

Departmental Disclosure Statement

Civil Aviation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

Parts of this Bill comprise a technical revision or consolidation of existing legislation to improve its structure, navigability and clarity, in conjunction with provisions to implement policy changes and address minor or technical issues.

Information provided in this disclosure statement about the content of the Bill is, unless otherwise indicated, confined to provisions that involve a substantive change to the law.

This disclosure statement was prepared by the Ministry of Transport.

The Ministry of Transport certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

5 August 2021

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Part One: General Policy Statement

This Bill repeals and replaces the Civil Aviation Act 1990 and the Airport Authorities Act 1966 with a single, modern statute that will provide a platform for safety, security and economic regulation of civil aviation now and well into the future.

The Bill contains a range of policy proposals which cumulatively will benefit the operation of the aviation sector in terms of safety, security, emissions, and economic outcomes. The Bill has been developed over a 5-year period and policy in the Bill has been subject to a number of consultation processes, including an exposure draft in 2019.

The proposal implements substantive policy changes, including to the following:

Remotely piloted or autonomous aircraft: incorporating amendments that account for new and emerging technologies and the responsibilities a person has while operating these, and provide new intervention powers for constables and specially authorised people to respond to serious misuse of drones:

National security checks: preserving New Zealand's national security and national interests by empowering the Minister of Transport to consider national security within the aviation system and make rules about when national security considerations apply:

Drug and alcohol management: improving the safety and security of New Zealand's aviation system by strengthening the management of the risk of drug and alcohol impairment in the commercial aviation sector following the Carterton balloon incident in 2012:

Aviation security: clarifying what powers, protections and tools aviation security officers have at security designated aerodromes, who can provide aviation security services, and expand the aviation security regime to enable short-term additional security measures in temporary "landside security areas" at airports when needed to respond to a heightened threat environment:

Emissions: enabling New Zealand to meet its obligations under the International Civil Aviation Organization's Carbon Offsetting and Reduction Scheme for International Aviation (CORSA):

Airline alliances: improving the efficiency and effectiveness of regulatory decision-making to facilitate a growing and competitive aviation sector, including by strengthening the process for authorising airline cooperative arrangements:

Airport regulation: introducing a modern registration regime for airports that includes a requirement to consult government agencies on spatial plans, and for some airports includes a requirement called an enforceable regulatory undertaking (ERU). ERUs will require government agencies to collaboratively agree their requirements for space and infrastructure, and airports to present a binding plan to the Secretary for Transport as to how they will meet those requirements. The Bill retains a provision that airports can set charges after consultation but repeals the stipulation that they can do so "as they see fit":

Offers-back under the Public Works Act: clarifying that the Chief Executive of Land Information New Zealand, rather than airport companies, is responsible for undertaking the offer-back process under the Public Works Act 1981 for airport land:

"Just culture": improving the quality and level of safety information reported to the safety regulator, including ensuring people who self-report incidents are provided certain protections from enforcement action and reported information is protected:

Financial penalty levels: revising financial penalty levels to provide an effective deterrent and align with those for similar offending under other comparable, recent legislation such as the Health and Safety at Work Act 2015.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>Consultation document: Civil Aviation Act 1990 and Airport Authorities Act 1966 Consultation Document, Ministry of Transport, 2014.</p> <p>Discussion paper: Clear heads: options to reduce the risks of alcohol-and drug-related impairment in aviation, maritime and rail, Ministry of Transport, March 2015.</p> <p>NZIER report: Cross-modal risk analysis of relative risk of fatalities across transport modes, where alcohol and drug impairment are contributing factors in accidents, NZIER, June 2014.</p> <p>These reports are available at https://www.transport.govt.nz/area-of-interest/air-transport/civil-aviation/</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
<p>The Bill includes provisions to implement the <i>Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA)</i>, adopted by resolution by the International Civil Aviation Organization. For further information, refer:</p> <p>https://www.icao.int/environmental-protection/CORSIA/Documents/Resolution_A39_3.pdf</p> <p>https://www.transport.govt.nz/area-of-interest/environment-and-climate-change/corsia/</p> <p>The Bill continues without modification existing provisions that give effect to international treaties to which New Zealand is a contracting party. Refer to Appendix One.</p>	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
<p>CORSIA was not subject to a Parliamentary treaty examination, as the scheme has been adopted under the Convention on International Civil Aviation, to which New Zealand is already a contracting party. The scheme was therefore the subject of a Regulatory Impact Statement rather than a National Interest Analysis.</p>	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>The Ministry of Transport produced Regulatory Impact Statements to help inform the main policy decisions taken by the Government relating to the contents of this Bill.</p> <ol style="list-style-type: none"> 1. Amendments to the Civil Aviation Act 1990 and Airport Authorities Act 1966: Safety Regulation (July 2016) 2. Amendments to the Civil Aviation Act 1990: Aviation Security (July 2016)* 3. National security considerations within the civil aviation regime (July 2016)* 4. Amendments to the Civil Aviation Act 1990 and Airport Authorities Act 1966 (August 2016) 5. Options to reduce the risks of alcohol and drug related impairment in aviation, maritime and rail (February 2016). 6. A carbon offsetting and reduction scheme for international aviation (6 September 2016)** 7. Options to address national security risks in the civil aviation system (23 November 2018)* 8. A carbon offsetting and reduction scheme for international aviation (update - August 2019) 9. New Civil Aviation Regulatory Powers (5 March 2020)** 10. Achieving better public policy outcomes at airports (5 May 2021) <p>These regulatory impact statements are published on the Ministry of Transport website here: https://www.transport.govt.nz/sitesearch/SearchForm?Keyword=regulatory+impact+civil+aviation+bill&action_results=Go</p> <p>And are available from the Treasury website, here: http://www.treasury.govt.nz/publications/informationreleases/ris</p> <p><i>* Information has been withheld from items 2, 3 and 7, principally to maintain the effective conduct of public affairs or because its release would be likely to prejudice the security of New Zealand</i></p> <p><i>** Information has been withheld from item 6 and 9, principally to avoid prejudice to New Zealand's economic interests and to protect commercial confidentiality</i></p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>Treasury's Regulatory Impact Analysis Team (RIAT) and Ministry of Transport Regulatory Impact Assessment Panel jointly reviewed the following regulatory impact statements (RISs):</p> <ul style="list-style-type: none"> • Amendments to the Civil Aviation Act 1990 and Airport Authorities Act 1966: Safety Regulation • Amendments to the Civil Aviation Act 1990: Aviation Security • National security considerations within the civil aviation regime • Amendments to the Civil Aviation Act 1990 and Airport Authorities Act 1966 <p>The reviewers' opinions on the quality of the RISs are set out in Appendix One.</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO
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Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO
2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>For potential costs and benefits of reducing the risks of alcohol and drug Impairment, refer pages 4 and 12-13 of the RIS <i>Options to reduce the risks of alcohol and drug impairment in maritime, aviation and rail</i>.</p> <p>The analysis of costs and benefits for other policy is qualitative rather than monetised. Refer RISs: <i>Amendments to the Civil Aviation Act and Airport Authorities Act</i>, pp15, 24-25, 35-36, 40, 44, 46, 48; <i>A carbon offsetting and reduction scheme for international aviation</i>, pp 5-8; <i>New civil aviation regulatory powers</i>, pp 3-4, 29-30, 33; <i>Achieving better public policy outcomes at airports</i>, pp 2-3, 20-21.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO

