

# **Submission - Civil Aviation Act 1990 and Airport Authorities Act 1966 Consultation**

**31 October 2014**

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**Aviation Safety Management Systems Ltd**



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## **1 Introduction**

The Ministry of Transport ("the Ministry") is current conducting a review of the Civil Aviation Act 1990 and the Airport Authorities Act 1966 ("the review").

Aviation Safety Management Systems Ltd (ASMS) is pleased to provide this submission in response to the review.

There are certain aspects in relation to safety regulation that we consider warrant more detailed attention than is possible in the published template, and we address those in section 3. Section 4 then provide our responses to the Ministry's questions in the template provided. We have only listed the questions answered.



## 2 About Aviation Safety Management Systems Ltd

This submission is made by the Directors of Aviation Safety Management Systems Ltd (ASMS), a regulatory and safety management consultancy. Of particular relevance to this review:

- ASMS ([www.asms.co.nz](http://www.asms.co.nz)) has made a number of submissions to CAA urging the immediate adoption of Safety Management Systems (SMS) as these are implicitly provided for under existing health and safety legislation and a protracted rule-making process should not be required. At one meeting with CAA it was verbally suggested that the current review process would be the appropriate forum for reviewing the interface between sector-specific transport regulation and general health and safety regulation.
- In 2013 ASMS was retained by the CAA to conduct a review of joining procedures at uncontrolled aerodromes. This was an exercise in obtaining a broad cross-section of opinion rather than a comprehensive consultation exercise. As part of the project, it became clear that there was significant under-reporting of accidents and incidents and reasons for that were suggested. Our report suggested a potential approach to address the level of under-reporting.<sup>1</sup>
- ASMS is at the forefront of developing best practice operating procedures for operators of Remotely Piloted Aircraft Systems (RPAS) or Unmanned Aerial Vehicles (UAV). We are an invited participant in the current Rule Design process for Remotely Piloted Aircraft.
- ASMS developed the written expositions for three Part 115 Adventure Aviation Operators, including for the first “ground up” Warbird operation that was not just the conversion of an existing Part 135 General Aviation Operator certificate.

The Directors of ASMS hold a number of relevant positions within the aviation industry. Ms Andrews is currently Quality Assurance Manager for two certified organisations, and the accident and incident investigator for two certified organisations. Mr Shelley is the President of a certified medium airline operator. The Directors of ASMS are currently undertaking an assessment process to be approved as external auditors for the Accident Compensation Corporation (ACC).

Also relevant to this review, one of the Directors of ASMS is also the Managing Director of Andrew Shelley Economic Consulting Ltd, a consultancy that specialises in **economic regulation** with particular expertise in the electricity and gas transmission and distribution sectors. Mr Shelley had significant involvement in the development of the Input Methodologies for companies regulated under Part 4 of the Commerce Act, and continues to be involved in preparing information disclosures such as Pricing Methodology Disclosures required by the Commerce Commission.

Appendix A provides curriculum vitae for the Directors of ASMS.

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<sup>1</sup> Heather Andrews and Andrew Shelley, *Review of Joining Procedures at Uncontrolled Aerodromes*, Aviation Safety Management Systems Ltd, 2 July 2013.

### 3 The Interface between Sector-Specific Transport Regulation and Generic Safety Regulation

Sector-specific transport regulation exists for all four modes of transport: road, rail, sea, and air. At the most basic level, sector-specific regulation sets out the “rules of the road” that all parties in command of that mode of transport must obey, whether they are commercial operators or recreational/private users. For road transport this is quite literally the road rules covering such things as speed limits, keep left, give way rules, etc, as well as driver licensing, regulations governing the suitability of vehicles to be used on public roads and other safety, etc. The same model applies to other modes of transport with speed limits set within a given distance of shore or an aerodrome, give way rules, licensing, etc.

In parallel with the general safety regulation for each sector is an additional layer of regulation governing commercial operations that carry passengers: drivers, pilots, and boat Captains must all meet higher standards to be able to carry passengers; additional regulations address fatigue; and additional safeguards may be specified to enhance passenger safety.

Other non-transport sectors also have sector-specific regulation intended to enhance safety. In some sectors regulation specifically prohibits non-licensed practitioners from undertaking work that is dangerous for untrained personnel, e.g. electrical work.

Sector-specific regulation is not enough to provide an assurance of safety. Such regulation may effectively result in a check list of actions or practices that a specific sector must take or must not take, and well-trained professional personnel, but these factors alone have never been enough. Spanning across the sector-specific regulation is an over-arching framework of health and safety regulation for all commercial operators in all sectors.

The importance of this general safety regulation is illustrated by a recent case in the electricity industry: on 1 April 2013 a trained linesman missed a standard “tailgate” hazard identification meeting required by the company’s health and safety procedures and failed to follow a number of standard safety procedures (including attachment of his safety harness before proceeding to work on the line, and testing whether the line was “live”). As a consequence of these and other failures the linesman came into contact with a live 11,000kV power line, suffering burns to his hands and falling 6m into bush. The Employment Relations Authority found that the lineman’s “training, knowledge, and experience should have reinforced” the necessity of following standard safety procedures.<sup>2</sup>

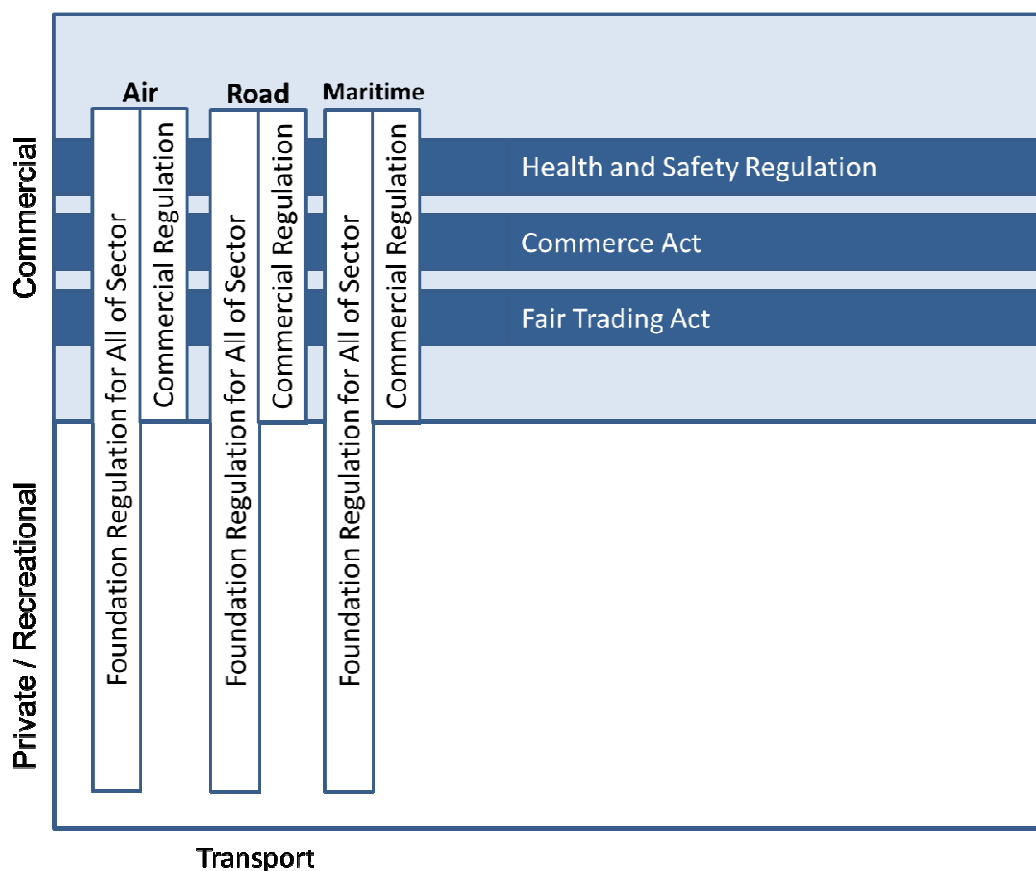
The interaction of sector-specific and general regulation is illustrated in Figure 1. Sector-specific activity can be sub-divided into commercial and recreational. Foundation regulation covers both commercial and recreational activity within a given sector. Sector-specific commercial regulation provides additional safeguards for activities undertaken on a commercial basis within the sector. Generic health and safety regulation underpins all commercial activities.<sup>3</sup>

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<sup>2</sup> Nelley v Top Energy Ltd [2014] NZERA Auckland 140 at para. 33.

<sup>3</sup> Note that this model can be extended to also include economic regulation. The Ministry’s proposals in the review include removing sector-specific economic regulation and relying instead on generic competition law provided by the Commerce Act 1986.

**Figure 1: Interaction of Sector-Specific and General Regulation**



We have the strong view that the effectiveness of general health and safety regulation varies across the transport sectors, with the effectiveness within a specific transport sector being determined by the attitude and awareness of the sector-specific regulator. Within the aviation sector we make the following observations:

- Health and safety has been traditionally viewed as an issue of “Flight Attendants and Galley Carts” or the baggage handlers. It has not been viewed as the over-arching framework that acts to keep everyone safe.
- CAA has had the jurisdictional authority under the Health and Safety in Employment Act 1992 for “aircraft in operation”, but in practice has been almost exclusively focussed on implementation of the Civil Aviation Act 1990.
- In 2013 a General Manager at CAA told us that the Health and Safety in Employment Act didn’t include the powers that would enable CAA to proactively require certain systems and procedures to be in place, and only allowed action to be taken after a failure (accident) had occurred. In contrast, Worksafe recently successfully prosecuted Eden Homes Development after its employees Wei Qiang Sun and Ming Han were seen installing a roof in Glenfield

without adequate edge-protection to help prevent falls. No accident actually occurred.<sup>4</sup> This case suggests that pro-active action is actually possible under health and safety legislation.

