

Proactive Release

This document is proactively released by Te Manatū Waka the Ministry of Transport.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

Listed below are the most commonly used grounds from the OIA.

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
9(2)(ba)(i)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public
9(2)(ba)(ii)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)

[IN-CONFIDENCE]

Office of the Minister of Transport
Cabinet Economic Policy Committee

Civil Aviation Act 2023 Implementation

Proposal

- 1 This paper seeks:
 - 1.1 agreement to release a public consultation document, and consult stakeholders, on the scope of decisions to be covered by the new independent review function created by the Civil Aviation Act 2023
 - 1.2 endorsement of my approach to other secondary legislation related to civil aviation offences and penalties that are necessary to successfully implement the Civil Aviation Act 2023.

Relation to government priorities

- 2 The Government is committed to creating a modern transport system that supports our economy and improves the wellbeing of New Zealanders. This includes safe and secure New Zealand airports and airspace. The work on the implementation of the Civil Aviation Act 2023 (2023 Act) ensures the regulatory underpinnings of the civil aviation system remain in place when the Civil Aviation Act 1990 (1990 Act) is repealed, and the 2023 Act comes into force, on 5 April 2025.

Executive Summary

- 3 The 2023 Act was enacted on 5 April 2023 and commences on 5 April 2025. It replaces the Civil Aviation Act 1990 and will repeal the Airport Authorities Act 1966 five years later, on 5 April 2030. The 2023 Act sets the foundations for the aviation regulatory system, and it is critical to ensuring the sector functions well.
- 4 Broadly, the implementation programme involves activities ranging from introducing new functions and requirements, to the smooth transition of existing provisions under the current legislation to take effect under the 2023 Act.
- 5 The Civil Aviation Authority (CAA) and the Ministry of Transport (the Ministry) are working closely together to implement the 2023 Act. The focus of the implementation programme is on the fundamentals of the civil aviation system to ensure our airports and airspace remain safe and secure, and business continuity is prioritised. Less essential provisions and powers enabled in the Act will be implemented over time.
- 6 I seek Cabinet agreement to release a public consultation paper on secondary legislation to be made under the 2023 Act that sets out the scope of decisions made by the Director of Civil Aviation that can be subject to a new independent review process. Separately, the Ministry is exploring cost recovery options. I am not seeking decisions on cost recovery now and will report back on proposals for levies or charges.

- 7 I also seek Cabinet's agreement to authorise me to:
- 7.1 determine matters that arise in the course of drafting secondary legislation relating to civil aviation offences and penalties, that are inconsistent with the intent of the current regime or of minor or consequential policy detail, without further reference to Cabinet; and
 - 7.2 to instruct the Parliamentary Counsel Office to draft secondary legislation relating to civil aviation offences and penalties.
- 8 Alongside the implementation of the 2023 Act, I am focused on the prudent financial management and the delivery of effective and sustainable performance of the Civil Aviation Authority (the CAA) s 9(2)(f)(iv) and a vibrant and competitive aviation sector that continues to grow, innovate and adapt through greater use of new technologies.

Background

- 9 The objective of the 2023 Act is to provide a single, modern statute that establishes a platform for safety and security within (and appropriate regulation of) the civil aviation system now and well into the future.
- 10 The 2023 Act strengthens drug and alcohol management requirements, requires a modern airport registration regime administered by the Secretary for Transport, introduces new systems and rules for aviation safety and security and a new independent review function for decisions made by the Director of Civil Aviation (the Director).
- 11 Significant work to enable the 2023 Act to commence on 5 April 2025 is focused on the fundamental components of the system that will ensure safety and business continuity. Less essential provisions and powers enabled in the Act will be implemented over time.
- 12 This 2023 Act implementation work sits within a broader context of other work needed to ensure this important sector operates effectively. I have set very clear expectations of CAA in my Letter of Expectations to the Board and through performance measures in the 2024/25 Statement of Performance Expectations. I am focused on the prudent financial management and the delivery of effective and sustainable performance of the CAA s 9(2)(f)(iv) and advancing New Zealand's approach to new technology and advanced aviation.

The 2023 Act introduces a new function to enable independent review of decisions made by the Director of Civil Aviation (Director)

- 13 The independent review function will be operational from commencement of the 2023 Act. Its purpose is to provide an expert independent review option for sector participants that is quicker and less costly than the court system. This is intended to promote transparency, timeliness, and accountability, and support improvements in decision-making in the aviation regulatory system over time.
- 14 The review function CAA responds to stakeholder concerns – expressed in submissions on the Civil Aviation Bill – about the time and costs of appealing decisions made by the Director through the courts, and the court system's lack of expertise on civil aviation matters.

- 15 The function will not cover medical certification decisions, as these are already reviewable through the medical convener procedure that the 2023 Act continues.
- 16 The 2023 Act requires that one or more reviewers be appointed to carry out reviews. The Ministry will provide secretariat support for the function.

The scale and the nature of demand for reviewable decisions is currently unclear

- 17 The 2023 Act provides that the scope of independent reviewable Director decisions is to be specified in regulations. It is difficult to predict the future demand for independent reviews, and the main categories of decisions for which stakeholders may wish to seek reviews.¹
- 18 I want to be confident that a new independent review function is effective and timely. Accordingly, the consultation process is intended to seek stakeholder feedback on the likely demand for reviews and the potential impact of the three indicative options, and thereby provide a more solid information base upon which to assess the most appropriate option.
- 19 I am seeking Cabinet's approval to release a consultation document that identifies three indicative options for setting the scope of reviewable decisions:
- 19.1 Indicative option 1 – the scope is based on the relevant categories of Director decisions that are appealable to the District Court. This would focus reviews primarily on decisions centred on 'aviation documents' (e.g. the granting or revoking of pilot licences or air operator certificates), which affect the ability of individuals/entities to operate within the civil aviation system. Around 2,000 decisions within this scope are made annually
- 19.2 Indicative option 2 – the scope is the same as option 1, with the addition of CAA decisions on the granting of exemptions from regulations and Civil Aviation Rules (the Rules). Decisions on exemptions from regulations and Rules are not decisions on 'aviation documents', and do not come within the scope of the right of appeal to the District Court under both the current Civil Aviation Act 1990 and the 2023 Act. Decisions on exemptions can range from significant (including granting special dispensation from a particular Rule to enable an individual or entity to participate in the civil aviation system) to comparatively minor. There are fewer than 100 decisions on exemptions made each year
- 19.3 Indicative option 3 – all Director decisions taken by (or on behalf of) the Director are reviewable, except where inappropriate or not relevant.² This option would bring the widest possible range of Director decisions within scope of the function. In addition to the categories of decisions covered under the other two options, it would also include the numerous minor day-to-day decisions made each year by the Director under the Civil Aviation Rules that

¹ The weight of opinion expressed across the submissions to the Committee over 2021-2022 suggests there may be substantial demand for a readily accessible independent review function. Informal feedback from representative organisations over 2023 suggests that the demand for reviews may not be as widespread as implied by the level of support for a review function in the submissions.

² Examples of inappropriate or not relevant decisions include decisions on medical certification (that are covered by the medical convener function), decisions where there is a need to act promptly to address immediate risks relating to public safety or security, decisions regarding prosecutorial discretion that are governed by the Solicitor-General's prosecution guidelines, and decisions regarding the payment of fees and charges that are pecuniary matters relating to invoicing and payment.

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do not fundamentally affect the privileges of those operating in the system. Around 100,000 decisions a year would be covered by this option.

