civil Aviation Act 2023, provides a faster and less costly route than the court process for sector participants to raise genuine concerns about regulatory decisions that have been made by (or on behalf of) the Director of Civil Aviation, and for their investigation by a neutral and impartial party.

Scope

This document is intended to be used as a guide for reference and not taken as a substitute for the provisions in the Civil Aviation Act 2023 or relied on as legal advice.

Who this document is for

This document is prepared for the aviation sector participants who are interested in or are accessing the Independent Review Function

Glossary of terms and abbreviations

Applicant	Person in respect of whom a decision is made, or the owner, operator, or person, for the time being, in charge of an aircraft or aeronautical product that is the subject of a decision.
Application	Application or request for the review of a decision made by the Director of Civil Aviation
CAA	Civil Aviation Authority
Director of Civil Aviation	Person who, for the time being, is the Director of Civil Aviation (or the Acting Director) together with all persons who hold a relevant delegation to act on behalf of the Director.
Final decision	Final decision made by the Director after receiving the independent reviewer's report, on whether to accept any or all of the reviewer's recommendations.
Independent reviewer(s)	Person(s), appointed by the Minister of Transport, responsible for carrying out reviews and reporting their recommendations to the Director.
IRF	Independent Review Function
Reviewable decisions	Decisions made by the Director that are covered by the Independent Review Function, as specified in Regulations.

Overview of the Independent Review Function

- 1 The Independent Review Function (IRF) was created in response to a desire from the aviation sector for a timely, practical, and affordable alternative to appealing decisions made by the Director of Civil Aviation (the Director) through the courts.
- 2 The Civil Aviation Act 2023 (the Act) created a new function for reviewing the Civil Aviation Authority's (CAA) decisions which will be independent of the CAA, and additional to the appeal and judicial review rights that aviation participants already possess.
- 3 Provisions for this function are set out in Part 10, Subpart 5 of the Act.
- 4 The Director exercises control over entry into, activities within, and exit from the aviation system through aviation documents or other instruments. The Director is responsible for decisions related to granting, renewing, and amending aviation documents, and for issuing medical certificates¹.
- 5 The IRF ensures more transparency and over-sight of these decisions, by allowing civil aviation participants to seek an independent review of a decision made by (or on behalf of) the Director.
- 6 The Ministry of Transport (the Ministry) plays an administrative role in facilitating and monitoring the function but does not direct reviewer(s) in the performance of their independent statutory function.

Reviewable decisions

- 7 The scope of reviewable decisions is set out in the Civil Aviation (Independent Review Function) Regulations 2025². A "decision" includes the process by which the relevant decision was made, and the decision itself.
- 8 The regulations set out that the following types of decisions can be subject to review:
 - the key relevant categories of decisions taken by (or on behalf of) the Director that are appealable to the District Court, being
 - a decision to decline to register an aircraft,
 - a decision concerning the grant, issue, revocation, or suspension of an aviation document (such as a pilot's licence or an air operator certificate),
 - a decision to impose conditions on an aviation document,
 - a decision to issue an improvement notice (which sets out what a person needs to do to remedy or prevent the contravention of civil aviation legislation) when made by or on behalf of the Director, and

¹ IRF will not carry out reviews of medical certification decisions, as these decisions are already reviewable through the medical convener procedure that the 2023 Act continues. <https://www.transport.govt.nz/about-us/what-we-do/queries/reviewing-a-medical-certificate-decision>

² These regulations are made in accordance with section 407 of the Act and complement the Act's definition of a decision in section 443. During the process of developing these regulations, we assessed options based on how well they meet the policy intent of the function and sought public feedback on these options.

- a decision to amend a New Zealand air operator's certificate with Australia New Zealand Aviation privileges or withdraw those privileges, and
- decisions taken by (or on behalf of) the Director on the granting of individual exemptions from regulations and the Civil Aviation Rules.

Nature of the review

- 9 The IRF provides an avenue for the Director's regulatory decision making to be subject to additional scrutiny. This scrutiny includes looking at how they exercise their functions and powers, and the reasonableness of the decisions made. It is designed to help strengthen both sector and public confidence in the decisions of the aviation safety regulator.
- 10 The function is intended to enhance the rights of sector participants and promote transparency, timeliness and accountability in the regulatory system.
- 11 The outcome of a review will not affect an applicant's right to then appeal the decision through the Courts, should they wish to do that once the independent review is complete. More information is provided later in this guidance on the relationship between independent review and the appeal process.

Fees and charges

- 12 The charges payable by applicants for the review of their application are determined in accordance with Civil Aviation (Independent Review Function) Regulations 2025.
- 13 The Civil Aviation (Independent Review Function) Regulations 2025 set a two-tiered fixed fee for applicants, of \$1,000 (excl. GST) per review application for individuals, and \$1,500 (excl. GST) per review application in any other case (such as for organisations).