- d) CAA is attempting to do the right thing through their current project to encourage and then regulate for Safety Management Systems. This effort should be strongly supported, yet we suggest that no new Civil Aviation Rule is required – the relevant provisions are already provided in the Health and Safety in Employment Act 1992 and will be further strengthened by the new Health and Safety at Work Act. The Director of Civil Aviation, Mr Graeme Harris, acknowledged this at an “SMS Forum” held by CAA in Christchurch in 2013, when he stated to all attendees that SMS was arguably already required by health and safety legislation.
- e) Our own assessment of Civil Aviation Rules against the ACC Workplace Safety Management Practices (WSMP) programme standard reveals that the Civil Aviation Rules (and associated Advisory Circulars) are not enough to meet the Safety Management System requirements of the WSMP programme.

In our view these issues are primarily an issue of institutional design. CAA has been designed to implement the Civil Aviation Act 1990, and they do that very effectively. The review of the Civil Aviation Act 1990 should consider rewriting the provisions governing the Civil Aviation Authority to give equal emphasis to all safety regulation administered by the Authority. The benefit of such an approach would be more effective use of CAA resources. Resources that are currently dedicated to additional rule making might instead be redirected towards education and enforcement, and thereby deliver improved safety outcomes in the industry.

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<sup>4</sup> Worksafe, “Inadequate scaffolding leads to fine”, News Release, 16 July 2014  
<http://www.business.govt.nz/worksafe/news/releases/2014/inadequate-scaffolding-leads-to-fine>



## 4 Answers to Questions in the Consultation Paper

### 4.1 Contact Person

The contact person within ASMS for questions about this submission is:

Your name                      **Andrew Shelley**

Your email address        [AndrewShelley.asms@gmail.com](mailto:AndrewShelley.asms@gmail.com)

### 4.2 ASMS' Role in the Transport Industry

#### 1. What is your interest in Civil Aviation Act and Airport Authorities Act Review?

Are you:

☐ A private individual?

☒ **Part of the transport industry?**

#### 2. If you are part of the sector, please describe your role:

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See Section 2 above.

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## 4.3 Part A: Statutory framework

### 4.3.1 Item A1: Legislative structure

**Question A1a:** Which option do you support?

- ☐ **Option 1:** Amalgamate the Civil Aviation Act and the Airport Authorities Act
- ☒ **Option 2: Separate the provisions in the Civil Aviation Act into three separate Acts:**
  - (i) an Act dealing with safety and security regulation
  - (ii) an Act dealing with airline and air navigation services regulation
  - (iii) an Act dealing with airport regulation
- ☐ **Option 3:** Status Quo – Civil Aviation Act and Airport Authorities Act maintained.
- ☐ **Some other option** (please describe):

Please state your reasons:

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ASMS supports the separation of the provisions of the Civil Aviation Act 1990 into three separate Acts. Three separate Acts with a clear purpose will provide more focussed regulation and better enable the relevant Acts to be updated in keeping with other legislation.

We note, for example, that the safety regulation components of the Civil Aviation Act 1990 have not been kept synchronised with changes in health and safety regulation. For example, while the rest of industry has been focussed on a definition of “Serious Harm” contained in the Health and Safety in Employment Act 1992, the aviation sector has a slightly different definition of “Serious Injury” contained in Civil Aviation Rule Part 12. The two different definitions creates a degree of confusion that is completely unnecessary.

While, in theory, a review of the Civil Aviation Act could remedy these problems and retain a single Act, experience has demonstrated that it has not been possible to keep Civil Aviation regulation synchronised with general health and safety regulation with a single omnibus Act in place.

We also note that there are other aspects of economic regulation that are performed by entities other than the Civil Aviation Authority. For example, the Commerce Commission has jurisdiction for economic issues that arise under the Commerce Act 1986, such as anti-competitive conduct and regulated information disclosure (some airports), and for consumer protection legislation such as the Fair Trading Act 1986.

In our view separate Acts will be more accessible to the public, provide sharper focus within each individual Act, provide sharper focus for regulators, and clarify the application of general sector-independent regulation (such as the other Acts cited above).

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#### 4.3.2 Item A2: Purpose statement and objectives

**Question A2a:** Do you support the concepts listed in Part A, paragraph 29 for inclusion in a purpose statement?

Subject area of the Act or Acts	Purpose	Do you support?
Safety and security related	To contribute to a safe and secure civil aviation system	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> No
Economic - airport related	To facilitate the operation of airports, while having due regard to airport users	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> No
Economic – airline related	To provide for the regulation of international New Zealand and foreign airlines with due regard to New Zealand's civil aviation safety and security regime and bilateral air services	<input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> No
	To enable airlines to engage in collaborative activity that enhances competition, while minimising the risk resulting from anti-competitive behaviour <sup>5</sup>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> <b>No</b>
	To provide a framework for international and domestic airline liability that balances the rights of airlines and passengers	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please state your reasons:

The general framework provided by the Commerce Act allows for collaborative activities that enhance competition. There is nothing special about airlines that would require sector-specific regulation. If necessary, the Commerce Commission is able to conduct an investigation and then authorise collaborative arrangements if they have positive net benefits.

<sup>5</sup> Depending on the outcome of the review, international air carriage competition provisions may be moved out of transport legislation and into the Commerce Act 1986.



#### 4.3.3 Item A3.4: Independent statutory powers

**Question A3.4:** Should independent statutory powers continue to reside with the Director of Civil Aviation?

☒ **Yes**

☐ **No**

Please state your reasons here.

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## 4.4 Entry into the system

### 4.4.1 Item B1: Provisions relating to fit and proper person assessment

**Question B1a:** Which option do you support?

- ☐ **Option 1:** Status quo – no change to the matters which the Director should consider when undertaking a fit and proper person test
- ☒ **Option 2: Align the fit and proper person test in the act with other transport legislation (Ministry of Transport preferred option)**
- ☒ **Some other option (please describe):**

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Please state your reasons here.

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The fit and proper person assessment should not only be at the entry level into the aviation system for a document holder, but should be a continuous assessment of people in safety critical roles. In practice, it is only the senior persons in a certified organisation that receive regular reassessment, whereas other document holders may seldom ever be re-assessed after issue.

Relying on self-disclosure will not necessarily capture some of the individuals that pose the greatest risk. If an offence is not included on a criminal record then the individual will tick 'no', for example in relation to the "history of adverse physical or mental health or behavioural problems". There will be a number of participants in the aviation system who do have such a history, but there is currently no way for CAA to obtain this information. A person with a history of bullying is also unlikely to see themselves as having a problem.

To help correct this issue of missing information, we suggest the following should be considered:

- A process for members of the public to lodge concerns about a particular participant.
- Psychometric testing for participants. This may require specialist evaluation in addition to the current interview process, which really only tests technical knowledge.

Self-Disclosure for violence problems should not be relied on.

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**Question B1b:** Are there any issues with the provisions in Part 1 or 1A of the Civil Aviation Act 1990 that you think should be addressed? If so, what options do you propose to address the issue(s)?

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See answer to previous question.

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## 4.5 Rules and regulatory frameworks

### 4.5.1 Item B9: Rule making

**Question B9a:** What enhancements could be made to the rule-making process?

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**Question B9b:** Which is your preferred option?

- ✓ **Option 1: Status quo – no change**
- ☐ **Option 2:** Power for Civil Aviation Authority Board (CAA Board) to make temporary rules
- ☐ **Option 3:** Power to enable the Minister to delegate some of his/her rule-making powers to the Director or CAA Board
- ☐ **Option 4:** Creation of a new tertiary level of legislation (e.g. Standards)
- ✓ **Some other option: Please describe**

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The current regime could be streamlined by amending a number of existing rules to provide the Director with the power to set or amend appendices or schedules to the rule as and when required. For example, the consultation paper cites Civil Aviation Rule Part 91, Appendix A, A.9 as including an out-of-date list of equipment. An amendment to Part 91 could allow for this appendix to be updated by the Director as required.

It is noted that a performance-based regime is not incompatible with the Rule-making process currently contained in the Civil Aviation Act. Any SMS Rule, for example, would of necessity be performance-based (notwithstanding our contention that such a Rule is not necessary given the workplace health and safety regulatory regime).

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**Question B9c:** If you prefer Option 3 (Delegation of some of the Minister's rule-making powers to the CAA Board or Director), what matters should the Director or CAA Board be delegated to make rules for?

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**Question B9d:** Is a 'first principles' review of rule-making required to consider the out of scope options (paragraphs 183 – 187) in more detail?

☐ Yes

☒ **No**

Please state your reasons:

Performance-based Rules are possible under the existing regime, and the performance-based workplace health and safety framework should be given significantly more attention within the aviation sector. The current regime therefore allows for a mix of prescriptive, outcome-based, and performance-based regulation. This potentially allows for an optimal mix of regulation to develop over time.

It is not clear that a full first-principles review of rule-making would deliver net benefits compared to the current regime.