- 20 Depending on the consultation feedback received, the scope that is recommended to Cabinet following the consultation process may differ from these three indicative options.
- 21 I consider that s 9(2)(f)(iv) may be the most workable and effective options to achieve the intent of the function. They will both respond to the core concerns raised in stakeholder submissions on the Civil Aviation Bill, regarding the need for a quicker and less costly alternative than going to court for reviews of appealable decisions on 'aviation documents'.
- 22 I also favour, at least initially, tightly defining the scope because:
- 22.1 I want to make sure that the function delivers timely reviews
- 22.2 once the function is operational it may be easier to expand the scope of the function than restrict the scope at a later date, should that be needed.
- 23 The consultation process is expected to provide an indication of demand and a more solid information base for final advice on determining the most appropriate scope of the function.
- 24 Subject to Cabinet's approval, the consultation document will be publicly released, with feedback requested over a four-week period. Officials will continue engaging with key civil aviation stakeholders during the consultation period.
- 25 I expect to report back to Cabinet following the consultation, to seek policy approval for the content of the regulations and for approval to issue drafting instructions to Parliamentary Counsel Office (PCO), in November 2024.

Cost recovery is being explored

- 26 The 2023 Act allows for fees and levies to be charged to reimburse direct and indirect costs and to facilitate the delivery of functions and processes enabled by the Act. I am aware that aviation businesses are facing cost increases in other areas, and I am committed to keeping costs of an independent review function as low as practicable. The Ministry is exploring cost recovery options for the new independent function (and for authorisations of internal air carriage alliances).
- 27 I am not seeking decisions on cost recovery now and will report back on proposals for cost recovery levies or charges. These would require a separate stakeholder consultation process that would need this Committee's approval.

Appointing reviewers

- 28 I am responsible for appointing at least one reviewer. I expect to bring this matter to the Cabinet Appointments and Honours Committee no later than February 2025.

Other Act Implementation matters

Existing rules

- 29 The 2023 Act requires me, as Minister of Transport, to remake all current civil aviation rules. It provides for a streamlined process to carry over the existing settings, with any necessary updates to reflect the Act. These are largely technical.

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30 Consultation is not required for existing rules as part of the streamlined process, but I expect officials to engage with stakeholders by publishing draft rules for sector feedback in the second half of 2024. This will assure me that the new rules are consistent with what the Act intends.

Offences regulations

31 The Civil Aviation (Offences) Regulations 2006 (2006 Regulations) need to be remade under the 2023 Act. These regulations identify which breaches of rule provisions are offences under the Act, the maximum fines that can be imposed by a Court and infringement fees where that option is available.

32 The remade regulations will replicate the current regulations, with necessary changes to reflect the 2023 Act and remade aviation sector rules. The bulk of the changes will be the revocation of items relating to previously revoked rules and aligning with editorial changes to the remade rules, which meets the criteria in paragraph 7.95(d) of the Cabinet Manual as routine and not requiring new policy decisions.³

33 Officials have identified a small number of items that are inconsistent with the intent of the current regime, and I seek authorisation from Cabinet to address these during drafting of the regulations without further reference to a Cabinet policy committee. Examples of these inconsistencies include, but are not limited to:

33.1 when a rule applies to body corporates but the regulations only prescribe penalties for individuals - it could be appropriate to include penalties for body corporates in specific cases

33.2 rules where breach should be an offence, but no offence is prescribed.

34 I intend to issue drafting instructions to PCO without further reference to this Committee. I anticipate these regulations, once drafted, will be ready for consideration by the Cabinet Legislation Committee (LEG) by February 2025.

35 I expect implementation deliverables relating to Cabinet decisions will meet the following approximate timeframes:

Milestone/Activity	Timeframe
Consultation on scope of reviewable decisions for independent review function	August 2024
Cabinet approval of independent review function scope and drafting instructions and appointment of independent reviewer/s ⁴	November 2024
Cabinet approval of regulations for offences and penalties and independent review function	By February 2025
Civil Aviation Act 2023 comes into force; rules, regulations, and notices made under that Act come into effect	5 April 2025

³ Section 7.95 (d) states that "...If the secondary legislation is routine and does not require new policy decisions, the Minister may authorise drafting without reference to Cabinet."

⁴ I will report back if I wish to seek decisions on cost recovery levies or charges.

Cost-of-living Implications

- 36 These proposals do not affect the cost of living. Most elements of the implementation work programme are designed to carry over existing settings to the 2023 Act. There will be some costs to operators in complying with 2023 Act requirements, but these will be kept to a minimum.

Financial Implications

- 37 There are no new financial implications or requirements associated with this paper. Crown funding was approved in Budget 2023 to ensure the independent review function can be implemented, at least until demand and other necessary information is available to consider alternative funding approaches.

Legislative Implications

- 38 Secondary legislation will be required to give effect to the following:
- 38.1 setting reviewable decisions for the new independent review function
 - 38.2 remaking the Civil Aviation (Offences) Regulations.
- 39 PCO has been consulted on the upcoming work to deliver secondary legislation by the end of February 2025.

Impact Analysis

- 40 As requested by the Treasury, the Ministry's Quality Assurance panel has reviewed the consultation paper on the scope of the decisions reviewable by the Civil Aviation Authority Director and determined that it contains sufficient impact analysis to support Cabinet's decision to release it. Therefore, a separate regulatory impact statement (RIS) is not required at this stage. A full RIS will be completed at a later stage to inform Cabinet's final decisions on this proposal.
- 41 The other matters referred to in this paper are unlikely to require Regulatory Impact Analysis, as they provide solely for the commencement of the 2023 Act's legislative provisions. Policy proposals in the Act were subject to regulatory impact analysis requirements during the Civil Aviation Bill's development.

Population Implications

- 42 There are no population implications associated with this paper.

Human Rights

- 43 There are no human rights implications of these proposals. Secondary legislation developed to give effect to the new independent review function will be consistent with the New Zealand Bill of Rights Act 1990.

Use of External Resources

- 44 The Ministry of Transport has not engaged external resources to develop the proposals outlined in this paper.

Consultation

45 The following agencies were consulted on the contents of this paper: Ministry of Justice, the Treasury, Te Puni Kōkiri Ministry of Māori Development and the Civil Aviation Authority. The Department of the Prime Minister and Cabinet has been informed.

Communications

46 Officials will provide information about the consultation of the Independent Review function scope, through the joint Ministry and CAA regular newsletter, with follow-up information and discussion provided when requested.

47 When consultation begins, officials will provide information on the Ministry of Transport website and create social media posts, and email key stakeholders.

Proactive Release

48 This paper will be proactively released within 30 business days after it has been confirmed by Cabinet. It will be subject to redaction, as appropriate, under the Official Information Act 1982.

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Recommendations

The Minister of Transport recommends that the Committee:

- 1 **note** that the Civil Aviation Act 2023 will commence on 5 April 2025

Independent review function – reviewable decisions

- 2 **note** the Civil Aviation Act 2023 introduces a new function to enable applicants to seek expert independent reviews of decisions made by the Director of Civil Aviation that affect them
- 3 **note** that the Civil Aviation Act 2023 provides that secondary legislation will specify the decisions to be subject to this function
- 4 **approve** the release of the attached Ministry of Transport consultation document entitled *Independent reviews of the Director of Civil Aviation's decisions: Regulations to set the scope of reviewable decisions* to the public
- 5 **direct** the Ministry of Transport to carry out consultation on options for setting the scope of reviewable decisions, for a four-week period following Cabinet approval
- 6 **agree** that minor or technical changes may be made to the consultation paper, if necessary, prior to its release.
- 7 **note** Cabinet will be asked to approve the independent review function scope and drafting instructions in November 2024, and to approve the regulations in February 2025.