Most provisions of the Bill serve to continue, in a modernised form, the existing framework of obligations and standards that apply to civil aviation, and will have no direct impact on the level of compliance or non-compliance or on the nature and level of compliance-related regulator effort. The collective aim of changes in the Bill is to promote compliance through accessible, understandable law and improve the flexibility and range of regulatory tools available to the Civil Aviation Authority. The benefits of the modernised framework are not, however, readily quantifiable.

To the extent that the Bill includes new elements:

- the qualified protection of aviation incident reports from use in law enforcement action is expected to increase the flow of safety information to the regulator but will not affect regulatory compliance effort
- the new drug and alcohol management planning and testing regime for aviation operators will support and reinforce the existing safety management regime for aviation operators
- the enforceable regulatory undertakings regime will clarify aerodrome operators' obligations and move the focus of engagement between airports and relevant agencies from short-term concerns to long-term investment and planning
- rules providing for transport instruments to update requirements that are highly technical or subject to frequent technical change will avoid barriers and compliance costs due to outdated technical requirements in rules
- landside security areas that can be declared by the Minister for a period of up to 30 days, if necessary to respond to threats to civil aviation, enable New Zealand to be part of a concerted international response to a threat to aviation security or to support the main or additional purposes of the Civil Aviation Bill. Aviation security officers will have the ability to search any person present in, or before entering the landside security area for any relevant item or substance (with consent).

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
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The Bill continues without modification the provisions of existing legislation that give effect to international civil aviation obligations.

The Ministry of Transport has identified the relevant principles set out in the Legislative Design and Advisory Committee guidelines and considered the extent to which the new provisions to give effect to CORSIA (refer question 2.2) are consistent with New Zealand's international obligations.

The Ministry has evaluated amendments to other existing and new provisions in the Bill to ensure that they are consistent with International Civil Aviation Organization standards and recommended practices.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

The Ministry of Transport has identified the relevant principles set out in the Legislative Design and Advisory Committee guidelines and considered the extent to which the policy to be given effect by the Bill is consistent with the Crown's obligations under the Treaty of Waitangi.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
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The Ministry of Justice has been consulted throughout the development of this Bill and advice has been provided to the Attorney-General. The advice concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. Where the Bill interacts with or limits any rights, the Ministry of Justice considers that those limits are reasonable and necessary in the context.

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
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(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
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(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
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The Bill increases fines for some offences, removes imprisonment as a penalty for some offences and creates or amends several offence provisions. Refer to Appendix Two.

The Bill clarifies that the Disputes Tribunal has jurisdiction to hear claims made under provisions of the legislation that deal with airline liability in relation to damages caused by passenger delay, lost, delayed and damaged baggage and cargo, but not passenger death and injury.

3.4.1. Was the Ministry of Justice consulted about these provisions?	YES
<p>The Ministry of Justice was consulted during the policy process for maritime and aviation drug and alcohol management policy, as reflected in the Bill, and has been consulted on drafts of the Bill. Consultation on aviation security and offence and penalty provisions has involved meetings between officials and correspondence concerning specific issues raised by the Ministry of Justice.</p> <p>In response to issues raised through this process, modifications have been made to the Bill to:</p> <ul style="list-style-type: none"> • remove imprisonment as a penalty for some strict liability offences; • add a mens rea element to some offences for which the penalty may include imprisonment; • add defences to some strict liability offences; • specify that searching powers of aviation security officers do not authorise access to data stored in, or accessible from, an electronic device; • clarify that a person may refuse or withdraw consent to a search at a security screening point. 	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	YES
Refer to Appendix Two.	