#### 4.5.2 Item B10: Possible amendments to Part 3

**Question B10:** What matters should the Minister take into account when making rules? Please specify and state your reasons.

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Section 33 with the proposed consolidations is reasonable. Section 33(2)(f) could be broadened by inserting the underlined words "the benefits of the proposed rule, including whether the proposed rule..." Other aspects of good regulatory practice can be addressed administratively, allowing practice to adapt and change as the concept of good regulatory practice is refined.

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## 4.6 Information management

### 4.6.1 Item B11: Accident and incident reporting

**Question B11a:** What are the barriers to fully reporting accidents and incidents to CAA?

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In 2013 ASMS spoke to a cross-section of aerodrome users throughout New Zealand on issues related to joining procedures at uncontrolled aerodromes. One of the findings was that incidents occurring at uncontrolled aerodromes appear to be significantly under-reported. The most significant reasons offered for not reporting incidents were:

- Reporting an incident resulted in a “black mark” against a pilot and an instructor, with a strong feeling amongst some pilots that reports are shared with the enforcement unit. There was a lack of trust between the industry and the Civil Aviation Authority.
- Conversely, the process associated with an incident report was also viewed as lacking any feedback, with views that a report of dangerous action would not result in any follow-up by CAA, and lack of feedback from CAA when a report is submitted.

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**Question B11b:** What could be done to overcome the barriers in Question B11a?

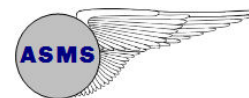
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ASMS noted that aerodrome user groups provide a *partial* solution to the under-reporting problem, inasmuch that they provide a forum where safety issues can be addressed. We noted that while this approach does not improve the level of information held by CAA, it does eliminate hazards at the local level that might otherwise be unaddressed.

We also noted the Aviation Safety Reporting Programme run by NASA, which provides immunity from prosecution (with exceptions), and appears to have a high level of trust by pilots in the United States. All parties involved in an occurrence are effectively provided with immunity unless involved in an accident or criminal activity, in which cases the information is passed to the relevant regulatory authorities and is not “de-identified”. It was suggested by a number of individuals that a system similar to that employed in the United States might provide a much better level of reporting as only occurrences involving an actual offence would be passed directly to the CAA. Such a reporting system would, of course, require an independent third party to collect and analyse the incident data. Some pilots considered that the third party should not be the TAIC, others expressed no strong preference.

There may be some difficulties with implementing such an arrangement within New Zealand. Our regulatory institutions are generally small, and there is likely to be little appetite to incur the cost of creating a stand-alone body for the sole purpose of accident and incident collation. Collection by Worksafe would offer no advantages over collection by CAA, as Worksafe is also an enforcement body. Potentially the best way forward is to mandate an operational split within CAA, with the arm of CAA charged with collecting statistics being operationally separate from the rest of CAA, and with strict protocols on the exchange of information. Such protocols could be modelled on the agreement between NASA and the FAA.

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## 4.7 Security

### 4.7.1 The Nature of Security Threats

The US State Department publishes an annual review of terrorist activity around the world. For 2013 the following events are notable:<sup>6</sup>

- On January 9, in Western Paris, Ömer Güney, a 30-year-old ethnic Kurd, killed three Kurdish women activists. On January 21, the French police arrested Güney, and have since held him in solitary confinement.
- In Germany, the trial against an AQ terrorist cell, which began in July 2012 in Düsseldorf, was ongoing at year's end. The defendants were accused of conspiring to set off explosives in crowded areas.
- On January 20, two homemade bombs exploded on the first floor of a shopping center near Athens injuring two private security guards. Conspiracy of Fire Nuclei claimed responsibility for the attack.
- On November 1, two unidentified persons shot and killed two members of the Golden Dawn political party and injured a third person in front of the party's office in the Athens suburb Neo Heraklion. The "Militant People's Revolutionary Forces" claimed responsibility for the attack; police were still investigating it at year's end.
- On December 24, a group called Informal Anarchist Federation/International Revolutionary Front threatened to poison certain Coca-Cola products in Greece with hydrochloric acid, causing a recall of those products from store shelves.
- On December 30, an unknown group fired approximately 60 rounds at the German Ambassador's residence in Athens. The attackers remained at large at year's end.
- Greece's two largest cities, Athens and Thessaloniki, experienced frequent, relatively small-scale anarchist attacks that used inexpensive and unsophisticated incendiary devices against the properties of political figures, party offices, private bank ATMs, ministries and tax offices, and privately-owned vehicles.
- In Ireland, there were 250 occasions when Explosive Ordnance Disposal (EOD) teams were called in response to a report of an improvised explosive device (IED), which resulted in the discovery of 70 viable IEDs disarmed and analyzed by Ireland's Army bomb disposal teams. On November 22, a car bomb exploded on a housing estate in County Donegal. There were no injuries and Garda sealed off the scene and evacuated a number of homes in the area.
- On October 21 a female suicide bomber detonated a device on a public bus in Volgograd, killing seven civilians and injuring 32 others.
- On December 29-30, two suicide attacks occurred within the space of 24 hours, at Volgograd's main railway station and on a city trolleybus, killing 34 and injuring at least 65. No group immediately claimed responsibility for the Volgograd attacks.

<sup>6</sup> US Department of State, *Country Reports on Terrorism 2013*, Bureau of Counterterrorism, Released April 2014. Available online at <http://www.state.gov/j/ct/rls/crt/2013/index.htm>

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- On September 3, a cache with ammunition, an explosive device, and a schematic view of a school was found in the Dagestani city of Buinaksk.
- On October 4, a Tatarstan court sentenced two Islamist militants on charges of planning to detonate IEDs at a shop selling mobile phones and a local police station in the city of Chistopol, central Tatarstan. The court found that the principal defendant had trained in Pakistan, formed a terrorist network upon his return to Tatarstan, and then recruited his co-defendant.
- On October 15, Russian authorities arrested two men, identified as Islamist radicals from the North Caucasus, for allegedly planning an attack on the Maradykovsky chemical weapons storage and disposal facility in the Kirov region, 620 miles northeast of Moscow.
- On November 24, a vehicle-borne improvised explosive device partially detonated near Victoria Square, the largest and busiest shopping mall in Belfast's city center. A driver, carjacked by three masked men in the predominantly Catholic Ardoyne district, was forced to deliver the vehicle laden with 60 kg of explosives to the shopping center's parking garage.
- In Canada, police charged Chiheb Esseghaier – a Tunisian national – and Raed Jaser – a Palestinian national – with conspiring to derail a VIA Rail passenger train between Toronto and New York City. Neither of the suspects is a Canadian citizen. At year's end, both men remained in custody and no trial date had been set. In a coordinated arrest, authorities in New York City arrested a third individual, Ahmed Abassi, whom they alleged radicalized Esseghaier and fraudulently applied for a visa to remain in the United States to commit acts of terrorism and develop a network of terrorist recruits.

There were also a large number of incidents related to unresolved regional conflicts, most notably Northern Ireland, Ireland, Central America, and the Middle East. None of these incidents involved air travel.

The National Consortium for the Study of Terrorism and Responses to Terrorism (START) Global Terrorism Database (GTD) lists and categorises all known terrorist and potential terrorist attacks since 1970.<sup>7</sup> In the years 2006-2013 inclusive there were 45,819 events globally, of which 1,347 (2.9%) occurred in Australasia, North America, Oceania, or Western Europe. The majority of those attacks occurred in countries that have ongoing issues with sectarian violence: Greece (341), Ireland (70), Northern Ireland (324), Corsica (113), and Spain (101). These countries collectively accounted for 949 or 70% of the 1,347 events.

The GTD lists twelve events as having occurred in Australia or New Zealand in the period 2006-2013 (Figure 2). Four of the twelve events involved explosives. None of the twelve events were linked with aviation or airports.

Of the 1,347 events occurring in the listed regions, seven (0.5%) were aviation related (Figure 3) of which 4 were potential bombings. Conversely, 41 events (3.0%) were targeted at other modes of transportation including trains, subways, and buses, and 28 of those events were bombings or attempted bombings. On the basis of this data, the risk of a terrorism related event is nearly 6 times higher on modes of transport other than aviation, and the risk of bombing is 7 times higher on modes of transport other than aviation.

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<sup>7</sup>

The Global Terrorism Database is available for download from <http://www.start.umd.edu/gtd/contact/>.