2023 Act implementation matters related to civil aviation offences and penalties

- 8 **note** that the secondary legislation, in relation to offences under section 407 of the Civil Aviation Act 2023 is required to support enforcement of the remade civil aviation rules
- 9 **authorise** the Minister of Transport to determine matters that arise in the course of drafting secondary legislation in relation to offences, that are inconsistent with the intent of the current regime or of minor or consequential policy detail, without further reference to Cabinet (subject to these decisions being noted by Cabinet when secondary legislation is considered for authorisation for submission to the Executive Council)
- 10 **invite** the Minister of Transport to instruct the Parliamentary Counsel Office to draft secondary legislation relating to civil aviation offences and penalties.
- 11 **note** Cabinet will be asked to approve regulations for offences and penalties by February 2025.

Hon Simeon Brown

Minister of Transport

Independent reviews of the Director of Civil Aviation's decisions

Regulations to set the scope of reviewable decisions

Consultation document
Not Government policy
August 2024

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Introduction

The purpose of this paper is to seek your views on the setting of the scope of decisions to be covered by the new independent review function created by the Civil Aviation Act 2023 (the 2023 Act).

In this document, the Ministry of Transport Te Manatū Waka (the Ministry) invites your feedback on three indicative options for setting the scope of the review function. A series of questions are set out in the document. Your responses to these questions will help us to understand the impact the different options could have on you.

Please also feel free to provide us with any other comments you consider to be relevant to any of the issues canvassed in this paper.

Your feedback will inform our advice to Ministers when they make final policy decisions on the scope of decisions to be covered by the independent review function. Depending on the feedback received, the scope that is finalised may differ from the options presented in this paper.

You can provide feedback on part or all of the issues and proposals by writing and sending your input to civilaviationact@transport.govt.nz with the subject line "feedback - independent review".

The consultation period will close on 9 September 2024. Following this, we will review all feedback and finalise any proposed changes, taking your views into account.

We will then prepare a report for the Minister of Transport to communicate your perspectives and suggestions, and to make recommendations about which options should be taken and how this approach might have changed in response to your feedback.

We may use an artificial intelligence tool to help us analyse submissions.

We may use an AI tool to help us analyse your feedback. We will take steps to avoid inputting personal information into any AI tool that is outside our network.

Your feedback may become public information.

Please note the feedback you provide us with may become publicly available. The Ministry may publish any information you submit and identify you as the submitter. Therefore, please clearly indicate if your comments are commercially sensitive or should not be disclosed for another reason, or the reason why you should not be identified as the submitter. Any request for non-disclosure will be considered under the Official Information Act 1982.

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Summary

- 1 The 2023 Act creates a new function that enables independent reviews of regulatory decisions made by the Director of Civil Aviation (the Director) or persons delegated by the Director. The function will be independent of the Civil Aviation Authority (CAA), and independent of the appeal and judicial review rights that aviation participants already possess.
- 2 The purpose of the new function is to provide an expert independent review option for sector participants that is quicker and less costly than the courts, and to promote accountability and good decision-making in the regulatory system.
- 3 The 2023 Act leaves the scope of decisions to be covered by the new function to be specified in regulations. This consultation paper identifies three indicative options for setting the scope of reviewable decisions. Depending on the consultation feedback received, the scope that is finalised may differ from the options presented in this paper, in order to ensure the new function is effective in meeting its intended purpose.
- 4 The indicative options are:
 - **Option 1** – the scope of reviewable decisions would be based on relevant categories of decisions taken by (or on behalf of) the Director that are appealable to the District Court
 - **Option 2** – the same as Option 1, except that decisions on the granting of exemptions from regulations and Civil Aviation Rules (the Rules) would also be included
 - **Option 3** – all regulatory decisions taken by (or on behalf of) the Director would be reviewable, except where inappropriate or not relevant.
- 5 Your feedback on the options and issues canvassed in this paper will help to provide a more solid information base upon which to assess the most appropriate approach for setting the scope of reviewable decisions.

The review function was created in response to stakeholder concerns

- 6 Submitters who engaged the Transport and Infrastructure Committee (the Committee) during its consideration of the Civil Aviation Bill (the Bill), over 2021-2022, raised concerns about what they viewed as the limited ability to challenge the decision-making powers of the Director.
- 7 Under the current system, there are several existing avenues for independent reviews of decisions made by (or on behalf of) the Director that the 2023 Act carries over:
 - Applicants may appeal key regulatory decisions to the District Court, under section 453(1) of the 2023 Act (previously section 66(1) of the Civil Aviation Act 1990). Appealable decisions primarily relate to certification – i.e. the granting, renewal,

THE REVIEW FUNCTION WAS CREATED IN RESPONSE TO STAKEHOLDER CONCERNS

suspension, revocation of, or imposition of conditions on, 'aviation documents'¹. These decisions control participation in the aviation system – including licensing pilots and air operators, and controlling the use of aircraft, equipment, and flight systems.

- An applicant also has the right to make an application for judicial review, to the High Court, of any decision made by the Director pursuant to functions under the Act or powers granted under the Rules.²
- Individuals may also challenge medical certification decisions by lodging an application for review with the medical convener, under Schedule 2 of the 2023 Act (previously Part 2A of the Civil Aviation Act 1990). This process is separate from the ability to appeal to the courts.
- The Ombudsman also has a role in investigating complaints relating to government agencies, including the CAA, where people do not feel that they have been treated fairly.³

8 During the Committee's consideration of the Bill, submitters expressed concerns about the drawbacks of appealing CAA decisions through the courts. They noted that undertaking judicial actions is costly, and there is typically a long interval between when a contested decision was made and the conclusion of the court process. This means court action can be an ineffective remedy, particularly in the face of adverse decisions that have an immediate, significant impact – for example, where someone has been suspended from operating within the aviation system, and thus loses their ability to earn income.

9 It was noted in submissions that the District Court process can take up to 3-4 years, with associated costs that can amount to over \$300,000 per case.⁴ There were only 13 appeals to the District Court regarding CAA decisions between 2013 and 2022. This may partly reflect the disincentives to taking court action presented by the associated costs and time delays.

10 In response, Parliament agreed to include provisions in the Bill to enable regulatory decision-making by the CAA to be subject to additional scrutiny, by providing for independent reviews of how the Director exercises their functions and powers.⁵

¹ "Aviation documents" are defined under section 5 of the 2023 Act to mean "any licence, permit, certificate, or other document issued under subpart 1 or 2 of Part 4 to or in respect of any person, aircraft, aerodrome, aeronautical product, or aviation-related service".

² The right to judicial review exists independently of any statutory appeal rights, and cases consider only matters of procedural justice (i.e. whether the decision was made in accordance with the law, and is within the range of reasonable decisions possible). Judicial review cases of CAA decisions tend to be more costly to applicants than appealing to the District Court, and thus are extremely rare.

³ Investigations by the Ombudsman relating to the CAA are relatively rare. For example, in 2021 the Ombudsman's office engaged with the CAA on five complaints it had received. Four of those complaints were related to the CAA declining to provide information under the Official Information Act, and one was in relation to the Civil Aviation Rules.

⁴ <https://bills.parliament.nz/v/6/259400c2-8ca0-483c-a959-edf2c2b86b4d?Tab=sub>

⁵ The creation of this function was recommended in Ministry advice to the Committee, and the Committee recommended the inclusion of these provisions in its report-back to Parliament
<https://www.legislation.govt.nz/bill/government/2021/0061/latest/LMS49346.html>

THE 2023 ACT SETS OUT THE KEY FEATURES OF THE NEW FUNCTION

- 11 The purpose of the new function is to:
- provide an expert independent review option that is quicker and less costly than the District Court process, without replacing or duplicating existing mechanisms
 - promote good decision-making by strengthening accountability and transparency around the rationale for decisions – thus enhancing the effectiveness and public confidence in the regulatory system over time.