3.5.1. Was the Privacy Commissioner consulted about these provisions?	YES
<p>The Office of the Privacy Commissioner (OPC) was consulted during the policy process on issues relating to the Director of Civil Aviation's ability to withhold prejudicial information in line with the Privacy Act. The proposal as reflected in clauses 81 and 100 of the Bill was supported by the OPC.</p> <p>OPC was consulted on the Bill as a whole at exposure draft stage and with particular reference to provisions relating to the Director's ability to seek and receive information for the purpose of the fit and proper person test and to the withholding of prejudicial information. The OPC raised no issues concerning these matters.</p> <p>The OPC was consulted on new aviation security proposals that make provision for AvSec airside security powers to be extended to landside areas. The Privacy Commissioner questioned whether there is sufficient evidence of the need to extend AvSec powers as proposed, especially when considering the similar risk presented at other crowded places such as rail stations or ferry terminals. While security threats are not confined to aviation, the effectiveness of air security measures has meant that publicly accessible landside areas, are increasingly targeted in lieu of aircraft. The Bill proposals allow landside measures to be activated only the duration of an identified security threat.</p>	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>The Ministry of Transport has consulted with the Civil Aviation Authority and the Aviation Security Service (AvSec) throughout the development of the Bill, through written communications, telephone discussions, and face to face and virtual meetings.</p> <p>The Ministry released a disclosure draft of the Bill together with a commentary document in mid-2019.</p> <p>Refer to Appendix Two for further information on external policy consultation and consultation on the exposure draft and commentary document.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>Where appropriate the proposals have been considered by the affected agencies, in particular the Civil Aviation Authority and AvSec, to ensure that they are workable.</p> <ul style="list-style-type: none"> • Police contributed to assessment of operational considerations relating to the controlled airspace and restricted areas offence provision and the power for constables and response response officers under clause 318 to seize, detain, or destroy aircraft without a person on board. • The enforceable regulatory undertaking (ERU) proposal for airport operators was not included in public consultation in 2019 on the Civil Aviation Bill and accompanying commentary document. Following feedback from initial consultation with stakeholders on a licensing proposal for airports at which government border agencies operate, the Ministry of Transport undertook targeted consultation on a revised approach based on ERUS entered into by airports, rather than licensing obligations imposed on airports. The revised approach was presented in a workshop with key aviation stakeholders, including airports, airlines and select advocacy groups and discussed with relevant government agencies. Government agencies were also consulted on the resulting proposals to Cabinet. • Government agencies and Auckland Airport are trialling the new approach relating to space requirements at airports under Part 7 of the Bill as they discuss medium term developments at Auckland Airport. • The intelligence community participated in the development of the national security provisions of the Bill. • The Ministry of Transport has worked with the Ministry of Justice's Bill of Rights Act and Offences and Penalties teams throughout development of the Bill. 	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO
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Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	YES
The Bill amends existing levy provisions. Refer to Appendix Three.	

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO
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Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	YES
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	YES
The Bill continues some existing strict liability offences contained in the Civil Aviation Act 1990 and two existing provisions of the Act that modify the burden of proof. Refer to Appendix Three for further details.	

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	YES
The Bill grants immunity to: <ul style="list-style-type: none">• inspectors and persons called on to assist an inspector or the Director of Civil Aviation and to aviation examiners;• medical examiners and medical practitioners in respect of the good faith performance of their functions;• constable or response officer exercising in good faith the power to seize, detain or destroy an aircraft without a person on board.	

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	YES
<p>Part 5, Aviation security, subpart 1. includes a new power for the Minister of Transport to declare an area within any security designated airport or navigation installation as a landside security area. Refer Appendix Three.</p> <p>Part 6, subpart 1, International Air Services Licensing, consolidates the categories of international air services licences while leaving the substance in place in most cases. For New Zealand airlines seeking a licence or a licence amendment that relates only to unrestricted air services, the process is simplified.</p> <p>Part 7, subpart 2, Enforceable regulatory undertakings, creates new obligations and powers relating to the provision of operational space for government agencies at airports. Refer to Appendix Three.</p>	