**Figure 2: Terrorist Events Occuring in Australia and New Zealand, 2006-2013, Global Terrorism Database**

04/08/2006: The mobile phone shop of former Shapelle Corby backer Ron Bakir was firebombed at 6:00 a.m. when a man bashed the glass doors of the shop with a rock before dropping a cigarette into a canister of fuel on the footpath outside in Broadbeach, Australia. No group claimed responsibility for the attack.
08/01/2006: A group of Middle Eastern men stoned Sydney, Australia's Parramatta Synagogue's roof and windows and damaged cars nearby. No group has claimed responsibility for this attack.
04/15/2008: On Tuesday morning, on Conventry Road, in Hastings, New Zealand, six pipe bombs were found and dismantled by the Army's bomb disposal units at Cash for Scrap. No casualties or damage resulted from the attempted attack. No motive was reported and no group claimed responsibility.
04/21/2008: On Monday, a 30 mm pipe bomb rigged with external batteries and a mobile phone was detonated by the police bomb squad unit after it was found by council workers in Federation Park on the Drayton Connection Road, near Vale View south of Toowoomba, Queensland, Australia. No claim of responsibility was made for the attempted bombing, however on 04/22/2008 on Tuesday, executed a search warrant at a home in Kent Street at Oakey and allegedly found evidence of a home-made explosive device. A 21-year-old man was arrested and charged with one count of attempting to damage property by explosives.
6/24/2008: On Tuesday, a letter containing 1080 poison was sent to the Ministry of Agriculture and Forestry building in Wellington, Wellington State, New Zealand. The 1080 poison is used as a pesticide. No casualties were reported and no claim of responsibility was made for the incident.
6/24/2008: On Tuesday, a letter containing 1080 poison was sent to the Parliament building in Wellington, Wellington State, New Zealand. The 1080 poison is used as a pesticide. No casualties were reported and no claim of responsibility was made for the incident.
6/24/2008: On Tuesday, a letter containing 1080 poison was sent to the Government Reserve Bank in Wellington, Wellington State, New Zealand. The 1080 poison is used as a pesticide. No casualties were reported and no claim of responsibility was made for the incident.
08/13/2008: On Wednesday, a white powder was found in an envelope in the party offices of the Prime Minister Helen Clark in Wellington, New Zealand. The area was evacuated and decontaminated though the nature of the powder has not been confirmed. Douglas Hancock pleaded guilty to sending the letter.
12/08/2008: On Monday, a Holden Rodeo ute vehicle carrying a 220-liter fuel tank was backed into the Joondalup police station and set aflame. The attack damaged two offices, one of which was the inspector's District Office. No casualties were reported.
12/10/2008: On Wednesday morning, at 0235, two private vehicles belonging to Warwick police officers were firebombed in Joondalup, Western Australia, Oceania, Australia.
04/16/2009: On Thursday morning around 0830, assailants detonated an explosive device in waters off Australia's north-west coast, killing 3 asylum-seekers and injuring 50. No group claimed responsibility for the attack.
10/08/2009: On Thursday night at 0100, in Market Street in Condell park, Sydney, New South Wales, Australia, an improvised explosive device placed on the hood of a car detonated, smashing the windows of two townhouses and destroying the vehicle. Investigator Mark Smith says it is not clear if the device was intended for the vehicle or the townhouses 10-15 meters away. No group claimed responsibility.
02/04/2010: On Thursday night, in Queens Park, Perth, Western Australia, Australia, armed assailants fired upon a mosque, damaging the mosque but causing no casualties. No group claimed responsibility, although authorities believed Combat 18 was responsible.

**Figure 3: Aviation-Related Terrorist Events Occurring in Australasia, North America, Oceania and Western Europe, 2006-2013, Global Terrorism Database**

04/14/2006: A home-made explosive device was found in Biarritz-Parme Airport in Bayonne, France, between 2:00 p.m. and 3:00 p.m. following a telephone call made by a man who was apparently a sympathizer with the separatist cause.

06/30/2007: Two men, reportedly linked to Al-Qa`ida in Iraq, rammed a flaming Jeep Cherokee filled with gasoline and explosives into Scotland's largest airport on Saturday. The two men--Bilal Abdulla and Kafeel Ahmed--were apprehended in the attack. Abdulla was a legal medical doctor while Ahmed was an aeronautical engineer. Bilal was captured as was Ahmed; who died on August 2, 2007 from burns he received in the attack. A police officer and a civilian were also wounded in the attack. No claim of responsibility was reported.

12/25/2009: On Friday morning, in Detroit, Michigan, United States, as the plane was approaching the destination, a would-be suicide bomber, identified as Umar Farouk Abdulmutallab, a 23-year-old Nigerian national, on board of Northwest Flight 253 from Amsterdam, Netherlands detonated a device that was attached to his body while on the plane. The bomb was a six inch packet of high explosives containing pentaerythritol, Triacetone Triperoxide, other materials and a syringe. The explosives were sewn into his underwear. The assailant was wounded and damage was done to the aircraft. A passenger who tried to put the explosion out was also injured. 290 people in total were on board. No other injuries or casualties were reported. Al Qaeda in the Arabian Peninsula claimed responsibility.

10/29/2010: On Friday night around 0330, in East Midlands Airport in Lockington, Leicestershire, Great Britain, British authorities conducted a search of UPS Flight 232, which had been bound for the United States and was diverted to East Midlands Airport after authorities were alerted by Saudi intelligence that there were parcels carrying explosive devices on board. Officials located and safely defused an improvised explosive device, reportedly not long before it was set to detonate. The IED was a package containing PETN hidden inside a printer cartridge. The packages were sent from Yemen, addressed to synagogues in Chicago. Four militants were arrested in connection with the incident, which was linked to a similar attempt on a FedEx cargo plane that was grounded in Dubai. Al Qaeda Organization in the Arabian Peninsula claimed responsibility for the attack.

01/05/2011: On Wednesday, in Oslo city, Oslo, Norway, a Turkish national stormed the cockpit of a Turkish Airlines plane less than one hour before its arrival in Istanbul, Turkey, and demanded that the aircraft return to Oslo, Norway, while waving what he claimed to be an explosive device. However, passengers overpowered the hijacker and the aircraft landed safely in Istanbul. The man was taken into custody by security forces. The explosive device claim was discovered to be false. No casualties or damages were reported and no group has claimed responsibility for the attempted hijacking.

04/18/2013: An explosive device was discovered at the airport in McCook city, Nebraska state, United States. The device was safely defused without incident. No group claimed responsibility for the unsuccessful attack.

11/01/2013: Gunman opened fire on Transportation Security Administration (TSA) agents in a terminal at Los Angeles International Airport (LAX), Los Angeles city, California state, United States. One TSA agent was killed and two others were wounded in the attack. Additionally, five civilians suffered injuries in the attack. When officers returned fire, an assailant was injured. Paul Ciancia claimed responsibility for the incident, stating, in a note found in his apartment, that he wanted to kill and to instill fear in TSA officers.

The overwhelming majority of terrorist incidents are not aviation-focussed, and the risk of attacks on other modes of transportation is some 6-7 times higher than for aviation. The current level of scrutiny makes aviation targets more difficult than equally high profile public spaces that are not subject to heavy surveillance. In the absence of specific information to the contrary, there is no evidence to suggest that security currently needs to be further enhanced at New Zealand airports.

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The terror potential of airports is primarily related to the potential to “bring down” an airliner full of passengers. Cockpit security measures now mean that it is highly unlikely (although still possible) that passengers will be able to gain control of an aircraft, so terror measures are primarily focussed on explosives that will detonate in mid-air.

Beyond the fact that an airport is a location providing physical access to aeroplanes, an airport may be a target because of the high concentration of people. Turning to more general terrorist targets, the 1,347 events in the GTD included: 86 events involving banks; 40 events involving Retail/Grocery/Bakery; 26 events involving multinational corporations; 20 events involving restaurants, bars, and cafés; and 18 events involving Entertainment/Cultural/Stadiums/Casinos. Shopping malls are an alternative and possibly easier target that also have a high concentration of people. In addition, as shown by the 2013 Boston Marathon bombing, popular sporting events may also be a target.

There is no evidence to suggest a general need for paranoia or significant additional security measures. The same security measures that apply at malls, supermarkets, and sporting events can reasonably apply at airports. Any heightened security over and above that should be carefully considered in response to specific threats and make use of applicable Police and other security forces.

The landside part of an aerodrome is potentially no more a significant terror target than is a shopping mall or a complex such as the Sky Tower. Providing for more extensive security checks at the landside part of aerodromes than is required at other sites of high concentration of people is unnecessary and unwarranted. AvSec should be subject to the same requirements as the Police, and there is a reasonable case to suggest that AvSec should have Police in attendance if they consider it necessary to conduct a search landside.

#### 4.7.2 Item B13: Search powers

**Question B13a:** Should the Aviation Security Service (Avsec) be allowed to search unattended items in the landside part of the aerodrome?

- ☐ Yes
- ☒ No

Please state your reasons here.

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The use of EDD for an external check may be reasonable, but further search powers are not warranted. As discussed in section 4.7.1 above, airports face less risk than other places and modes of transport where there may be a high concentration of people and lower levels of scrutiny.

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**Question B13b:** Should Avsec be allowed to search vehicles, in the landside part of the aerodrome, using non-invasive tools such as Explosive Detector Dogs (EDD)?

- ☐ Yes
- ☒ No

Please state your reasons here.

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This measure is not required. As discussed in section 4.7.1 above, airports face less risk than other places and modes of transport where there may be a high concentration of people and lower levels of scrutiny.

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**Question B13c:** Do you support the use of EDD within a landside environment of an airport, including public car parks and airport terminals generally? In particular, do you consider it appropriate for EDD to be used around people, including non-passengers?

☐ Yes

☒ **No**

Please state your reasons:

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This measure is not required as a general measure. As discussed in section 4.7.1 above, airports face less risk than other places and modes of transport where there may be a high concentration of people and lower levels of scrutiny.

However, the use of EDD to conduct an external check of unattended items necessarily means that the EDD will be used around people, including non-passengers. This may be acceptable, but there is no need to conduct routine general searches throughout the landside areas of an airport.

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#### **4.7.3 Issue B15: Security check procedures and airport identity cards**

**Question 15:** Do you have any comments regarding Security Check Determinations (sections 77F and G) and the Airport Identity Card regime?