The 2023 Act sets out the key features of the new function

- 12 The Act specifies that the new review function will enable “a 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” to seek an independent review of a decision made by the Director (or by persons delegated by the Director) that affects them.
- 13 The function will be operational from 5 April 2025, when the 2023 Act comes into force.
- 14 The main requirements for the establishment and operation of the independent review function are set out in Part 10, Subpart 5 of the 2023 Act:
- the Minister of Transport is to appoint one or more independent reviewers with the appropriate range of expertise to carry out reviews
 - applications for review must be made within 20 working days after the date on which the applicant was notified of the decision to which the application relates
 - the reviewer may reject an application for review that is trivial, frivolous, or otherwise an abuse of process or vexatious in nature
 - reviewers will carry out reviews, drawing on advice and expertise of other suitably qualified and experienced people, and report their recommendations to the Director
 - reviewers’ recommendations are non-binding – this was specified by the Committee to ensure that the role of the reviewer would not conflict with the Director’s overall responsibility to oversee a safe and secure civil aviation system⁶
 - the Director must, within 10 working days, make a final decision on whether to accept any, or all, of those recommendations and must provide an explanation of the reasons for the final decision – the Director’s final decision may involve either a new decision or confirmation of the existing decision
 - 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 (provided the decision is of a type that is appealable under the Act) or to take a complaint to the Ombudsman

⁶ <https://selectcommittees.parliament.nz/v/SelectCommitteeReport/af1a75ae-bf70-44af-9fbc-0e7876d7dc2d>

FACTORS RELEVANT TO DEVELOPING THE REGULATIONS

- the categories of decisions that may be subject to the independent review function are to be specified in regulations – this is intended to provide more flexibility than prescribing them in the primary legislation, whilst retaining a high level of executive scrutiny.
- 15 Reviewers will not have the power to require any form of compensatory payments, or actions, following the outcome of a review.
- 16 The following parameters apply to reviews:
- reviews may consider both the substance of a decision and the process by which the decision was made, meaning that both the technical and procedural merits of a decision may be reviewed
 - reviews may cover decisions relating to things, such as aircraft, insofar as they affect a person's ability to operate within the civil aviation system
 - reviews do not extend to the setting of standards across the aviation system, they only apply to the application of those standards
 - the function 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.
- 17 The Ministry is currently working on the establishment of the review function, including the appointment of reviewers, the development of the necessary secretariat and functional support, and exploration of options for cost recovery. The focus of this paper is the development of regulations to set the scope of the function.

Factors relevant to developing the regulations

- 18 There are a range of factors that have implications on the assessment of options, as detailed below.

It is difficult to forecast the likely level of demand for, and costs of, independent reviews

- 19 One of the key challenges in assessing the scope of function is the difficulty in predicting the likely level and nature of demand for independent reviews once the function is operational.
- 20 The weight of opinion expressed across the submissions to the Committee over 2021-2022 suggests there may be substantial demand for a readily accessible independent review function. Informal feedback from some representative organisations since that time, though, suggests this may not necessarily be the case.
- 21 Overall, there are no directly applicable data that can be used to forecast accurately the level and nature of demand, and there is only limited wider contextual information available.⁷

⁷ While there have been few appeals to the District Court since 2013, it is difficult to read much significance into this, given the major delays and cost barriers inherent to Court action.

- 22 The uncertainties around the demand for reviews also make it difficult to forecast the likely costs and resourcing requirements across the different options for setting the scope of the function.
- 23 We anticipate the main costs of the review function will comprise:
- the remuneration of reviewer(s) and incidental costs
 - the costs of any required independent contracted technical advice, where reviews centre on technical matters beyond the expertise of reviewers
 - the cost of secretariat and functional support for the review process provided by the Ministry, including overheads.⁸
- 24 There will also be funding and capacity demands on the CAA from the operation of the review function. This is because the 2023 Act requires the CAA to provide relevant case information to reviewers on request. The Director will also be required to consider and make final decisions in response to the reviewer's recommendations in each case.

Cost recovery is under consideration

- 25 The 2023 Act enables fees to be charged to reimburse the direct and indirect costs associated with reviews, and/or for levies to meet the wider delivery costs of the review function.
- 26 The Ministry is exploring potential options for cost recovery in relation to the independent review function. Your feedback on the scope of the review function will help inform this work, by providing information on the likely scale and cost of the function once it is operational.
- 27 A separate stakeholder consultation process would be carried out if a decision is made to progress options for cost-recovery.

The core policy intent needs to be met as efficiently as possible

- 28 To maximise effectiveness of the function in meeting its core policy intent there may be a need for the scope of reviews to be focused primarily on more significant decisions, which have a 'material impact' on a person or operator. That is, decisions that have a major bearing on their ability to participate in the sector and/or their livelihoods – for example the suspension or revocation of an 'aviation document', such as a pilot's licence or an air operator's certificate.
- 29 There is a need to ensure the function appropriately balances the intent of the Act with the practicalities of maintaining a manageable workload for the independent reviewers.

Comparable independent review entities in the UK, Australia and Canada carry out relatively few reviews a year across larger civil aviation sectors. However, the scope of these review functions is generally limited to decisions regarding the granting or revoking of a relatively narrow range of key certificates, permits or licences (such as pilot licences or air operator certificates). Also, civil aviation agencies in those countries tend to have relatively extensive internal review procedures available to sector participants, which may serve to stem much of the demand for independent reviews (see **Annex 2**).

⁸ The nearest reference point to help gauge the likely costs of the review function is the medical convenor process, given it has many similar design features to the review function. Around 20 reviews a year are carried out by the medical convenor function, at an estimated average cost of around \$5,500 per review (comprising convenor remuneration, contracted specialist advice, and Ministry support costs and overheads).

QUESTIONS FOR FEEDBACK

- 30 If reviews were to extend to lower-level regulatory decisions that do not fundamentally affect someone's ability to operate in the aviation system, there might be a need to accord them a lesser priority. Otherwise, reviews of this nature could take up time and resources at the expense of the review function's capacity to consider more impactful decisions.
- 31 This approach reflects the Legislation Design and Advisory Committee (LDAC) guidelines on creating systems of appeal, review, and complaint, which specify that:

"The value of an appeal must be balanced in the particular circumstances against a consideration of the potential costs, implications of delay, significance of the subject matter, competence and expertise of the decision-maker in the first instance, and the need for finality. However, concerns about cost and delay should usually be dealt with by limiting the right of appeal, rather than denying it altogether"⁹

Questions for feedback

What types of decisions made by the CAA do you think have a "material impact" on you or your business?

Do you have a view on the likely demand for independent reviews of CAA decisions once the function is operational, including the kind of decisions where the demand for reviews may be most prominent?

Have you or your business ever been subject to a decision that you think warranted independent review (had that option been available at the time)? Please provide any information you think would be helpful for us to understand the type of decision made and how it affected you or your business.

⁹ Legislation Design and Advisory Committee, Legislation Guidelines (2021 edition): <https://www.ldac.org.nz/guidelines/legislation-guidelines-2021-edition/appeal-and-review-2/chapter-28>

Options

- 32 We have identified three indicative options for the scope of decisions to be subject to review, outlined below for your consideration and feedback.
- 33 Under these options, given that section 446(2) of the Act provides for the rejection of applications for review that are “trivial, frivolous or vexatious or otherwise an abuse of process”, we expect that applicants will have used all available avenues to work through with the CAA concerns they have about the Director’s decision in question, during the period of the Director’s consideration and after the Director’s decision before deciding to apply for an independent review.