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p>Clause 322 empowers the Director of Civil Aviation to grant exemptions from compliance with secondary legislation. A class exemption granted under clause 322 is secondary legislation, to which the publication requirements of Part 3 of the Legislation Act 2019 apply.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill continues, with refinements, the existing Civil Aviation Act 1990 scheme for implementing aviation safety and security standards through aviation rules and regulations. Refer to Appendix Three.</p> <p>Clauses 429 to 431 introduce new measures that provide for regulations or aviation rules to delegate specified decision-making powers to specified persons (the Director of Civil Aviation and the Secretary for Transport). Under these provisions:</p> <ul style="list-style-type: none"> • a specified person may make transport instruments, the purpose of which is to define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) listing standards, controlling activities, setting requirements, procedures, or means of compliance, setting competency requirements, and providing for exceptions. • a transport instrument has legal effect only to the extent that any of the regulations or rules refer to it. <p>Civil aviation rules give effect to measures that include many detailed requirements that are subject to constant change to reflect technical developments, refinements to operating procedures and evolving international standards that are implemented through the rules. These changes do not alter the thrust and substance of the rules but necessitate a constant need for the Minister to make minor rule amendments, which can be administratively cumbersome, resource intensive and time-consuming. Rules that provide for the specified person to implement such changes through transport instruments will allow the resolution of matters requiring relatively frequent adjustment or that are highly technical in nature, which will avoid the regulatory system having to play catch-up to remove unnecessary barriers and compliance costs).</p> <p>Clause 431 provides that:</p> <ul style="list-style-type: none"> • the specified person must not make a transport instrument unless all persons and organisations that the Director thinks appropriate have been consulted, having regard to the subject matter of the proposed transport instrument • consultation is not necessary if the specified person is satisfied that the amendment is minor or technical <p>a transport instrument is secondary legislation that is subject to the publication requirements of the Legislation Act 2019.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>Clause 316 introduces a power to seize, detain, or destroy aircraft designed to be operated without a pilot on board, provided no person is on board the aircraft. A constable or a response officer appointed by the Director of Civil Aviation may exercise the power if they believe on reasonable grounds that the aircraft is operating, or is about to be operated: in the commission of an offence under civil aviation legislation or an offence imprisonable under other legislation; or in a manner that may endanger people or property. Detention or seizure may be maintained only for as long as necessary to prevent danger or the commission of an offence. A constable or response officer must, if requested by the aircraft owner or operator, provide in writing reasons for their exercise of the power. Part 4 of the Search and Surveillance Act 2012, other than subparts 2 and 3, applies in respect of a detention under clause 316.</p> <p>Clause 341 contains provisions that give effect to the “Just culture” policy to: improve the quality and level of safety information reported to the safety regulator.</p> <p>Clause 341 limits enforcement action in respect of infringements of civil aviation law that come to the regulator’s attention through an incident report filed in accordance with obligations civil aviation legislation.</p> <p>The Director of Civil Aviation may take law enforcement action, in relation to a notified incident only if satisfied that the public interest in taking action in the circumstances outweighs any adverse impact that the proceeding will have on further incident notifications.</p> <p>The purpose of the protection is to improve the flow of safety information through incident notifications, which will improve the Civil Aviation Authority’s understanding of areas of risk throughout the aviation system.</p> <p>Clause 343 includes protections that prevent the data produced by flight data recorders being admissible in criminal proceedings against the operator or flight crew connected with that equipment. A court may, however, override the protection if satisfied it is in the interests of justice, having regard to any adverse implications for future accident and incident investigation. This provision will encourage the installation of flight data recorders in aircraft for which such equipment is not mandatory, and thus improve the availability of safety information relating to the operation of such aircraft.</p> <p>These statutory protections provide a level of assurance about the protection of information that administrative measures cannot provide.</p>	

Appendix One: Further Information Relating to Part Two

Relevant international treaties – question 2.2

The international treaties to which the Bill gives continued effect are:

- Convention on International Civil Aviation, 1944 (Chicago Convention);
- Montreal Convention. 1999;
- Guadalajara Convention, 1961;
- Warsaw Convention as amended by the Hague Protocol of 1955 and the Montreal Additional Protocols Nos 1 and 2 and Protocol No 4 of 1975;
- Convention on International Interests in Mobile Equipment, 2001;
- Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment, 2001;
- Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963.

RIS quality – question 2.3.1

The Regulatory Impact Analysis Team (RIAT) in the Treasury and the Ministry of Transport Regulatory Impact Assessment Panel (the QA reviewers) have jointly assessed:

- the RIS **Amendments to the Civil Aviation Act 1990 and Airport Authorities Act 1966: Safety Regulation**
- the RIS **Amendments to the Civil Aviation Act 1990: Aviation Security**
- the RIS **National security considerations within the civil aviation regime**
- the RIS **Amendments to the Civil Aviation Act 1990 and Airport Authorities Act 1966**

The four RISs contain proposals to reform the aviation sector following a major policy review. This involved extensive consultation and engagement with industry stakeholders and experts to identify areas for improvement. The assessments were that:

The QA reviewers consider that the RIS **Amendments to the Civil Aviation Act 1990 and Airport Authorities Act 1966: Safety Regulation** meets the quality assurance criteria. The RIS states that there are not cost impacts on stakeholders, but this is likely to depend on compliance behaviour, for which there is little detail about the potential use of new tests and penalties. Monitoring of the proposed arrangements should ensure the changes are proportionate and take due account of risk over time.

The QA reviewers consider that the RIS **Amendments to the Civil Aviation Act 1990: Aviation Security** partially meets the quality assurance criteria. The reviewers note, however, that the problems addressed as issue four, AvSec institutional arrangements are unclear, the magnitude of costs imposed by status quo arrangements are not obvious, and there has been limited consideration of alternative options. As a result, the preferred options are only weakly supported by the analysis. Nonetheless, the impact of these proposals is small and unlikely to be negative.

The QA reviewers consider that the RIS entitled **National security considerations within the civil aviation regime** meets the quality assurance criteria. The reviewers note that although the general case for providing measures to deal with national security threats is well made, there is little detail about the actual concerns or the operation of the proposed measures. This limited transparency makes the impacts of the proposals difficult to assess. However, the reviewers also note the role of classified information in the rationale and the process followed in forming a policy view (including the role of other agencies), and therefore considers that in broad terms the analysis is adequate.

The QA reviewers consider that the RIS **Amendments to the Civil Aviation Act 1990 and Airport Authorities Act 1966** partially meets the quality assurance criteria. RIAT notes the differing views of submitters and of agencies, and notes that the uncertain net benefits for the preferred options given many of the intended benefits are largely qualitative. RIAT also notes that assessing the likely impacts and quantifying all the costs is not possible without further policy work, particularly the impacts of option three which envisages a role for the Commerce Commission but with decisions continuing to be made by the Minister of Transport. Careful implementation planning, including a monitoring and evaluation programme, will be needed to mitigate any risks of unintended consequences, regardless of which option is preferred by Ministers.