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The proposed amendments are reasonable. The suggested powers should potentially also apply to the Police, i.e. *"on request by members of the New Zealand Police, or employees of the CAA including Avsec"*

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#### 4.7.4 Item B16: Alternative terminal configurations

**Question B16a:** Should alternative airport designs or configurations be allowed in the future, for example, a common departure terminal?

☒ **Yes**

☐ **No**

Please state your reasons here.

The criteria of improved retail performance by increasing 'dwell time' is hardly a suitable criteria to include when assessing security arrangements. It is well known by regular travellers that the security screening point provides retailers beyond the screening point with a form of protected monopoly, and that monopoly is exploited by either the retailers (through higher profits), the airport company (through higher rentals to the retailers), or both.

If a CDT at a given airport required additional Avsec resources then that airport, and that airport alone, should pay for those extra resources. If a CDT delivers all the benefits suggested, including reduced spend on infrastructure and improved retail performance, then the airport company should be able to rationally make the trade-off between the increased Avsec costs and the other benefits. This will only happen if Avsec costs are recovered on a user-pays basis from each relevant airport.

The issue "potentially creates chokepoints for Customs' processing as passengers delay boarding to remain with friends/relatives" is noted in paragraph 332.6. We suggest that the same issue currently exists, with passengers delaying customs and security screening for as long as possible.

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Notwithstanding the above comments, it is reasonable to allow alternative airport designs or configurations in the future. This is an excellent example of the need for outcome-based regulation: the proponents of the proposed design would be required to demonstrate that all security and customs requirements would be met. The proponent of the proposed design would also be required to incur all associated costs so that they can trade-off potential efficiencies against the costs of re-designing processes.

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**Question B16b:** If yes, how should processing costs be funded?

As noted in the answer to the previous question, all processing costs should be born on a user-pays basis by the airport in question. The airport company then has the incentive to consider the optimisation of those costs in its wider plans to optimise its profits. From an economic perspective this approach should, over time, result in optimal designs at each location, which may differ depending on location.

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## 4.8 Domestic Airline Liability

### 4.8.1 Item C1: The necessity of specific domestic airline liability provisions

**Question C1a:** Should air carriers continue to be presumed liable for loss caused by delay in exchange for a limit on that liability?

☒ **Yes**

☐ **No**

Please state your reasons:

Carriers should continue to be presumed liable for loss caused by delay. Relying on Consumer Guarantees Act provisions is time consuming and costly, and would result in many passengers failing to claim. As a result, passengers would bear the cost of delays that are under the control of the airline, and there would be a significantly reduced incentive for airlines to be on time.

The liability provision should include situations where the flight is cancelled and passengers are required to re-book on a later flight. If airlines are able to escape liability by cancelling the flight then the liability regime is significantly diluted. Situations of inadequate preventive maintenance or inadequate capacity resulting in delays should result in compensation to the affected passengers; they should not result in a cancelled flight and no compensation.

It is reasonable to place a limit on liability. This is consistent with insurance principles, and ensures that passengers have some incentive to optimise their replacement travel arrangements.

**Question C1b:** The Civil Aviation Act delay provisions relate to passenger delay. Should there be a presumption of fault for delay in the carriage of baggage as well?

☒ **Yes**

☐ **No**

Please state your reasons here:

Delayed baggage may be a significant cause of the costs incurred by delay. Sporting equipment, musical instruments, gifts, and even clothing may all have to be replaced at short notice, with more consideration given to the speed and convenience of obtaining the items rather than their cost. As such it is important that airlines face an incentive to ensure that baggage reaches the correct destination on time.

Compensation should also be payable if baggage has been transferred to a later flight – having to wait for the baggage to arrive is no better than having the passenger's flight delayed, and if the baggage is urgently required then it may still have to be replaced.

### 4.8.2 Item C2: The effectiveness of specific domestic airline liability provisions

**Question C2a:** Which is your preferred option?

☒ **Option 1:** Status quo and potential education measures developed (Ministry of Transport preferred option)

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☐ **Option 2:** Strengthen the consumer protection provisions in the Act

✓ **Other option: Please describe**

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A lesson from other industries is that Ombudsman regimes working within the frame of existing regulation can do much to improve the outcomes for consumers. Examples are the Electricity & Gas Complaints Commissioner and Telecommunications Disputes Resolution service. Such a service could be legislated, but it need not necessarily be so. All of the options suggested in C2b below fit with the concept of an Ombudsman to assist consumers to know their rights and help in the resolution of disputes.

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Please state your reasons:

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Anecdotally, many domestic travellers hold the view that airlines will always blame the weather or factors outside their control to avoid paying compensation. We suggest that it is for this reason that the Ministry is not aware of Section 9B claims – the claims are not being made because consumers are not aware of the provisions, and if they are then they don't believe that a claim would be successful.

The effectiveness of the regime would be strengthened by an information/education campaign so that passengers know their rights, and by the introduction of an Ombudsman/Complaints Commissioner/Disputes Resolution service to assist passengers with complaints.

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**Question C2b:** Do you think that educational measures are necessary? If so, what should they be?

✓ **Yes (please tick one or more below)**

✓ **Online information on the provisions in the Civil Aviation Act.**

✓ **A 'Know Your Rights' pamphlet or other printed materials for passengers.**

☐ Government departments working with carriers to introduce a 'Customers Charter' or something similar.

✓ **Other. Please specify:**

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As discussed above, an Ombudsman/Complaints Commissioner/Dispute Resolution service has merits.

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☐ No

Please state your reasons here:

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**Question C2c:** Do you think that stronger protection provisions are necessary in the Civil Aviation Act 1990?

✓ **Yes**

☐ No

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☐ Please state your reasons here:

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Include delayed baggage

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**Question C2d:** If you answered yes to question C2c, what do you think should be included in the Act?

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Include delayed baggage.

It is also important that “delay” is specified in a generic sense. A 3 hour delay, as defined by the European Court of Justice, will be a time frame that is excessively long for some passengers, while for others there are no additional costs incurred. A 3 hour delay makes a flight all but useless for many domestic business and sporting flights, and is generally not viewed as acceptable by the travelling public.

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#### 4.8.3 Item C3: The limit on liability for damage caused by delay

**Question C3a:** Which is your preferred option?

☒ **Option 1: Status quo – liability is capped at an amount representing 10 times the sum paid for the carriage**

☐ **Option 2:** Revise the domestic liability limit for damage caused by delay

☐ **Other option:** Please describe

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Please state your reasons:

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A limit on liability is consistent with insurance principles, and ensures that passengers have some incentive to optimise their replacement travel arrangements. However, it is important to note that passengers may have limited time and options available, so the available alternatives may be quite costly relative to the originally booked travel. It is difficult to envisage the full range of situations in which costs might be incurred, but those costs could extend to missing scheduled connecting transport and having to make short-term arrangements to compensate for that. In some circumstances this could also include additional taxi and accommodation costs.

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**Question C3b:** If you selected Option 2 for Question C3a, what do you consider would be an appropriate liability limit for domestic air carriage and why?

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## 4.9 International air services licensing

### 4.9.1 Item D1: Commercial non-scheduled services

**Question D1a:** Which is your preferred option?

- ☒ **Option 1: Status quo – the Act continues not to specify the precise scope of ‘non-scheduled services’**
- ☐ **Option 2:** Remove the need for case-by-case authorisation for services that do not follow a systematic pattern and provide explicitly for authorisation of supplementary services or a systematic series of flights (Ministry of Transport preferred option)
- ☐ **Some other option** (please describe):

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Please state your reasons:

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#### 4.9.2 Item D2: Allocation decisions for New Zealand international airlines

**Question D2:** Which is your preferred option?

- ☐ **Option 1:** Status quo – the Minister of Transport continues to consider licensing decisions for New Zealand airlines that involve allocating both limited and unlimited rights
- ☐ **Option 2:** Status quo and Secretary to consider licensing decisions for New Zealand airlines involving unlimited rights under delegation
- ✓ **Option 3: Amend the Act to allow the Secretary to consider licensing decisions for New Zealand airlines involving unlimited rights (Ministry of Transport preferred option)**
- ☐ **Some other option** (please describe):

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Please state your reasons:

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Agree with the Ministry's reasons. Where unlimited rights have been negotiated, there is no public interest issue involved in licensing a carrier to exercise those rights. Instead, public interest is best served by minimising the entry barriers to the relevant market by making the licensing process as efficient as possible.

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#### 4.9.3 Item D3: Public notice

**Question D3a:** Which is your preferred option?

- ☐ **Option 1:** Status quo – the Act provides for a 21 day submission period when an application for a new, amended or renewed scheduled international air service licence by a New Zealand airline is received.
- ☐ **Option 2:** Amendment to the Act to:
  - reduce the 21 day submission period, for example, to 14 days or 10 days
  - require notice to be given only when limited air services rights for routes or capacity are being allocated.

(Ministry of Transport preferred option)

- ✓ **Some other option (please describe):**

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Option 2 as proposed by the Ministry, but without the reduction in the 21 day submission period.

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Please state your reasons here:

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Just as the Ministry has a hierarchical process of approvals for policy and consultation papers, private sector organisations have a hierarchical process of approvals for submissions on important issues. Assuming that the notice for allocation of limited air service rights is unexpected by other carriers, potential submitters may not have done all the work that they need to in order to lodge an

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appropriately detailed submission. Time is required for the published notice to be noticed or registered within a competing carrier's organisation, a work plan must then be established, analysis conducted, the submission written, and approvals obtained. 21 days is a tight but workable timeframe. A reduced timeframe would be too short.