Option 1 – Aligning with the 2023 Act’s right of appeal to the Courts

- 34 This option would set the scope of decisions **based on the relevant scope of decisions that are already subject to appeal to the District Court**, which are set out in section 453(3) of the 2023 Act (previously section 66(5)) of the 1990 Act).
- 35 This option would focus reviews primarily on decisions linked to the granting, renewal, suspension, revocation, or imposition of conditions of ‘aviation documents’– e.g. a pilot’s licence or an air operator’s certificate, airworthiness certificate or maintenance engineer’s licence. These decisions primarily determine whether an applicant is a ‘fit and proper’ person or operator to participate in the civil aviation system and set the key conditions for their participation (see Annex 1).
- 36 This would mean the key categories of decisions in scope for the function would be the following decisions made by (or on behalf of) the Director set out in section 453:
- to decline to register an aircraft under section 37 [Section 453(3)(a)]
 - concerning the grant, issue, revocation, or suspension of an aviation document [Section 453(3)(b)]
 - to impose conditions on an aviation document [Section 453(3)(c)]
 - to issue an improvement notice under section 298 [Section 453(3)(d)]
 - to amend a New Zealand Air Operator Certificate (AOC) with ANZA privileges or withdraw those privileges ¹⁰ [Section 453(3)(l)].
- 37 Around 2,000 decisions a year are made covering the above categories.
- 38 Under this option, certain categories of decisions set out in section 453(3) would need to be excluded on the grounds that it would be inappropriate, or not relevant, to include them, as set out in Table 1 below.

¹⁰ An AOC with ANZA privileges issued by the aviation safety authority of one country authorises the holder of that AOC to operate aircraft in the other country, without needing to hold an AOC issued by the aviation safety authority of the other country.

OPTIONS

Table 1 Categories of decisions in section 453(3) excluded under Option 1

Category	Rationale
<ul style="list-style-type: none"> Decisions to issue a non-disturbance notice [Section 453(3) (e)] Decisions to exercise powers to detain aircraft, seize aeronautical products, or impose prohibitions and conditions relating to aerodromes, aircraft, and aeronautical products [Section 453(3) (f)] 	These relate to matters where there is a need to act promptly to address immediate risks relating to public safety or security.
<ul style="list-style-type: none"> Medical certification decisions [section 453(3) (g)-k] 	Reviews of these are covered by the medical convenor process.
<ul style="list-style-type: none"> Decisions made by the Secretary for Transport, rather than the Director [section 453(3) (m)] 	Decisions made by the Secretary are not covered by the independent review function.

39 The scope of decisions subject to review under this option would broadly be in line with the types of decisions covered in similar review functions in Australia, Canada and the United Kingdom (UK). Those functions also tend to focus on decisions relating to civil aviation documents (see Appendix 2).

Option 2 – based on Option 1, but with decisions on exemptions also included

- 40 This option would include all the categories of decisions covered under **Option 1**, but would also include decisions made by (or on the behalf of) the Director **to grant or not to grant, exemptions** from regulations or Rules made under the 2023 Act for “any named aviation participants, aeronautical products, aircraft, aerodromes, aviation-related services, or other things”. Section 322(1)(a) of the 2023 Act provides the authority to make such decisions.¹¹
- 41 Exemptions may be granted, with appropriate conditions, where an aviation participant is unable to comply with a prescriptive rule requirement.¹² Exemptions give the CAA flexibility to accommodate unforeseen or exceptional situations, without changing the law. The critical issue for an exemption decision is whether it enables the same level of safety, or risk control, to be achieved as the Rule is intended to achieve.
- 42 Exemption decisions can relate to requirements specified in most of the 50 Rule Parts. They can range from significant (including granting special dispensation from a particular Rule to enable an individual or entity to participate in the civil aviation system) to relatively minor (such as exemptions from operating, technical, experience, training or competency requirements, or required maintenance or safety schedules).

¹¹ Under the 2023 Act, decisions applying to any *class* of “aviation participant, aeronautical product, aircraft, aerodrome, aviation-related service or other thing” [section 322(1)(b) of the 2023 Act] would however not be reviewable, as class exemptions are deemed secondary legislation under section 322(5), and thus they are effectively part of the settings of the regulatory framework.

¹² In effect exemptions relate only to Rules, as under existing settings, no regulations impose regulatory requirements on individual aviation participants.

- 43 Decisions on exemptions are not subject to a right of appeal to the District Court. This is because they are not categorised as decisions on 'aviation documents', under the Civil Aviation Act 1990 and the new 2023 Act. However, individuals have the right to apply to the High Court for judicial review of any such decision.
- 44 Less than 100 decisions on exemptions are made each year.

Option 3 – A broad scope of regulatory decisions subject to review

- 45 Under this broader option, **all decisions** taken in relation to sector participants by (or on behalf of) the Director would potentially be reviewable. The only exceptions would be categories of decisions that would be inappropriate or inapplicable, as detailed in Table 2 on the following page.
- 46 This option would include CAA decisions covered under **Option 1** and **Option 2** but would also include a wide range of more minor miscellaneous decisions made by personnel (delegated by the Director) which do not fundamentally alter the privileges of those operating in the system.
- 47 These lower-level decisions would include numerous decisions on:
- operating, technical, experience, training and/or competency requirements – such as decisions on the approval of minor maintenance matters, paint schemes and markings, types of courses and examinations, forms of ID, technical data, minimum equipment that must be carried in an aircraft, and accepting alternative means of compliance to those prescribed in the Rules – e.g. under Rule Parts 19, 39, 43, 47, 61, 91, and 125
 - amendments to an aviation document holder's operations (such as minor changes to maintenance or safety schedules) or its organisation (such as changes to personnel or the location of operations) that are subject to the Director's acceptance – e.g. under Rule Parts 47, 115, 119, 129 and 137.
- 48 Under both the current Act and the 2023 Act, the main existing right applicants have to challenge decisions of this type is to lodge an internal complaint directly with the CAA.¹³
- 49 In the region of 100,000 decisions a year are made covering all the categories within scope of this option.

¹³ CAA advise this internal complaints avenue is currently used to resolve some lower order Rules-based decisions mentioned above: [Authority Complaints Policy \(aviation.govt.nz\)](https://www.aviation.govt.nz/authority-complaints-policy)

OPTIONS

Table 2 Categories of Director's decisions that would be excluded under Option 3

Category	Rationale
Decisions relating to medical certification – under Schedule 2 of the 2023 Act.	These decisions are covered by the review role of the medical convener.
Decisions regarding the creation of Emergency Rules by the Director, under Part 3 (Subpart 2) of the 2023 Act.	These decisions enable the regulatory framework to be amended urgently, to address immediate risks not addressed by the existing regulatory framework. There are in-built statutory restrictions on the use of these powers (such as time limitations).
Decisions relating to aviation security and monitoring, investigation, enforcement – for example relating to alcohol and drug testing (Part 4, Subpart 6), security checks (Part 5), entry and inspection, searching, and seizure (Part 9) of the 2023 Act.	These relate to matters where there is a need to act promptly to address immediate risks relating to public safety or security. It is generally not possible to undo actions of this nature once they have been carried out – and, as already noted, the function will not have powers to require any retrospective form of compensation or reimbursement.
Decisions to delegate functions, under Part 10, Subpart 7 of the 2023 Act.	Delegation decisions are part of the setting of the operation of the regulatory framework, and are not made with respect to specific individual regulated parties, aircraft, aeronautical products or services.
Decisions to initiate proceedings in respect of any offence under the Act, or Rules or regulations made under the Act or to issue an infringement offence notice.	Other more appropriate avenues than the independent review function exist in relation to these matters, e.g.: <ul style="list-style-type: none"> • decisions to initiate proceedings are governed by the Solicitor-General's prosecution guidelines • there is an established Court process specific to contesting infringement offence notices.
Decisions to impose or recover fees, charges and levies , primarily under Part 10 (Subpart 1) of the 2023 Act.	These are pecuniary matters relating to invoicing and payment, rather than matters of aviation specialist knowledge or procedural justice.