Independent Reviewer(s)- Civil Aviation

- 14 The Minister of Transport (the Minister) appoints one or more independent reviewers with the appropriate range of expertise to carry out reviews.
- 15 The reviewers are appointed for a period no longer than 3 years and the Minister may renew an appointment for one or more periods.
- 16 The Minister may also appoint an interim reviewer for a period of no longer than 6 months and renew the appointment for one or more periods.
- 17 Reviewers have recommendatory powers only, with the Director retaining the right of final decision making.

Roles within the Independent Review Function

Who	Role
Reviewer(s)	<ul style="list-style-type: none"> Decide whether to accept or decline an application for review at the initial assessment stage Determine which evidence and further information provided by the CAA are relevant for sharing with the applicant Carry out reviews of decisions that are in scope as soon as practicable Require relevant parties to provide evidence Receive and consider all relevant evidence provided regarding the decision under review Report recommendations to the Director in writing as soon as practicable, upon the completion of the review Draw on the advice and expertise of any suitably qualified persons, including Ministry staff, to assist in reviewing a decision
Ministry of Transport	<p>The Act enables the reviewer to draw on the advice and expertise of any suitably qualified and experienced person to assist the reviewer with the review process³. This allows the Ministry to:</p> <ul style="list-style-type: none"> Provide secretariat support for reviewers which may include: <ul style="list-style-type: none"> receiving and acknowledging applications responding to general inquiries responding to OIA requests seeking information, and communicating with the Director, applicants, and other persons on the reviewer(s)' behalf ensuring all documentation related to reviews is maintained and recorded appropriately facilitating IT, systems and other infrastructure as required for use by the reviewers facilitating access to expert advice upon request from reviewer(s), and facilitating payment of application fees and payment to reviewers and experts. Provide legal support as needed to the secretariat and reviewer(s) on queries relating to the review process. The legal support can include: <ul style="list-style-type: none"> advice on scope (determining if the decision in question is reviewable) in compliance with the Act advice on grounds for rejecting an application any preliminary legal assessment that reviewers may seek.

³ The Civil Aviation Act 2023, section 447(2)(a)

Who	Role
	<p>The Minister may cancel a reviewer's appointment if the reviewer fails to satisfactorily perform their functions⁴. To enable advice to the Minister to support the exercise of this provision, if required, the Ministry intends to,</p> <ul style="list-style-type: none"> • Monitor the performance/operations of IRF⁵ • Have regular check-in discussions with reviewer(s) covering progress, resources, workloads, and contentious issues/trends. The manager responsible for the IRF secretariat is responsible for this task.
Applicants	<ul style="list-style-type: none"> • Apply to have a decision made by the Director reviewed • Provide evidence and information to assist the review as requested by the reviewer(s) • Participate in the review process either directly or through a nominated representative
CAA	<ul style="list-style-type: none"> • Provide evidence or additional information requested by the reviewer regarding any issue related to the decision under review • Consider the reviewer's recommendations and make a final decision within 10 working days of receiving the reviewer's recommendations • Notify the applicant, in writing, of the final decision and the reasons for the final decision • Make a final decision in the applicant's favour, if the parties agree, any time before the reviewer completes their review and reports their recommendations • Notify the IRF secretariat of the final decision made by the Director • Participate in the review process either directly or through a nominated representative
Experts or other person	<ul style="list-style-type: none"> • Provide evidence or additional information requested by the reviewer regarding any issue related to the decision under review • Participate in the review process either directly or through a nominated representative • Protect the confidentiality and privacy of information provided by applicants

18 Roles within the IRF can evolve as we enhance or change our practices or understanding.

⁴ The Civil Aviation Act 2023, section 451(1)

⁵ The Ministry's monitoring role is minimal and some key reporting information will be collected to monitor the performance of the function.

Process for a review

- 19 This section describes the process for a review as set out in sections 445, 446, 447 and 448 of the Act. A flow chart of the review process is attached in **Annex 1**.

Application for review

- 20 An applicant can inform the Ministry of their intent to have a decision made by the Director independently reviewed by submitting an online application. Applications should be made via the Ministry website [insert link once available].
- 21 Applications for review must be made within 20 working days after the date that the applicant was notified of the decision to which the application relates. The reviewer cannot carry out a review of a decision if the request has been made outside this timeframe.
- 22 It is the responsibility of the applicant to clearly identify the aspects of the decision that they are seeking to have reviewed. Applicants are expected to observe the process and timeframe for submission of applications and provide any supportive information.
- 23 Upon receipt, the application undergoes an initial assessment to determine if the application meets acceptance criteria, which are:
- the decision is reviewable under the scope of the IRF
 - the application has been made within 20 working days from the date of notification of the Director's decision
 - the application adequately identifies the aspects of the decision that the applicant is applying to have reviewed
 - the application is not trivial, frivolous, or vexatious; and
 - the application is not otherwise an abuse of process.
- 24 The reviewer decides whether to accept or decline the application based on the assessment.
- 25 An application for review may be rejected if the application does not meet these acceptance criteria. Applicants are notified if their application is declined with an explanation of the reasons for rejection.
- 26 If the reviewer rejects an application, the application is considered to have been withdrawn.