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**Question D3b:** What is the appropriate submission period to balance the desirability of allowing third parties to make representations with reducing delay for airlines that are planning and implementing services?

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As discussed above, 21 days.

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#### 4.9.4 Item D4: Transferring licences

**Question D4:** Which is your preferred option?

- ☐ **Option 1:** Status quo – Sections 87K and 87Y retained.
- ✓ **Option 2: Repeal sections 87K and 87Y, and amend sections 87J, 87Q and 87X (Ministry of Transport preferred option)**
- ☐ **Some other option** (please describe):

Please state your reasons here:

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Sections 87K and 87Y appear to be redundant, and their removal will aid in the development of a clear and concise regulatory framework. The proposed amendments to sections 87J, 87Q, and 87X are also desirable and would aid in providing an efficiently administered system.

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#### 4.9.5 Item D5: Airline operations from countries with which New Zealand does not have an Air Services Agreement

**Question D5:** Which is your preferred option?

- ✓ **Option 1:** Status quo – the Act continues to provide for the licensing of foreign international airlines of countries with which New Zealand does not have an Air Services Agreement or similar arrangement (Ministry of Transport preferred option)
- ☐ **Option 2:** Repeal – the Act ceases to provide for the licensing of foreign international airlines of countries with which New Zealand does not have an Air Services Agreement or similar arrangement
- ☐ **Some other option** (please describe):

Please state your reasons:

The status quo provides an option that can be used to bring-forward competitive entry and thus benefit consumers and New Zealand generally.

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## 4.10 International air carriage competition

### 4.10.1 Item D6: Authorisation of contracts, arrangements and understandings between airlines

**Question D6a:** Which is your preferred option?

- ☐ **Option 1:** Amended Civil Aviation Act regime – amend the existing provisions to explicitly require an assessment of costs and benefits, specify the process for making a decision, and provide for conditions to be attached to any approval
- ✓ **Option 2:** Commerce Act – the authorisation of contracts, arrangements and understandings between airlines will be considered and made under the Commerce Act
- ☐ **Some other option** (please describe):

Please state your reasons:

From an economic regulatory perspective there is nothing special about airlines as compared to other commercial enterprises. The existing framework of legislation (particularly the Commerce Act) is as equally applicable to airlines as it is to any other industry. The Commerce Commission has previously investigated restrictive trade practices in airlines, has expertise in the analytical techniques.

**Question D6b:** How do the two options meet the criteria in paragraph 96?

While it is possible that specialist staff from the Commerce Commission could be co-opted into an investigation under Option 1, there is no guarantee that this would happen. Instead, history would suggest that the body charged with conducting the assessment under Option 1 would seek to build its own expertise. This expertise would necessarily be under-utilised and potentially out of practice when an investigation was required. This in turn means that Option 1 carries greater risks that the analysis of costs and benefits is not sufficiently comprehensive (96.1), due to the absence of well tested procedures the authorisation process is not as transparent as it might be (96.3), and duplication of resources does not minimise the direct cost to government (96.4).

**Question D6c:** What are the costs, benefits, and risks of the two options?

Option 1 provides greater expertise in international air services obligations, but otherwise is generally weak. Option 2 suggests a much stronger economic analysis can be applied, in a transparent and well-tested process.

**Question D6d:** Under each option, how do you envisage the decision-making process working? (For example, under Option 1 who would undertake the competition analysis and what information gathering powers would be required to undertake this analysis?)

Option 2 is very straightforward – the existing process employed by the Commerce Commission would apply. See, for example, the Commerce Commission's *Authorisation Guidelines*, July 2013. In many instances agreements might qualify for the streamlined authorisation process.

Under Option 1 an essentially identical process would need to be developed and the organisational capability built to support the process.



#### 4.10.2 Item D8: Authorisation of unilateral tariffs by the Minister

**Question D8:** Which is your preferred option?

- ☐ **Option 1:** Status quo – the Act continues to provide for authorisation of single airline tariffs
- ☒ **Option 2: Amended provision – replace section 90 with a provision similar to regulation 19A(4) of the Australian Air Navigation Regulations 1947 (Ministry of Transport preferred option)**
- ☐ **Option 3:** Complete repeal – the Act ceases to provide for authorisation of single airline tariffs
- ☐ **Some other option** (please describe):

Please state your reasons:

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## 4.11 Airport Authorities Act

### 4.11.1 Item E1: Specified airport companies

**Question E1a:** Which is your preferred option?

- ☐ **Option 1:** Status quo – specified airport companies are defined as an airport company that in its last accounting period received revenue exceeding \$10 million.
- ☐ **Option 2:** Revise the threshold – specified airport companies are defined as an airport company that in its last accounting period received revenue exceeding \$15 million.
- ☐ **Option 3:** Amend the threshold to be based on revenue from identified airport activities – for example, specified airport companies are defined as an airport company that in its last accounting period received revenue from identified airport activities exceeding \$10 million.
- ☐ **Option 4:** Amend the threshold from annual revenue to passenger movements – for example, airport company that in its last accounting period had in excess of one-million passenger movements (Ministry of Transport preferred option)

✓ **Some other option (please describe):**

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Amend the threshold from annual revenue to either of an excess of one-million passenger movements or 40,000 aircraft movements per year (the threshold for a category 3 aerodrome) or both.

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Please state your reasons:

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Option 4 is a step in the right direction, moving away from an arbitrary revenue threshold to a passenger movement threshold. There are, however, more than just passengers using an airport. Private and recreational flying activities are as much a customer of the airport as is a certified operator carrying passengers.

It may be appropriate to specify an “either/or” criteria, i.e. a large number of aircraft movements or one million passenger movements.

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**Question E1b:** Is changing the threshold for a ‘specified airport company’ the most effective way to distinguish between airports that are in a position to exercise significant market power and those which are not?

☐ Yes

✓ **No**

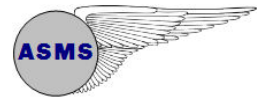
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While we support changing the threshold for a ‘specified airport company’, enshrining a threshold in legislation is NOT the most effective way to distinguish between airports that are in a position to exercise significant market power.

This question would be best left to the Commerce Commission. It can be argued that the home airport for a private pilot or small operator is able to exercise significant market power, just as a consumer’s telecommunications provider is able to exercise significant market power in the termination of calls to the consumer’s phone. These issues have been considered by the Commerce Commission, the Australian Competition and Consumer Commission, and other competition regulators around the world.

It would be appropriate for the Act to provide a default threshold that would apply until an alternative threshold was determined by the Commerce Commission.

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#### 4.11.2 Item E2: Redundant provisions

**Question E2a:** What impact, if any, would removing section 3BA have?

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**Question E2b:** Do you support repealing section 3BA?

- ☐ Yes
- ☐ No

Please state your reasons:

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**Question E2c:** What impact, if any, would removing sections 4(2) and 4A have for airports that are not regulated under the Commerce Act 1986?

There would be no impact.

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**Question E2d:** Do you support repealing sections 4(2) and 4A for airports that are not regulated under the Commerce Act 1986?

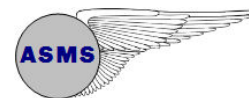
☒ **Yes**

☐ **No**

Please state your reasons here:

These sections are simply not required – an airport is the same as any other commercial entity subject to normal commercial regulation.

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#### 4.11.3 Item E3: Consultation on certain capital expenditure

**Question E3a:** Which is your preferred option?

- ☐ **Option 1:** Status quo - specified airport companies are required to consult substantial customers before approving certain capital expenditures
- ✓ **Option 2: Require all airport companies to consult on certain capital expenditures (Ministry of Transport preferred option)**
- ☐ **Some other option** (please describe):

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Please state your reasons:

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**Question E3b:** Under the status quo, to what extent do airport companies that are not 'specified' consult on capital expenditure? Please give examples.

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**Question E3c:** What would be the costs and benefits of expanding this provision to cover all airport companies?

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Airport companies can currently undertake capital expenditure that impacts significantly on future charges, without the airport users having any particular input to the decision. Acting as a profit-maximising company, the airport company can undertake the capital expenditure for the purpose of increasing profit, but without providing additional services that are actually wanted (or sufficiently highly valued) by current users of that airport.

Expanding the provision to all airport companies would ensure that the ability of the airport company to make unilateral decisions is curbed, reducing the ability of the airport company to exercise significant market power in relation to the private individuals and small operators that may be based at that airport.

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#### 4.11.4 Item E4: Threshold for consultation on certain capital expenditure

##### Options for amending the threshold for consultation on certain capital expenditures

Passenger volumes	OR Annual revenue	Option 1	Option 2	Option 3
< 1 million	< \$10 million	> \$5 million	10% of identified airport assets (excluding land)	The lower of 30% of identified airport assets or \$30 million
> 1 million but < 3 million	> \$10 million but < \$50 million	> \$10 million		
> 3 million	> \$50 million	> \$30 million		

**Question E4:** Which is your preferred option?

- ☐ **Option 1:** Stepped thresholds
- ☒ **Option 2:** 10 percent of identified airport assets (excluding land)
- ☐ **Option 3:** The lower of 30 percent of identified airport assets or \$30 million
- ☐ Some other option (please describe):

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Please state your reasons:

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**Question E4b:** If you prefer Option 1, where do you consider the thresholds for consultation should be set and why?