50 The essential differences between the three options are illustrated in Figure 1 below.

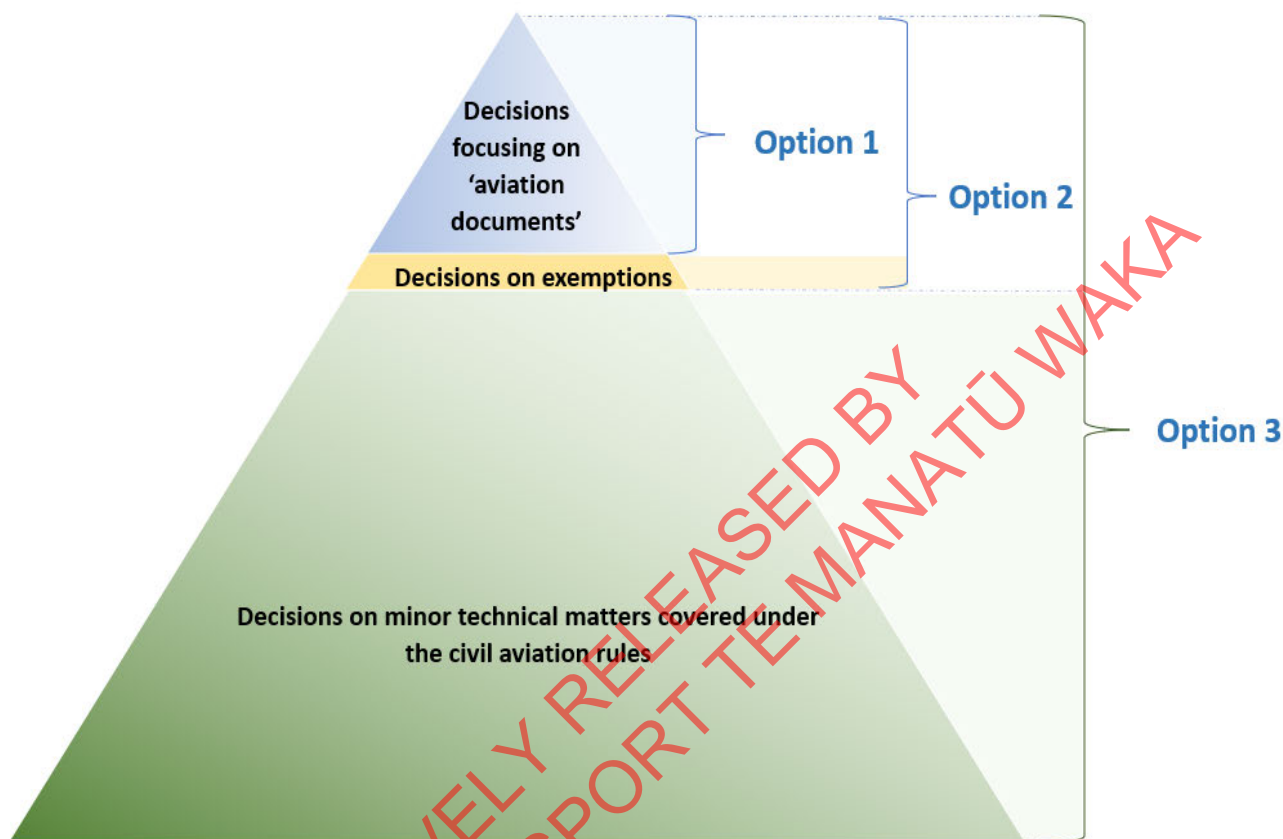


Figure 1 Coverage of options for scope of independent review function

Comment

51 **Option 1** would offer the advantages of:

- responding to the core concerns raised in submissions on the Civil Aviation Bill, regarding the need for a quicker and less costly alternative than going to Court for reviews of appealable decisions
- focusing reviews on the majority of decisions which have a significant impact on aviation participants
- providing the highest degree of certainty that the function would be able to operate on a manageable basis, by avoiding any possible risk of reviews of a broader range of mostly lower-order decisions compromising the delivery of reviews of more impactful decisions.

52 It is possible though that some CAA decisions not captured by **Option 1** may be viewed as significant by some potential applicants and thus this option may be seen as materially limiting the new rights provided by the review function.

IMPACT ASSESSMENT CRITERIA

- 53 As experience with implementation of the review function accumulates, the scope of decisions subject to review under **Option 1** could be expanded, if compelling evidence were to emerge that certain categories of decisions not covered under this option should be included.
- 54 **Option 2** would offer essentially the same advantages as **Option 1** but, by making decisions on exemptions reviewable, would also likely provide more complete coverage of decisions which potentially have a significant impact on aviation participants.
- 55 **Option 3** would cover a much broader range of CAA decisions than the other two options, by including a wide range of more minor decisions within scope, thus maximising the coverage of the function.
- 56 There is a potential risk, however, that the broad range of decisions captured under **Option 3** could generate undue pressure on reviewers' time and resources. This could compromise the function's capacity to deliver timely reviews of decisions that have a more material impact on applicants. It could also impose demands on CAA resources that intrude on the agency's day-to-day regulatory operations, and potentially compromise the Director's ability to arrive at a final decision on reviewers' recommendations within the statutory time frame.
- 57 As noted earlier, the assessment of these options is limited at this stage by the extent of unknowns about the likely demand for reviews and the potential impacts of different approaches to setting the scope of the function. Your feedback on the issues canvassed in this paper will help to provide a more solid information base upon which to determine the most appropriate approach to setting the scope of reviewable decisions.

Impact assessment criteria

- 58 In the table on the next page, we summarise our preliminary assessment of these options against the following criteria.

Table 3 Impact Assessment Criteria

Criteria	Description
1 Effectiveness	How well would the option achieve the intended policy objectives - namely to: <ul style="list-style-type: none"> serve as a faster and less costly route for independent reviews of decisions compared to consideration by the courts encourage transparency and accountability, and promote the quality of civil aviation regulatory decision-making.
2 Equity Fairness	Would the option achieve the fair treatment of participants?
Positive factors	
Negative factors	