Appendix Two: Further Information Relating to Part Three

Offences, penalties and court jurisdictions – question 3.4

The Bill continues offence provisions contained in the Civil Aviation Act 1990 and amends maximum fines for existing offences as offences identified in the following table. New or amended offence provisions include:

- a new mens rea offence for reckless conduct that exposes other persons to unnecessary danger, with maximum penalties aligned with those for reckless conduct under section 47 of the Health and Safety at Work Act 2015;
- removal imprisonment for the strict liability offences of dangerous activity involving an aircraft etc. and endangerment caused by the holder of an aviation document (clauses 41(4) and 103(4));
- a new mens rea offence for reckless conduct by an aviation document holder that exposes other persons to unnecessary danger;
- a new offence for operating an aircraft in controlled airspace or restricted area without authorisation (clause 42).

Civil Aviation Bill: fines for new offences and fines that have increased for existing offences carried over from the Civil Aviation Act 1990			
Indvl = individual OP = other person (replaces the term “body corporate”) All = any individual or other person		<i>Existing maximum fine</i>	<i>CA Bill Maximum fine</i>
17 Failure to notify emergency breach of Act, or regulations or rules	All	\$5,000	\$15,000
19 Failure to provide identifying information	Indvl	\$10,000	\$30,000
	OP	\$50,000	\$100,000
40 Operating aircraft in careless manner	Indvl	\$7,000	\$30,000
	OP	\$35,000	\$100,000
41(2) Dangerous activity involving aircraft, aeronautical product, or aviation related service	Indvl	\$10,000	\$150,000
	OP	\$100,000	\$1,500,000
41(3) Dangerous activity being reckless as to whether conduct will cause unnecessary danger	Indvl	New offence	\$300,000
	OP		\$3,000,000
42 Operating aircraft in controlled airspace or restricted area without authorisation	Indvl	New offence	\$10,000
	OP		\$100,000
43 Communicating false information affecting safety	Indvl	\$10,000	\$120,000
	OP	\$100,000	\$1,000,000
51 Failure to notify accident or incident	Indvl	\$10,000	\$30,000
	OP	\$50,000	\$100,000

95 Failure to cease conducting air operations in New Zealand	Indvl OP	\$10,000 \$100,000	\$60,000 \$200,000
103(1) Endangerment caused by holder of aviation document	Indvl OP	\$10,000 \$100,000	\$90,000 \$300,000
103(2) Endangerment caused by holder of aviation document being reckless as to whether conduct will cause unnecessary danger	Indvl OP	New offence	\$150,000 \$1,500,000
104 Acting without necessary aviation document			
(1)(b)(i) Acting without necessary document	Indvl OP	\$10,000 \$100,000	\$10,000 \$30,000
(1)(b)(ii) Acting with knowledge that required document not held	Indvl OP	\$10,000 \$100,000	\$90,000 \$300,000
106 Applying for aviation document while disqualified	Indvl OP	\$2,000 \$20,000	\$15,000 \$50,000
107 Failing to disclose information relevant to granting or holding of aviation document	Indvl OP	\$10,000 \$50,000	\$30,000 \$100,000
108 Failure to provide information to Director relating to Australian AOCs with ANZA privileges	Indvl OP	\$5,000 \$25,000	\$30,000 \$100,000
110 Acting without required medical certificate	Indvl	\$10,000	\$30,000
111 Fraudulent, misleading, or false statements to obtain medical certificate	Indvl	\$10,000	\$30,000
112 Failure to disclose medical information	Indvl	\$5,000	\$30,000
132 Offence to carry out activity while authorisation withdrawn or after authorisation revoked	Indvl	\$5,000	\$10,000
133 Offence to fail to comply with Director's requirement to withdraw or revoke authorisation	Indvl	\$10,000	\$37,500
146 Power to require drivers to stop vehicles in security enhanced areas for searching	Indvl	\$1,000	\$2,500
165 Refusal to give particulars or to leave security area or security enhanced area	Indvl		
security area		\$2,000	\$2,500
security enhanced area		\$5,000	\$5,000
166 Being present in a security area or enhanced security area without being searched or when not authorised	Indvl	New offence	
Fine			\$2,500
Infringement fee			\$1,000

167 Offence to impersonate aviation security officer	Indvl	\$2,000	\$10,000
168 Obstruction of aviation security officer	Indvl	\$2,000	\$7,500
169 Threatening or assaulting aviation security officer or authorised security person	Indvl	New offence	\$15,000
170 Obstruction or interference with aviation security dog	Indvl	New offence	\$5,000
171 Killing or injuring aviation security dog	Indvl	New offence	\$15,000
172 Security check offences	Indvl	New offence	\$10,000
191 Carrying on scheduled international air service without licence or contrary to licence	Indvl	\$10,000	\$30,000
	OP	\$100,000	\$200,000
192 Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence	Indvl	\$10,000	\$30,000
	OP	\$100,000	\$200,000
197 Powers of Minister to prohibit disclosure of information, documents, and evidence	Indvl	\$4,000	\$7,500
	OP	\$12,000	\$25,000
215 Offences relating to CORSIA	Indvl	New offence	\$50,000
	OP		\$250,000
245 Compliance with enforceable regulatory undertaking	Indvl	New offence	\$50,000
	OP		\$250,000
251 Sale of alcohol at international airports	All	\$1,000	\$2,500
292 Duty to assist inspectors	Indiv	New offence	\$10,000
	OP		\$50,000
294 Offence for failing to provide inspector with correct name, residential address and date of birth	Indiv	New offence	\$10,000
295 Offence to hinder or obstruct inspector	Indvl	New offence	\$10,000
	OP		\$50,000
296 Offence to impersonate inspector	Indvl	New offence	\$10,000
297 Failure to comply with inspection or monitoring request	Indvl	\$10,000	\$60,000
	OP	\$100,000	\$200,000
304 Compliance with non-disturbance notice	Indvl	New offence	\$50,000
	OP		\$200,000
327 Compliance with enforceable undertaking	Indvl	New offence	\$50,000
	OP		\$250,000