Gathering information

- 27 This step of the review process involves engaging with the involved parties to gather preliminary information pertaining to the application for review and provide relevant parties reasonable opportunities to make representations.
- 28 The Act⁶ enables the reviewer to require the applicant, the Director, or any other person to provide evidence regarding any matter at issue with respect to the decision that is under review.

⁶ The Civil Aviation Act 2023, section 447(2)(c)

- 29 Upon receipt of the application fee, the IRF secretariat, on behalf of the reviewer, will request information and documents from the CAA about the decision under review including relevant evidence, additional information or clarification.
- 30 The reviewer then determines relevant information and documents received from the CAA regarding the decision under review to be shared with the applicant for comment. This allows the applicant to provide any additional information in support of their application.
- 31 The applicant, Director, and any other person who are contacted for information, evidence or advice participate in the review process either directly or through a nominated representative.

Review of decision

- 32 Once the preliminary evidence and information have been gathered, the allocated reviewer(s) begins the review of the application.
- 33 During the review, the reviewer(s):
 - must consider all relevant evidence and additional information gathered in relation to the application
 - may draw on the advice and expertise of any person who the reviewer is satisfied is suitably qualified and experienced to assist the reviewer in assessing the decision under review
 - may require the applicant, the Director, or any other person to provide further evidence; and
 - must consider the purposes of the Act and the Director's duties under the Act when carrying out the review.
- 34 Following the assessment of an application, the reviewer reports their recommendations to the Director in writing, as soon as practicable.
- 35 Reviewers' recommendations are non-binding – this is to ensure that the role of the reviewer does not conflict with the Director's overall responsibility to oversee a safe and secure civil aviation system.

Final decision

- 36 A decision under review remains in force until the Director makes a final decision.
- 37 The Director must, within 10 working days from receiving the reviewer's recommendations, make a final decision on whether to accept any or all of the recommendations made by the reviewer. The Director's final decision may involve either a new decision or confirmation of the existing decision.
- 38 The Director must notify the applicant, in writing, of the final decision with an explanation of the reasons for the decision.
- 39 If the parties agree, the Director can make a final decision in the applicant's favour at any time before the reviewer reports their recommendations. If the Director makes a final decision before the reviewer completes the review, the Director must notify the applicant in

writing of the final decision and reasons for that decision. In this case, the application for review is considered to have been withdrawn on the day the applicant receives notification of the final decision.

Relationship between review and appeal

- 40 This section describes the relationship between the independent review and appeal processes as set out in sections 444 of the Act.
- 41 If an applicant has made an application to review a decision that is also appealable in District Court:
- the applicant must not appeal against the decision unless they withdraw or is considered to have withdrawn the application for independent review; or
 - until the Director has notified the applicant of a final decision.
- 42 The time to bring a decision before the District Court begins on the earlier of either:
- the day an applicant withdraws or is considered to have withdrawn their application for review; or
 - the day that an applicant is notified of a final decision.

Confidentiality and privacy of information provided by applicants

- 43 During the review process, applicants may be required to provide personal information or information commercially sensitive or confidential to them to be used to administer the review. This information will be collected, held, and used in accordance with the Ministry's privacy and transparency statement (<https://www.transport.govt.nz/footer/privacy-and-transparency-statement>) and statutory obligations under the Privacy Act 2020 and the Official Information Act 1982.
- 44 Information we collect will be kept confidential, in a secure system. Access to the system where we keep this information is strictly limited to Ministry employees who require access to progress the review and to the independent reviewers (who review this information).
- 45 If the applicant specifically authorises us to in their application form, we may also provide information to other people who are relevant to the review (for example, other persons that the reviewer will call on for expertise, advice, or evidence), or ask them for information.

How we engage with applicants

- 46 We aim to engage effectively with applicants throughout the review process. We may do so by:

- providing clear and accessible information about the review process and what to expect from us throughout the review process
 - providing guidance that helps applicants to understand the requirements their application must meet
 - engaging with applicants at key stages of the review process to keep them informed of the progress towards completion
- 47 If requested by reviewers, the Ministry may provide advice or support, such as providing legal advice to the secretariat or the reviewer(s) and arranging for technical expertise⁷. We otherwise will refrain from providing application-specific opinions that could have an influence on the substance of the review.