Table 4 Impact Analysis Table

	Option 1: based on the 2023 Act's right of appeal to the District Court	Option 2: based on Option 1 but with decisions on exemptions also added	Option 3 Broad approach
Effectiveness	<ul style="list-style-type: none"> This option would: <ul style="list-style-type: none"> support the core policy intent of providing a faster and less costly independent review process for specified decisions than consideration by the courts focus reviews on the majority of decisions that affect the ability of individuals and organisations to operate in the civil aviation system provide a degree of certainty that the function would be able to operate on a manageable basis. It would be broadly in line with comparable entities that carry out independent reviews of civil aviation regulatory decisions in Australia, Canada and the UK (Annex 2). Eligibility for review could be reviewed after implementation to ensure the scope of reviewable decisions remains fit-for-purpose. The scope could be broadened, if evidence emerges that other categories of decisions should be included. 	<ul style="list-style-type: none"> This option would offer essentially the same advantages as Option 1 but, by making decisions on exemptions reviewable, would also likely provide a more complete coverage of decisions which can potentially have a significant impact on aviation participants. 	<ul style="list-style-type: none"> This option would ensure the widest possible range of CAA decisions that could have a material impact on sector participants could be subject to review decisions – including decisions on exemptions and the numerous relatively minor rule-related decisions that would not be covered under Option 1 or Option 2. Eligibility for review could be re-assessed after implementation to ensure the scope of reviewable decisions remains fit-for-purpose and is set appropriately to maximise the benefit of the function.
	<ul style="list-style-type: none"> There is a risk that some decisions made by CAA that may be (or may be seen to be) significant would not be captured under this option – namely decisions on: <ul style="list-style-type: none"> exemptions the more numerous lower-level decisions (the CAA has advised there may be a limited likelihood of individuals seeking reviews in relation to these types of decisions, as they are generally of relatively minor consequence). 	<ul style="list-style-type: none"> As with option 1, there is a risk that some decisions made by CAA that may be (or may be seen to be) significant would not be captured under this option – namely decisions on the more numerous more lower-level decisions. 	<ul style="list-style-type: none"> This option would capture numerous but relatively low-level CAA decisions (mostly decisions made under the Rules). Reviews of such decisions could place demands on the review function that, to some extent, could compromise its capacity to deliver timely reviews of decisions that have a more material impact on applicants.
Equity Fairness	<ul style="list-style-type: none"> The option would focus resources to deal with largely significant decisions in a timely manner. 	<ul style="list-style-type: none"> Would provide a more complete coverage of decisions which potentially have a significant impact on aviation participants than Option 1. 	<ul style="list-style-type: none"> Would maximise sector participants' rights in the sense that a broad range of CAA decisions would potentially be subject to review.
	<ul style="list-style-type: none"> May limit some sector participants' rights, as some decisions made by CAA that are, or are seen to be, significant by sector participants would not be included within scope. 	<ul style="list-style-type: none"> As with Option1, although decisions on exemptions would be included within scope. 	<ul style="list-style-type: none"> Applications for reviews of decisions on the broader range of decisions, including the numerous more minor decisions, could mean that resources would be stretched more thinly and be less available to progress more significant cases in a timely manner.
Overall comment	Further assessment required, content on stakeholder feedback		

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Questions for feedback

Do you have any comments on the features of the three options for setting the scope of reviewable decisions outlined in this paper and the rationale provided for them?

Do you favour any of these options? Are there any amendments to these options you think are necessary, or other options you think would be more appropriate for setting the scope of the function?

What do you expect the level of demand for independent reviews would be under these options or under an alternative approach?

What do you think would be the impact of any of these different approaches for you or your organisation?

Is there any other information you think should be factored into the identification and assessment of the options for setting the scope of the independent review function?

Do you have any other general or specific comments on the issues canvassed in this paper?

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Annex 1 Aviation documents

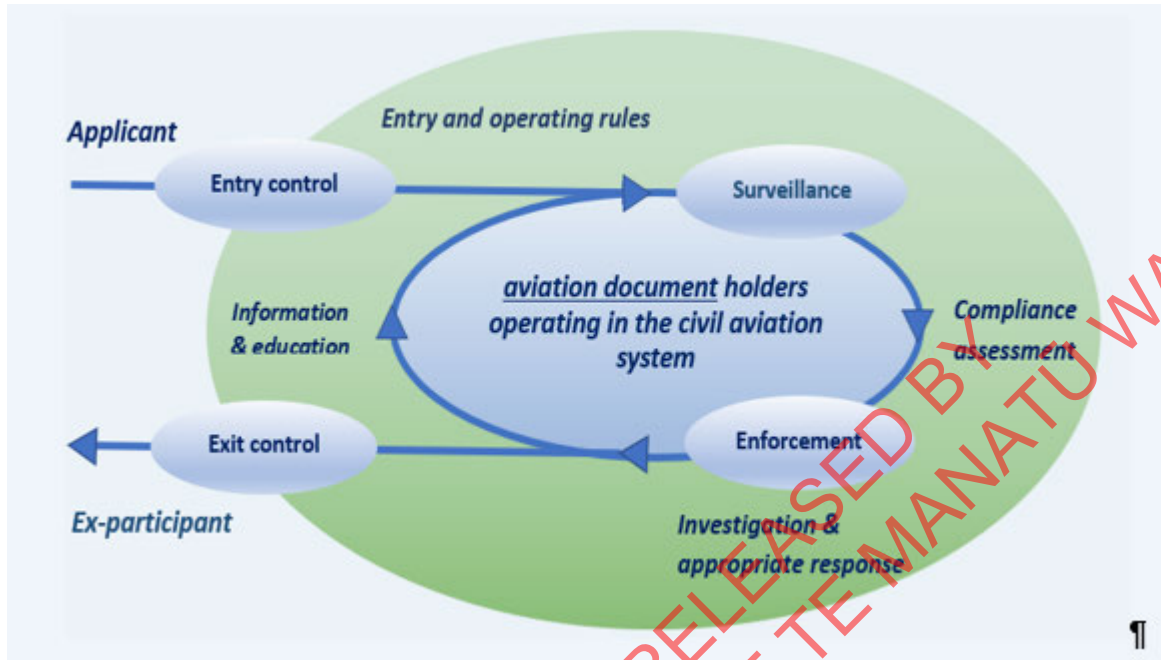


Figure 2 Aviation documents determine participation in the civil aviation system

As at 30 June 2023, there were 35,095 individual aviation document holders:

- the vast majority of these are pilot licence holders (30,061 individual licences), while other categories include engineer, flight instructor and air traffic control licences
- there were also 890 organisations that held aviation documents, such as airline operating certificates, certificates of aircraft registration and aerodrome certificates.¹⁴

¹⁴ Source: Civil Aviation Authority of New Zealand 2022–2023, Annual Report (2023)

Annex 2 The scope of reviews in other jurisdictions

Table 5 The scope of reviews in other jurisdictions

Jurisdiction	Scope	Powers of reviewer	Review frequency	Cost to applicant
Australia (Federal) – Administrative Appeals Tribunal (AAT)	<p>The AAT may on application review a decision if a law states that the decision can be reviewed by the AAT.</p> <p>Civil Aviation legislation provides for AAT review of a wide range of decisions by the Civil Aviation Safety Authority and other authorised decision-makers involving, broadly:</p> <ul style="list-style-type: none"> the grant or issue of a certificate, permission, permit or licence, or the cancellation, suspension or variation of a certificate, permission, permit or licence the imposition or variation of a condition, or the cancellation, suspension or variation of an authorisation reinstatement of an authorisation that has been suspended or cancelled refusal to grant approvals provided for in regulations. 	<p>The Tribunal may exercise all the powers and discretions conferred on the decision-maker, and must make a decision in writing:</p> <ol style="list-style-type: none"> affirming the decision under review; varying the decision under review; or setting aside the decision under review and: <ol style="list-style-type: none"> making a decision in substitution for the decision so set aside; or remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal. 	<p>In the five years 2019 – 2023 there have been some 20 published AAT decisions on civil aviation review applications.</p> <p>The decisions have related to a cross-section of medical certification matters, licensing matters, jurisdictional questions, and procedural considerations.</p>	<p>Standard application fee: AU\$1,082</p>
Canada Transportation Appeal Tribunal of Canada (TATC)	<p>The TATC is a cross-modal, quasi-judicial body, which replaced Canada's Civil Aviation Tribunal.</p> <p>In relation to civil aviation, reviewable decisions encompass:</p> <ul style="list-style-type: none"> refusal to issue or amend a Canadian aviation document suspension or cancellation Canadian aviation document refusal to remove a notation of a suspension or a penalty after two years assessment of monetary penalty (in place of summary proceedings for certain alleged regulatory contraventions). 	<p>Reviews are based on merit, on the record of the proceedings. Decisions of the TATC are binding.</p> <p>The reviewer may determine the matter by confirming the decision under review or substituting their own determination.</p>	<p>In the five years 2019 – 2023, some 100 TATC aviation hearings were held, at between 8 and 31 hearings per year.</p> <p>The largest proportion of appeals related to reviews of monetary penalty assessments, with smaller numbers relating to procedural, and jurisdictional and aviation document related matters.</p>	<p>No fee for lodging a review request.</p> <p>The Tribunal may award costs, and may require the reimbursement of expenses incurred, if the reasons for a decision that resulted in a review hearing are frivolous or vexatious, or the party that files a hearing request fails to appear without good reason or is granted an adjournment without giving adequate notice to the Tribunal.</p>
United Kingdom CAA internal review	<p>Individuals may seek an internal review of a UK CAA refusal to issue, or a proposal to vary, provisionally suspend, suspend or revoke licences or authorisations issued in relation to:</p> <ul style="list-style-type: none"> flight crew licensing aircraft maintenance engineers air traffic controllers rating and endorsements for instructors and examiners <ul style="list-style-type: none"> medical fitness decisions aeromedical examiners 	<p>If the internal review finds that the UK CAA did not follow the correct process in reaching a decision a full merits review will be undertaken where appropriate. If the further merits review finds that an incorrect decision has been made, the UK CAA will:</p> <ul style="list-style-type: none"> accept responsibility explain what went wrong and why put things right by making any necessary changes. <p>This process is only available to individuals.</p>	<p>Since the start of this process in May 2022, 16 cases have been subjected to an internal review.</p> <ul style="list-style-type: none"> 1 case was referred to the external IRP which found in the CAA's favour. 5 cases were rejected for an internal review as not in scope of the review process. 	<p>Not applicable.</p>

