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From: [REDACTED]@clear.net.nz>
Sent: Friday, 7 June 2013 9:53 PM
To: Glen-Marie Burns
Subject: CA Act review

Glen-Marie,

Does the review include consideration of the provisions concerning refusal to grant or suspension or revocation of aviation documents?

I have a number of concerns about the present legislation. This is not a criticism of individuals but of the Act under which they operate. In cases where affected document holders have complained that they have suffered a lack of "due process" at the hands of the Director, the judges have said that the Director has been applying the Act and if that results in lack of due process then the document holder's complaint is against the Act not the Director.

My concerns are:

- a) The process is too protracted. In practice there is little to stop the Director taking as long as he or she pleases to decide to revoke an aviation document that will often have been suspended in the meantime.
- b) Once the operator's certificate has been suspended or revoked it will likely suffer negative cash flow and be in a weak position to fund litigation and this is exacerbated by the time it takes to get an appeal heard. An appeal of the suspension or revocation to the District Court is of little value to the commercial operator that has gone broke in the meantime.
- c) In practice there is too little external oversight of the process. The Director is both investigator and decision maker.
- d) To be fair to the document holder the Director should be considering all the evidence personally but there is no requirement for him to do that. He is able to adopt factual conclusions reached by the investigators.
- e) Further, the Director is making decisions based on investigations, reports and recommendations of his employees. That creates an unfair bias against the document holder because of the risk, some would say inevitability, that the Director will place greater weight on what his employees tell him than what the document holder tells him. If the Director rejects an investigation, report or recommendation of an employee he is at some risk of precipitating a personal grievance (for example, if there are already problems with the employment relationship).
- f) In view of the irrational and excessive media attention given to aviation accidents and incidents and the grandstanding propensity of politicians in opposition there is a concern that a Director will be unnecessarily risk averse; not only for the benefit of the public but also for the benefit for the CAA, its employees and ultimately for himself. The Act puts him on the horns of a dilemma when he has to choose between the risk of doing injustice to a document holder and the risk of being the subject of media and political attention if the document holder retains his aviation document and then is involved in a significant accident or incident (even if unrelated to the reason for considering suspension or revocation).

From time to time members of the aviation industry have voiced disquiet about the fairness of these provisions and how they are being applied in practice. The objectives of provisions should be to produce a prompt decision that is fair to the document holder and seen to be fair. In my view, in order to achieve those objectives the Director should no longer make the decision to revoke or to impose conditions on an aviation document and should have the power to suspend or impose temporary conditions on an aviation document limited to the same five day period as in Australia.

Possible alternatives to the existing regime are:

- a) Some form of external and independent tribunal to which the Director must make application to extend any suspension beyond an initial five days and must make application to revoke or impose conditions on an aviation document; with either party having a right of appeal to the District Court; or

- b) Any suspension may only be for five days unless extended by a District Court and the Director must apply to a District Court to revoke or impose conditions on an aviation document; or
- c) A procedure similar to the infringement notice procedure for parking and traffic offences so that the Director would serve a notice of proposed adverse decision and if the document holder disputes that notice then the director must then apply to a District Court to revoke or impose conditions on the aviation document; or
- d) The decision whether to suspend, revoke or impose conditions on an aviation document is made by the CAA board instead of the Director. In appropriate cases the board would be able to appoint an independent commissioner to advise it or to make the decision. This proposal is a concept similar to a local authority referring some planning applications to appointed commissioners rather than making the planning decision itself.

Obviously, there are practical, philosophical, policy and cost considerations arising out of these suggestions and they will need to be worked through; but in my view the status quo is unsatisfactory and some change along the lines suggested is required to restore industry confidence in the fairness of the procedures for regulatory action.

Let me know if you would like to discuss this further.

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