Applicant feedback

- 48 Feedback is an important part of the review process. It enables us to understand if the review function operates effectively and efficiently as intended.
- 49 Applicants can engage with us directly in discussion, to make comments or raise concerns regarding their experience during the review process. This will allow us an immediate opportunity to review the matter and provide a remedy where necessary.
- 50 Applicants can direct their feedback to independentreview@transport.govt.nz.

Where to go for more information

Related documents

- Civil Aviation Act 2023
<https://www.legislation.govt.nz/act/public/2023/0010/latest/LMS49346.html>
- Ministry of Transport website <https://www.transport.govt.nz/area-of-interest/air-transport/air-transport-regulatory-information/independent-review-function>

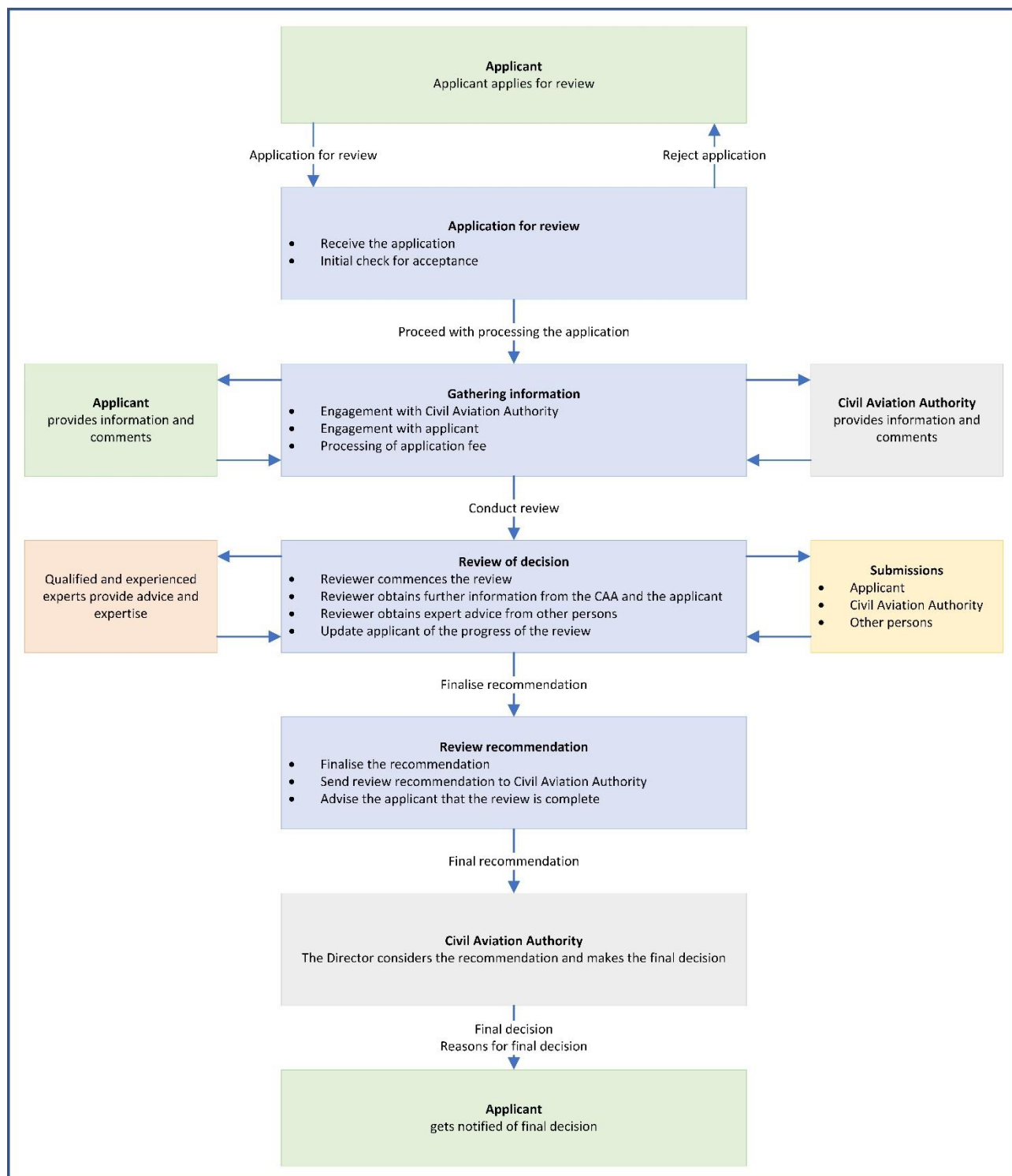
Contact us

- Contact details independentreview@transport.govt.nz for IRF secretariat

⁷ Section 447(2)(a) of the Civil Aviation Act 2023

Annex 1: Overview of the review process

The flowchart below captures an overview of the Independent Review process from the application for review to the final decision by the Director.



Independent Review Function

Review of Director of Civil Aviation's decisions Sector Guidance

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New Zealand Government