ANNEX 2 THE SCOPE OF REVIEWS IN OTHER JURISDICTIONS

Jurisdiction	Scope	Powers of reviewer	Review frequency	Cost to applicant
	<p>A review is the first step in a two-stage review process which may culminate in the Independent Review Panel process described in the row below.</p> <p>At stage one, an appropriate manager not involved with the initial decision will review the CAA's initial decision and determine whether the relevant process has been followed in reaching the decision. If the manager determines that the process has not been followed, a review of the merits of the decision will be undertaken.</p> <p>If dissatisfied with the outcome, a person may request an independent review by the Department for Transport.</p>			
<p>United Kingdom Independent review panel (IRP)</p>	<p>Established in 2022 on an administrative basis, the IRP is overseen by the Department for Transport, and is independent of the UK CAA. Decisions that are in scope for an internal review can be reviewed by the IRP, following the outcome of the internal review. The panel only assesses whether good decision-making process has been followed regarding civil aviation regulatory decisions, rather than assessing the substance of decisions.</p> <p>The IRP is the second step in the two-stage review process.</p> <p>If an individual remains dissatisfied with the outcome of the IRP, they may be able to seek a Regulation 6 review of the CAA's decision (see below).</p>	<p>The panel does not have the power to overturn a UK CAA decision, but can recommend that the UK CAA revisit the case, if it finds there have been process failings. The UK CAA then decides how it wishes to respond.</p>	See above.	Not applicable.
<p>United Kingdom Regulation 6 review (Civil Aviation Authority Regulations 1991)</p>	<p>This applies where a UK CAA official has advised of a refusal to issue or a proposal to vary, suspend or revoke:</p> <ul style="list-style-type: none"> • an aerodrome licence • an air operator's certificate • an air traffic controller's licence • an approval for a person to provide an air traffic control service • a certificate of airworthiness or a permit to fly • an approval of equipment for use on board an aircraft or in the provision of an air traffic control service • a maintenance engineer's licence • a pilot's licence • any other type of licence, certificate, authorisation or approval issued by the UK CAA. <p>A request for a review must be made within 14 days of the communication of the relevant CAA decision. The reviews are carried out by UK CAA Non-Executive Board Members, who are appointed by the Secretary of State. Panel members must not have had any previous involvement in the case.</p> <p>Where a person requests an internal review / IRP in addition to a Regulation 6 review, the Regulation 6 review will usually follow the outcome of the IRP process.</p>	<p>The Regulation 6 review panel has the power to make a regulatory decision on behalf of the UK CAA. It can thus review both the processes that were followed, as well as any substantial judgments made in a case. The panel has the power to substitute a different decision for the decision originally made by a UK CAA official.</p> <p>Provisional suspension cases are not permitted to be reviewed through the Regulation 6 process.</p>	<p>In 2022 to 2023, 14 Regulation 6 reviews were requested. Of those, 2 proceeded to a final review determination. The remaining requests were either withdrawn, or otherwise resolved.</p>	Not applicable.

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Independent reviews of the
Director of Civil Aviation's
decisions

Regulations to set the scope of
reviewable decisions

August 2024

transport.govt.nz





Cabinet Economic Policy Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Civil Aviation Act 2023: Implementation

Portfolio Transport

On 24 July 2024, the Cabinet Economic Policy Committee (ECO):

Background

1 **noted** that the Civil Aviation Act 2023 (the Act) will commence on 5 April 2025;

Independent review function – reviewable decisions

- 2 **noted** that the Act introduces a new function to enable applicants to seek expert independent reviews of decisions made by the Director of Civil Aviation that affect them;
- 3 **noted** that the Act provides that secondary legislation will specify the decisions to be subject to the above function;
- 4 **approved** the release of the document entitled *Independent reviews of the Director of Civil Aviation's Decisions: Regulations to Set the Scope of Reviewable Decisions* (the consultation paper), attached under ECO-24-SUB-0128 for public consultation;
- 5 **directed** the Ministry of Transport to carry out consultation on options for setting the scope of reviewable decisions, for a four-week period following Cabinet approval;
- 6 **agreed** that the Ministry of Transport may make minor or technical changes to the consultation paper, if necessary, prior to its release;
- 7 **noted** that the Minister of Transport intends to report back:
- 7.1 to ECO in November 2024 to seek approval to the independent review function scope and to issue drafting instructions;
- 7.2 to the Cabinet Legislation Committee (LEG) in February 2025 seeking approval to regulations relating to reviewable decisions;

2023 Act implementation matters related to civil aviation offences and penalties

8 **noted** that the secondary legislation in relation to offences under section 407 of the Act is required to support enforcement of the remade civil aviation rules;

- 9 **authorised** the Minister of Transport to determine matters that arise in the course of drafting secondary legislation in relation to offences that are inconsistent with the intent of the current regime, or of minor or consequential policy detail, without further reference to Cabinet;
- 10 **invited** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office for secondary legislation relating to civil aviation offences and penalties;
- 11 **noted** that the Minister of Transport intends to report back to LEG by February 2025 seeking approval to regulations for offences and penalties, and to advise of any decisions made under the authority in paragraph 9 above.

Rachel Clarke
Committee Secretary

Present:

Hon David Seymour
Hon Nicola Willis (Chair)
Hon Chris Bishop
Hon Simeon Brown
Hon Erica Stanford
Hon Paul Goldsmith
Hon Mark Mitchell
Hon Tama Potaka
Hon Matt Doocey
Hon Penny Simmonds
Hon Nicola Grigg
Hon Mark Patterson
Simon Court MP

Officials present from:

Office of the Prime Minister
Office of Hon Simeon Brown
Officials' Committee for ECO

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Cabinet

Minute of Decision

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Report of the Cabinet Economic Policy Committee: Period Ended 26 July 2024

On 29 July 2024, Cabinet made the following decisions on the work of the Cabinet Economic Policy Committee for the period ended 26 July 2024:



ECO-24-MIN-0128

Civil Aviation Act 2023: Implementation
Portfolio: Transport

CONFIRMED





Rachel Hayward
Secretary of the Cabinet

PROACTIVELY RELEASED BY
MINISTRY OF TRANSPORT TE MANATŪ WAKA