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#### 4.11.5 Item E5: Termination of leases without compensation or recourse for compensation

**Question E5:** Which is your preferred option?

- ☐ **Option 1:** Status quo - airport authorities may terminate a lease at any time if the property is required for the “purposes of the airport”, and lessees may not seek redress through the Courts for damages or compensation, except where compensation is provided for under the lease.
- ✓ **Option 2:** Amend the Act to clarify the reasons for which airport authorities can terminate leases without compensation or recourse for compensation.
- ☐ **Some other option** (please describe):

Please state your reasons:

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Termination of a lease should generally be subject to the normal legal provisions of recourse to dispute resolution and the courts, except for exceptional circumstances. Those circumstances should either be specified in legislation or in regulation administered by the Commerce Commission.

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Question E5b: Are there any other issues with section 6 of the Airport Authorities Act that you think should be addressed? If so, what options do you propose to address the issue(s)?

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#### 4.11.6 Item E7: Information disclosure and specifying what “publicly available” means.

**Question E7a:** What are the costs and benefits of the current information disclosure regime under section 9A of the Act?

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**Question E7b:** Which is your preferred option?

- ☐ **Option 1:** Status quo – the Act does not specify what “publically available” means in section 9A
- ☐ **Option 2:** Specifying what publicly available means in section 9A (Ministry of Transport preferred option)
- ☒ **Some other option (please describe):**

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Information disclosure exists as a part of economic regulation and should be combined with information disclosure requirements administered by the Commerce Commission. This should be governed by the same provisions as information disclosure under the Commerce Act 1986.

At a general level, however, the definition of “publically available” has changed over time. It is now generally accepted that the information should be available on the regulated entity’s website.

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#### 4.11.7 Item F1: Airways' statutory monopoly

Section 35 of the Civil Aviation Amendment Act 1992 provides for the repeal of Airways' statutory monopoly on a date to be appointed by the Governor-General by Order in Council.

We recommend:

- repeal of Section 35 of the Civil Aviation Amendment Act 1992; and
- the retention of Section 99 of the Civil Aviation Act 1990 (which provides for Airways to be the sole provider of area control services, approach control services, and flight information services).

**Question F1:** Do you agree with our recommendation?

☐ Yes

☒ **No**

Please state your reasons:

In a country as small as New Zealand, area control services can realistically only be provided by a single provider. Other services, such as approach control services and flight information services may well be able to be provided by providers other than Airways Corporation. The only requirement for the provision of such services is that the personnel are suitably qualified.

The Ministry notes that no Order in Council has yet been made to set a date to repeal Airways Corporation's statutory monopoly. The fact that no Order has yet been made is not a reason to repeal Section 35 of the Civil Aviation Amendment Act 1992.

Those functions of Airways Corporation that remain a statutory monopoly should be subject to economic regulation under Part 4 of the Commerce Act 1986, perhaps as a new Subpart 12. Aviation industry participants are generally more concerned with the cost of monopoly services than they are with the quality of those services (quality is perceived as being generally reasonable, but prices are perceived as being too high).

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#### 4.11.8 Item F3: Length of time before the Director can revoke an aviation document because of unpaid fees or charges

**Question F3:** Which is your preferred option?

- ☒ **Option 1:** Status quo – the Director of Civil Aviation may revoke an aviation document if the related fee or charge is overdue by six months
- ☐ **Option 2:** Reduce the threshold from six to four months
- ☐ **Some other option** (please describe):

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Please state your reasons:

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#### 4.11.9 Item F4: Power to stop supplying services until overdue fees and charges have been paid

**Question F4:** Which is your preferred option?

- ☐ **Option 1:** Status quo – Section 41(4) the Civil Aviation Act provides for the CAA, the Director and other persons to decline to process an application or provide a service under the Act until the appropriate fee or charge has been paid (or arrangements for payment made).
- ☒ **Option 2:** Amend section 41(4) to clarify its intention – to explicitly provide for the CAA, the Director and other persons to decline to process an application or provide a service under the Act until the appropriate fee or charge or outstanding debt has been paid (or arrangements for payment made).
- ☐ **Some other option** (please describe):

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Please state your reasons:

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#### 4.11.10      **Item F5: The Civil Aviation Authority's ability to audit operators that collect levies**

**Question F5:** Which is your preferred option?

- ☐ Option 1: Status quo – the Act does not allow the CAA to require an audit of operators from which it collects levies.
- ✓ **Option 2: Amend section 42B to include a power for the CAA to require an audit of operators from which it collects levies at the CAA's own cost**
- ☐ Some other option (please describe):

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Please state your reasons:

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#### 4.11.11 Item F6: Fees and charges for medical costs

**Question F6:** Which is your preferred option?

- ☐ Option 1: Status quo – section 38(1)(b) of the Civil Aviation Act allows the Governor-General to made regulations prescribing the fees and charges for the purpose of reimbursing the CAA for “costs directly associated with” the Director and Convener’s functions under Part 2A of the Act.
- ☐ Option 2: Clarify section 38(1)(b) that this section is intended to cover a broad range of services and corporate overheads associated with the Director and Convener’s functions under Part 2A of the Act
- ☐ Some other option (please describe):

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Please state your reasons:

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## Appendix A CURRICULUM VITAE

### HEATHER ANDREWS

#### Summary

Heather is an experienced aviation industry professional, and has been involved with roles such as Private Pilot, Assistant Air Traffic Controller, Purser, Trainer for Airlines, and an Industry advisor to ATTTO, NZQA, CAA and Part 115 and 119 Operators. She advises clients on aviation certification, safety and compliance including hazard identification, risk assessment, development of risk management plans, such as for major air shows and provides training and project management for implementation of those plans. This also included post-event evaluation of incidents. This wide range of experience provides an in-depth understanding of the range of hazards that might arise in the aviation industry.

Heather is a CAA-approved Quality Assurance Manager and Occurrence Investigator for several aviation organisations.

Heather holds a degree from the University of Canterbury, has completed ACC's External Auditor training course, has completed the CAA Safety Co-ordinator's course, and is an Accredited Safety Auditor and Certified Professional Member of the New Zealand Safety Council.

#### Selected Experience

Relevant projects include:

- Preparation of operating manuals and advice on associated procedures for three clients utilising unmanned aerial vehicles ("drones").
- Preparation of the suite of operating manuals ("exposition") for two clients intending to provide commercial flights on warbird aircraft. These manuals provide the basis for certification of the respective operations with the Civil Aviation Authority.
- Preparation of the exposition for a commercial hot air balloon operation. This included the design of the health and safety systems for the operation.
- Assisting an aviation operator with the preparation of manuals for the transition to hire and reward (Part 135) operations.
- For the Civil Aviation Authority, conducting a review of "joining procedures" at uncontrolled aerodromes in New Zealand. Joining procedures are the procedures used to ensure that aircraft can arrive at and depart from the aerodrome without conflict with other aircraft.
- Preparation of the Risk Management Plan and Emergency Plan for the Tauranga City Airshow 2010. On-the-day monitoring of operations to ensure plans were complied with.
- Industry Advisor for CAA project "Occupational Health and Safety for Cabin Crew and Flight Crew".
- Industry Advisor for ATTTO and NZQA, National Certificate in Aviation Flight Attendant.
- ATTTO, Academic writer and design of assessment for Unit Standards in Aviation.
- Audit and review of the health and safety management systems for a Massage and Osteopathy Centre, North Shore (approx 10 employees).
- Audit, review, and design of the health and safety management systems for a commercial gymnasium, Rolleston, Christchurch.



## Qualifications

BSc, University of Canterbury

Accredited Safety Auditor (ASA), NZ Safety Council

CAA Aviation Safety Coordinator

CAA Maintenance Controller course

QS101: An Introductory to Quality Management Systems and ISO9001, Southpac Aerospace

Certificate in Meteorology, Airways Corporation of New Zealand

Private Pilot's Licence

Gas Turbine Rating

Instructional Techniques

## Professional Memberships

Certified Professional Member of the New Zealand Safety Council

Tauranga Chamber of Commerce

## Professional History

2013 – <b>current</b>	<i>Quality Assurance Manager and Administration, Strikemaster Ltd</i>
2013 – 2014	<i>Quality Assurance Manager, Southern DC 3 Ltd</i>
2013 – <b>current</b>	<i>Safety Occurrence Investigator, and Quality Assurance Manager, Flight 2000 Ltd</i>
2012 – <b>current</b>	<i>Cabin Crew Manager, Fly DC3</i>
2010 – <b>current</b>	<i>Director and Consultant, Aviation Safety Management Systems Ltd</i>
2007 – 2012	<i>Flight Attendant, Fly DC3</i>
2010 – 2012	<i>Customer Service Consultant, BNZ</i>
2007 – 2009	<i>Academic Staff Member, Travel and Tourism, Bay of Plenty Polytechnic</i>
2003 – 2008	<i>Customer Service Consultant, ANZ</i>
2002	<i>Flight Attendant, Mount Cook Airlines</i>
2001 – 2002	<i>Assistant Air Traffic Controller (Flight Data), Airways Corporation of New Zealand</i>
2000 – 2001	<i>Senior Flight Attendant, Freedom Air International</i>
1994 – 2000	<i>Flight Attendant, Ansett New Zealand</i>



## ANDREW SHELLEY

Andrew is an experienced consultant with over 17 years advising senior management, Boards, and regulators on strategic, economic and regulatory issues in a wide range of industries. He is experienced at deciphering legislation and regulatory rules and processes, and identifying risks within those processes. Since 2010 Andrew has been consulting in regulatory economics, aviation, and health & safety. Current work includes advising on preparation of documentation for certification to the requirements of Civil Aviation Rules for unmanned aerial vehicles (UAVs), the development Safety Management Systems, and advice on pricing and cost allocation for regulated utilities.