361 Offences relating to breach of notice given by Minister on national security grounds	Indvl	\$10,000	\$60,000
	OP	\$100,000	\$200,000
362 Communicating false or misleading information	Indvl	\$10,000	\$30,000
	OP	\$50,000	\$100,000
363 Obstruction of persons duly authorised by Director	Indvl	\$2,000	\$7,500
	OP	\$10,000	\$25,000
364 Trespass	Indvl	\$2,000	\$2,500
365 Failure to maintain accurate records	Indvl	\$5,000	\$15,000
	OP	\$30,000	\$50,000
366 Breach of emergency rule, prohibition, or of condition imposed by Director	Indvl	\$5,000	\$30,000
	OP	\$30,000	\$100,000
367 Flight over foreign country without authority or for improper purpose	Indvl	\$10,000	\$60,000
	OP	\$100,000	\$200,000

Privacy issues – question 3.5

The Bill includes the following provisions relating to the collection, storage, access to, use of or disclosure (as the case may be) of personal information:		
CLAUSE	PRIVACY ISSUE	PROTECTIONS AFFORDED
38	The Civil Aviation Authority must maintain and provide access to the Civil Aviation Records	The requirement that documents kept in the Civil Aviation Records be made available for inspection by the public and for copying in accordance with Official Information Act is subject to the Privacy Act 2020.
49	Duty to notify accidents and incidents to CAA	<p>Clause 454 regarding confidentiality of information where the CAA obtains information or gains access to a document in performing or exercising any function, duty, or power under this Act.</p> <p>Clause 340 restricts admissibility of accident and incident except in a criminal proceeding concerning falsity of the notification.</p> <p>Clause 341 limits the circumstances in which law enforcement action may be taken in relation to an incident notification under clause 49.</p>

81 100	<p>Disclosure of prejudicial information</p> <p>Information obtained under section 96, 97, or 98 relating to suspension, imposition of conditions on, or revocation of an aviation document</p>	<p>If the Director of Civil Aviation proposes to take into account information that is or may be prejudicial to a person, the Director must:</p> <ul style="list-style-type: none"> • disclose the information to that person; • give that person a reasonable opportunity to refute or comment on it. <p>The Director may determine not to disclose the information if the Director could withhold the information under any of sections 49 to 53 of the Privacy Act 2020 had the person requested the information under that Act.</p> <p>The Director must inform the person of the non-disclosure and their right to complain to the Privacy Commissioner about the nondisclosure;</p> <p>The provisions of the Privacy Act 2020 apply to the non-disclosure as if the</p>
212	Secretary may request emissions information from New Zealand operator	Clause 214 provides that sharing of information with the International Civil Aviation Organization is subject to the Privacy Act 2020.
283	Director of Civil Aviation, the Civil Aviation Authority or an inspector may require an aviation participant or person who is or appears to be in charge of an aviation place to: produce information relating to the aviation place, activities carried out there, or the people who carry out those activities; produce information relating to the aviation participant's compliance with relevant civil aviation legislation; permit an inspector to examine and make copies of or take extracts from the	Information obtained is subject to clause 454 – Disclosure of Publication of information.
291	An inspector may require a person to provide the person's name, residential address, and date of birth if the inspector finds the person committing an offence against relevant civil aviation legislation or in circumstances that lead, or has information that give reasonable cause to suspect that such an offence has been committed.	When requiring a person to provide the person's name, residential address, and date of birth, the inspector must tell the person the reason for the requirement and warn them that it is an offence to fail to provide that information unless the person has a reasonable excuse.

409	Regulations may require an aviation participant to provide information in relation to their activities, including information about passengers carried and the rights of passengers, consignors, consignees, and other	Nothing in this section limits the Privacy Act 2020
454	The CAA may publish or disclose or direct any person to publish or disclose any information or document that it obtains in performing or exercising any function, duty, or power under civil aviation legislation.	Publication or disclosure of the information or document must be for the purpose of promoting any of the main or additional purposes of this Act and the CAA or other person must ensure that the information does not identify and could not reasonably be expected to identify any particular person. Publication or disclosure is subject to maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 2020).
455	Sharing of information between CAA, designated agencies, and overseas agencies	Nothing in this section limits the Privacy Act 2020.
Schedule 2 Clause 3 Clause 10	Powers of Director to require tests, examinations, and information for purpose of assessing application. Director may require licence holder to disclose or authorise the disclosure of relevant information.	Clause 454 applies Schedule 2, clause 19 provides for the medical convener designated under Schedule 2 to review a decision made by the Director under clause 3.

External consultation – question 3.6

Options for Management of Drug and Alcohol Impairment

Public consultation was undertaken on the discussion document *Clear heads: options to reduce the risks of alcohol-and drug-related impairment in aviation, maritime and rail* (see <http://www.transport.govt.nz/ourwork/clear-heads/>).

The Ministry of Transport received 37 submissions and held 10 face-to-face meetings with 14 organisations. The organisations represented large firms, small and medium enterprises, industry representative groups and members of the public. The Ministry worked with Maritime New Zealand, the Civil Aviation Authority the Transport Accident Investigation Commission and the New Zealand Police in developing the policy proposal.

Civil Aviation Bill exposure draft

An exposure draft of the Bill was released for consultation with the aviation industry from May to July 2019. The draft Bill was released alongside a commentary document highlighting the main changes. The commentary document included an invitation for stakeholders' to submit their views on options to provide law enforcement agencies with powers to detain, seize or destroy drones.

The Ministry of Transport received 116 submissions in response to the consultation, together with feedback from several face to face meetings with industry stakeholders. Submissions and feedback have been considered and, where appropriate, taken into account in the Bill.

The Bill, commentary document and submissions are published on the Ministry of Transport website.

<https://www.transport.govt.nz/assets/Import/Uploads/Air/Documents/afd6fdec49/Civil-Aviation-Bill-exposure-draft.pdf>

<https://www.transport.govt.nz/assets/Import/Uploads/Air/Documents/a79c4827e4/Civil-Aviation-Bill-Commentary-document.pdf>

<https://www.transport.govt.nz/assets/Import/Uploads/Air/Documents/92dfba9a52/Civil-Aviation-Bill-Submissions-Part-1.zip>

<https://www.transport.govt.nz/assets/Import/Uploads/Air/Documents/447132ecb4/Civil-Aviation-Bill-Submissions-Part-2.zip>

Proposed licensing regime for airports

The Ministry of Transport undertook targeted consultation with airports and airlines in mid-2020 on a proposal for a licensing regime to mandate a coordinated approach to consultation, planning and spatial requirements at airports where government border agencies and the Aviation Security Service operate.

Following a series of workshops with, and written submissions from, industry stakeholders, the licensing proposal was refined into a less onerous enforceable regulatory undertaking regime.

Refined proposal: an enforceable regulatory undertaking regime for airports

The refined proposal, as now reflected in Part 7, subpart 2 of the Bill, was presented in a workshop to key aviation stakeholders, including airports, airlines and select advocacy groups in October 2020.

The proposal was discussed with relevant government agencies, which have additionally been consulted on the relevant policy submission to Cabinet and resulting drafting changes to the Bill to give effect to the refined proposal.

Appendix Three: Further Information Relating to Part Four

Charges in the nature of a tax – question 4.2

The Civil Aviation Act 1990 provides for levies to be imposed on holders of aviation documents to provide income necessary to enable the Civil Aviation Authority (CAA) to perform its functions under the Act.

However, despite all aviation participants and service providers being required to comply with regulatory requirements that the CAA administers, not all are required to hold an aviation document.

Clause 417 extends the levy power to enable levies to be imposed in respect of any aviation participant, aerodrome, aircraft, aeronautical product or aviation-related service or aviation-related service, rather than only in respect of aviation document holders.

The change will mean that any person whose activities require CAA regulatory oversight can potentially be levied. It also removes any imperative to make people hold an aviation document so as to bring them within the levy regime when a different option would otherwise be just as effective from a regulatory perspective.

The clause expands the purposes for which a levy may be imposed to include:

- enabling the CAA to carry out its functions under any Act
- enabling the Secretary for Transport to carry out the Secretary's functions under the Civil Aviation Act

The amended scope of the purposes for which a levy may be imposed reflects that the CAA has aviation-related functions under other legislation (e.g. the Hazardous Substances and New Organisms Act 1996) and the Secretary for Transport now has functions under Part 6, subpart 3 (CORSA), Part 7 (Airports) and Part 8 (International Air Services) and of the Bill. Bringing these matters within the scope of the levy will make it possible for levies to fund relevant costs that cannot be met from other sources such as fees or Crown funding.

Clause 419 stipulates that a levy imposed under clause 417 must be applied for the purpose or purposes for which the levy was imposed under that clause.

Strict liability or reversal of the usual burden of proof for offences – question 4.4

Strict liability

The Bill contains the following offences that are strict liability or may be interpreted as being strict liability:

CLAUSE	OFFENCE
40	A person who operates any aircraft in a careless manner commits an offence
41(2)	Offence for dangerous activity involving aircraft, aeronautical product, or aviation related service
103(2)	Offence for endangerment caused by holder of aviation document
104(1)(b)(i)	Offence for acting without the necessary aviation document

108	Failure to provide information to Direction relating to Australian AOCs with ANZA privileges
110(1)(a),(c)	Offence for acting without the required medical certificate or failing to comply with specified conditions, restrictions or endorsements
132	Offence to carry out activity while authorisation withdrawn or after authorisation revoked
165	Refusal to give particulars or to leave security area or security enhanced
165	Being present in security area or security enhanced area without being searched or when not authorised
167	Offence to impersonate aviation security officer
169	Threatening or assaulting aviation security officer or authorised security person
191	Carrying on scheduled international air service without licence or contrary to licence
192	Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence
197	Every person who, contrary to an order prohibiting disclosure, publishes or communicates any information, document, or evidence that was the subject of that order commits an offence
215	Failure to, as required under sections 207 to 2011: provide an emissions monitoring plan; provide an emissions report; complete specified carbon offsetting requirements; provide an emissions unit cancellation report
238	A person who breaches a bylaw made by an airport authority that is not a local authority is liable on conviction to a fine
246	An airport operator that contravenes an enforceable regulatory undertaking given by the operator commits an offence
251	A person commits an offence who, at an international airport, sells alcohol to an under-age person or for delivery to a person other than the purchaser
296	A person who is not an inspector commits an offence if they in any way hold themselves out to be an inspector
300	Failure to comply with an improvement notice within the period specified in the notice
326	Compliance with an enforceable undertaking
361(1)(b)	It is an offence to apply for or obtain an aviation document while disqualified on grounds of national security from obtaining such a document
365	Failure to maintain accurate records