In addition to providing regulatory advice, Andrew has appeared as an expert witness in commercial arbitrations, and prepared expert evidence for a number of court cases. Andrew has appeared as an expert witness in Commerce Commission hearings and in commercial arbitrations.

Andrew has completed ACC's External Auditor training course, and is an Accredited Safety Auditor and Certified Professional Member of the New Zealand Safety Council. Andrew is also a Member of the New Zealand Institute of Directors and is familiar with the increasing responsibility being placed on senior staff for ensuring the safety of any workplace.

### Professional History

2013 – current	<i>President</i> , Fly DC3 New Zealand Inc <i>Director</i> , Flight 2000 Ltd
2010 – current	<i>Director</i> , Aviation Safety Management Systems Ltd <i>Senior Consultant</i> , The Lantau Group
2008 – current	<i>Director</i> , Andrew Shelley Economic Consulting Ltd <i>Senior Consultant</i> , Oakley Greenwood Pty Ltd
2008 – 2010	<i>Consultant</i> , CRA International
2001 – 2008	<i>Senior Associate</i> , <i>Associate Principal</i> , and <i>Principal</i> , CRA International
1999 – 2000	<i>Senior Consultant</i> , PHB Hagler Bailly – Asia Pacific Ltd
1998 – 1999	<i>Costing and Economics Manager</i> , Network Group, Telecom New Zealand
1995 – 1998	<i>Pricing Analyst</i> and <i>Strategic Analyst</i> , Transmission Services, Transpower New Zealand Ltd
1995	<i>Analyst Programmer</i> , Foodstuffs (Wellington)
1993 – 1994	Study for Master of Arts
1990 – 1993	<i>Analyst Programmer</i> , Farmers' Mutual Insurance Group

### Qualifications

MA (first class honours) Economics, Massey University

B.B.S. (Information Systems), Massey University

Accredited Safety Auditor (ASA), New Zealand Safety Council

Introduction to Quality Management Systems & ISO9001, Southpac Aerospace



## **Professional Memberships**

Member of the New Zealand Institute of Directors

Certified Professional Member of the New Zealand Safety Council

Member of the Law and Economics Association of New Zealand

## **Selected Consulting Assignments**

- Preparation of operating manuals and advice on associated procedures for three clients utilising unmanned aerial vehicles ("drones").
- For the Civil Aviation Authority, conducting a review of "joining procedures" at uncontrolled aerodromes in New Zealand. Joining procedures are the procedures used to ensure that aircraft can arrive at and depart from the aerodrome without conflict with other aircraft.
- Preparation of the suite of operating manuals ("exposition") for two clients intending to provide commercial flights on warbird aircraft. These manuals provide the basis for certification of the respective operations with the Civil Aviation Authority.
- For Buller Electricity Ltd (BEL), valuing the benefit to BEL's consumers of enhanced retail competition from BEL's ownership stake in Pulse Energy.
- For the Independent Electricity Generators Association of New Zealand, preparation of a report on Avoided Cost of Transmission (ACOT) payments for Distributed Generation.
- For Contact Energy, preparation of a report analysing whether the balance of Transpower's "economic value" (overs and unders) account was consistent with what would be expected in a workably competitive market.
- Advising NGC on the calculation of excess profits, including detailed consideration of the theoretical basis for calculating excess profits, arguments on the treatment of gains on sale and the appropriate treatment tax effects.
- Developing a comprehensive financial model for an Australian Distribution Network Service Provider to analyse how the firm's financial performance would respond to different forms of regulation and price and revenue controls.
- Development of a comprehensive simulation model to assess the impact of a wide range of potential regulatory changes on a major Asian utility.
- Expert report for Unison Networks on the approach that would need to be adopted for setting a regulated weighted average cost of capital (WACC) given material market and catastrophic risks faced by electricity distribution.
- For Pacific Steel, development of a financial model to assess the relative impact on competitiveness of the New Zealand Emissions Trading Scheme (NZETS) and proposals under Australia's Clean Energy Futures Plan (CEFP).
- For the Ministry for the Environment (MfE), quantifying the potential impact of the proposed New Zealand Emissions Trading Scheme on three energy-intensive businesses. This work included the development of spreadsheet-based financial models for each of the three businesses, including separate models for "manufacturing", "full import" and "importation of intermediate product".
- Advising the Inland Revenue Department on economic issues related to tax avoidance litigation.

- Provision of advice on the costs and benefits of converting plantation forestry to dairy farms, including valuation of the impacts on greenhouse gas emissions.
- Providing economic advice and analytical support to the New Zealand Commerce Commission in a Commerce Act s36 case.
- For the New Zealand Ministry of Health, managing consultant for two studies of the air ambulance sector in New Zealand. Both studies involved the collection, collation, and analysis of data on the operating costs of air ambulance services.
- For the New Zealand Electricity Efficiency and Conservation Authority (EECA), quantifying the benefits of the direct use of natural gas.
- Assessment and valuation of strategic options (including sale and acquisition options) for a New Zealand electricity lines business.
- For Telecom NZ Ltd, contributing to a number of public submissions to the New Zealand Telecommunications Commissioner, with particular emphasis on incentive effects of regulatory proposals and dynamic efficiency, cost recovery, reasonable rate of return on capital, funding of telecommunications service obligations (TSOs), and accounting for intangible benefits when calculating the cost of TSOs.
- Providing advice on how to adjust for differences in wage rates, cost of capital, and factor intensities in an international benchmarking study.
- Valuation and assessment of a proposed long-term contract for rail transportation, including a review of the approaches to rail price regulation in Australia.
- Review of the process and rules for the New Zealand Government's 2GHz radio spectrum auction.

### **Selected Public Reports**

*Selection of the WACC Percentile in the Context of Risks faced by Electricity Distribution*, Final Report, Prepared for Unison Networks Ltd, 29 April 2014.

*Use of The Loss & Constraints Excess to Offset Transmission Charges*, letter to the Electricity Authority, 3 March 2014.

*Value of Pulse Energy to Residential Consumers of Buller Electricity Ltd*, Final Report, Prepared for Buller Electricity Ltd, 14 February 2014.

*Avoided Cost of Transmission (ACOT) payments for Distributed Generation*, Final Report, Prepared for the Independent Electricity Generators Association, 31 January 2014.

with Heather Andrews, *Submission in Response to "Safety Regulation of Aviation: Considering a Risk Management Approach"*, Submission to the Civil Aviation Authority, 8 July 2013.

with Heather Andrews, *Review of Joining Procedures at Uncontrolled Aerodromes*, prepared for the Civil Aviation Authority, 2 July 2013.

*Cost of Capital and Leverage*, Final Report, Prepared for Unison Networks Ltd, 2 September 2010.

*Rents, Regulatory Commitment and the Role of Long Term Contracts*, Final Report, Prepared for Unison Networks Ltd, 19 August 2010.

*Regulated Returns for Australian and New Zealand Electricity Distribution*, Final Report, prepared for Unison Networks Ltd, 15 August 2010.

*Balance of the EV Account for Transpower's HVDC Assets*, Prepared for Contact Energy, 8 August 2010.

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*Comments on Cost Allocation and the Regulatory Asset Base*, Prepared for Unison Networks Ltd, 15 March 2010.

*Implementing the Deferred Tax Approach*, letter to Unison Networks Ltd, 26 January 2010.

*Input Methodologies: Economic Issues*, Prepared for Unison Networks Ltd, 13 August 2009.

with Anna Kleymenova and Tim Giles, *WACC for TPI's Iron Ore Railway*, Prepared for Economic Regulation Authority, 11 June 2009.

with Mike Thomas, *Regulatory Provisions of the Commerce Act*, Prepared for Unison Networks Ltd, 16 February 2009.

with Jeremy Hornby and James Mellsop, *Response to Commerce Commission's Discussion Paper: Threshold Reset 2009*, Prepared for Unison Networks Ltd, February 2008.

with Lewis Evans, Jeremy Hornby, and James Mellsop, *Comments on Commission's Draft Decisions Paper on Supply of Gas Distribution Services*, Prepared for Vector Ltd, 29 November 2007.

with Jeremy Hornby and Michael Thomas, *Discount Rate for the Grid Investment Test*, Final Report, prepared for Transpower NZ Ltd, 29 March 2007.

with Erik Westergaard, *Consultation on the Proposed Transmission Pricing Methodology*, Final Report, prepared for Electricity Networks Association, 2 February 2007.

with Jeremy Hornby and James Mellsop, *The Costs and Benefits of Regulating Transpower*, Final Report, prepared for Transpower NZ Ltd, 27 February 2006.

with Lewis Evans, Jeremy Hornby, and James Mellsop, *Cross Submission on the Intention to Declare Control of Unison*, Final, Prepared For Unison Networks Limited, 21 December 2005.

with Lewis Evans, Jeremy Hornby, and James Mellsop, *Review of the Commerce Commission's Intention to Declare Control of Unison*, Final Report, Prepared For Unison Networks Limited, 28 October 2005.

with Michael Thomas, *Net Benefits of Transmission Alternatives*, Final, Prepared for Meridian Energy Limited, 22 July 2005.