394(1)(a),(b),(c)	It is an offence to behave in a threatening, offensive, insulting, or disorderly manner towards a crew member or in a manner that interferes with performance of a crew member's duties
395	It is an offence to tamper with an aircraft, component of an aircraft or its equipment
396	It is an offence to board an aircraft when intoxicated or to become intoxicated on an aircraft
397	Failure to comply with commands given by the pilot-in-command of an aircraft is an offence
398	It is an offence to behave in a threatening, offensive, insulting, or disorderly manner on an aircraft
399	It is an offence to operate a personal electronic device on board an aircraft in breach of aviation rules
400	It is an offence not to comply with seating and safety belt instructions on an aircraft
401	It is an offence to smoke on an aircraft in breach of instructions, on an internal flight carrying passengers for hire or reward or flight by a New Zealand international airline
402	It is an offence to carry, or cause to be carried, any dangerous goods on an aircraft in breach of aviation rules

Strict liability offences, and offences likely to be interpreted as strict liability, were assessed against the Legislation Advisory Committee guidelines on the use of strict liability offences. It is considered that:

- the offences fit the category of public welfare regulatory offences, which are suitable for strict liability. They involve protection of the public from those undertaking risk-creating activities and/ or where individuals and organisations voluntarily are involved in a regulated activity; strict liability reflects that the civil aviation regulatory regime demands a high standard of care due to the risks inherent to aviation, aviation safety is closely regulated;
- people involved in the aviation system are expected to take responsibility to be aware of and follow safety rules, and participants are familiar with these matters in a way that would not be expected of the general public;
- defendants are best placed to establish absence of fault because of their familiarity with activities that are primarily within their knowledge and control;
- the threat of criminal liability is an incentive for people involved in risk-generating activity to take precautions that they might not otherwise choose to adopt.

Reversal or modification of burden of proof

- Clause 380 (Burden of proof of exceptions, etc., for offences) continues an existing Civil Aviation Act 1990 provision that, in relation to certain specified offences, any exception, exemption, proviso, excuse, or qualification may be proved by the defendant but need not be negated in the charging document and no proof in relation to the matter is required on the part of the prosecutor.
- The offence under Clause 396 (Intoxicated person on aircraft), continued from the Civil Aviation Act 1990, does not apply to a person under medical care but provides that the burden of proving that the defendant was under medical care lies on the defendant.

Significant decision-making powers - question 4.6

Landside security

Clause 126 empowers the Minister of Transport to declare an area within any security designated airport or navigation installation as a landside security area.

The Minister may exercise the power if the Minister considers it to be necessary to respond to a threat to civil aviation; enable New Zealand to be part of a concerted international response to a threat to aviation security; or otherwise necessary to support the main or additional purposes of the Bill.

The provision is designed to enable aviation security search powers to be exercised temporarily, during times of elevated security risk, in areas of an airport (e.g. public foyers) outside the designated airside security areas where those powers may normally be exercised.

A declaration may have effect for no more than 30 days.

Regulation of airports

Under the Bill, regulation of airports moves from a system of authorisation through an Order in Council under the Airport Authorities Act to a system of administrative approval by the Secretary for Transport. Airport operators, if they transition to the registration regime, will retain their existing rights and obligations under the Airport Authorities Act, carried over in updated form.

Part 7 of the Bill includes new obligations and powers relating to airports where border agencies and/or AvSec operate. Central to these requirements is the enforceable regulatory undertaking (ERU), which will introduce a mechanism to strengthen cooperation between government and airport operators at airports where border and aviation security operations occur.

Airport operators would be required to undertake additional consultation with government and key stakeholders when developing spatial plans, as well as capital expenditure plans. This is intended to foster greater mutual understanding and visibility of airport operations and future plans at airports.

Further, to address the broader problem around coordination between agencies and airports, there would be additional requirements on the relevant agencies and some airports under this regime. We propose that airports where one or more relevant agencies routinely operate will be required to develop a plan called an ERU. Key characteristics of the ERU are that it:

- is required at registered airports that are security designated aerodromes, or where border agencies routinely operate
- must specify projects, plans and milestones to meet requirements of each relevant agency
- reflects a collaborate view from agencies about their respective needs (including safeguards by way of agencies not unreasonably withholding or delaying approval, and making reasonable efforts to co-ordinate their response, and
- is approved by the Secretary and then becomes enforceable by the Secretary and through courts.

Powers to make delegated legislation- question 4.8

Part 3 of the Bill continues the Civil Aviation Act 1990 scheme for aviation rule making by the Minister of Transport or the Governor-General.

Clauses 52 to 60 set out the matters in relation to which aviation rules may be made.

Clause 61 specifies the procedural requirements, including consultation, for making rules, clause 62 specifies requirements concerning the content of rules, and clause 64 specifies further general matters relating to the content of rules and clause 72 sets out the criteria for rule making, including for emergency rules.

Clause 66 provides that no breach of a rule is an offence unless specified as an offence by regulations.

Clauses 67 to 71 provide for the Director of Civil Aviation or the Governor-General to make time-limited emergency rules where it is impracticable for the Minister in the circumstances for the Minister to make rules to alleviate an immediate safety risk.

A rule is secondary legislation, to which the publication requirements of Part 3 of the Legislation Act 2019 apply.

Part 10 of the Bill continues regulation making powers from the Civil Aviation Act 1990. Clause 406 provides for regulations to set fees and charges; specify breaches of rules or regulations that are offences or infringement offences; specify fines and infringement fees for offences.

Clause 408 is a new provision that provides for regulations relating to the carbon offsetting and reduction scheme for international aviation (Clauses 203 to 214 contain further provisions relating to the scheme).

Clauses 409-411, 413, 414, 417 and 425 continue Civil Aviation Act 1990 and Airport Authorities Act 1966 regulation making powers relating to information disclosure, international carriage by air, fees and charges, levies and sale of alcohol at international airports.