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22<sup>nd</sup> July 2019

Ministry of Transport  
PO Box 3175  
Wellington 6140

Email to: [ca.bill@transport.govt.nz](mailto:ca.bill@transport.govt.nz)

Dear Sir/Madam,

Submission on the exposure draft of the Civil Aviation Bill

On behalf of Fieldair Holdings Limited (FAH) I would like to thank you for the opportunity to submit consultation feedback on the exposure draft to the Civil Aviation Bill. FAH is a fully owned subsidiary of The Freightways Group, and we have two companies currently operating under Part 145 for Engineering and Part 125 for Air Operations. The primary business of our owners is airfreight operations, but FAH also has an interest in supporting our customers who are not purely focussed on freight.

FAH has taken a close interest in the changes proposed by the Civil Aviation Bill, having attended discussions with other industry participants. We are aware of the submission made by IQ Aviation, based on inputs from a wide sector of the industry, and generally support much of the content of their submission. However, I think that it is worthwhile highlighting the few points that are particularly interesting to our business, and also answering the questions asked in the exposure draft commentary document.

In general, I support the amalgamation of the Civil Aviation Act and the Airport Authorities Act as a positive move to simplify and integrate aviation safety management. The incorporation of changes to encapsulate modern technologies, such as unmanned aircraft are also very necessary, although without doubt the transformational impacts of such technologies will require ongoing revision of the legislation to stay in step with the rate of change. I share some concerns submitted by others that this is a once in 30 year opportunity to modernize our legislation, and that perhaps it is time for a more wide ranging review of the whole industry regulatory framework as it relates to changes in other legislation, and in relation to New Zealand's unique cultural, social and environmental situation. We want the Civil Aviation Act to underpin a strong aviation industry that is attractive to the next generation, who will utilize aircraft safely for all types of uniquely New Zealand situations to add value to our society, to our environment, and to our economy. This will require a bit more than addition and amendments to existing clauses in order to future proof this Act for the next 30 years.

Comments on the matters raised in the exposure draft are provided below in the same order and under the titles as used in the commentary document:

### ***Protection of safety information (a 'Just Culture' approach)***

I agree in general that the current drafting achieves the policy decision and will encourage more occurrence reporting. Just Culture is internationally proven to enhance safety culture, and so it is important that this is included in the Act.

The Just Culture principles which the CAA currently practices are already enough. Our business encourages Just Culture and protected disclosure by all staff to executive management, and disclosure directly to CAA only if it is felt that the management have not responded adequately to the specific concern. The CAA need to retain the right to audit the internal handling of incident reporting as it relates to risk management and SMS principles and to respond appropriately when these principles are not being properly upheld.

There may be a need for more definition of specific circumstances or information not disclosed that would represent a prosecutable offence; for example, when the information should have been disclosed or was purposely withheld by a person or business in order to knowingly hide an unsafe or illegal act performed by that person or business. This should not cover situations where the information did not normally need to be disclosed or was not knowingly withheld.

To have any comfort that the protections are meaningful, the concepts of "public interest" and "interest" need to be clearly defined.

### ***Drug and alcohol regulation***

I agree that the current drafting will achieve the policy decision.

While supporting the introduction of random testing as well as mandating testing post an accident resulting in death or serious harm, there needs to be some rethinking of how to legislate the need for approved drug and alcohol management plans (DAMP). Most companies, like our own, already address drugs and alcohol within employment policies as part of our safety and risk management as required under the Health and Safety at Work Act, and utilize external agencies for testing for pre-employment or when there is just cause. Rather than require each company to develop its own DAMP, and create another level of bureaucracy and cost, it would be adequate to require the drug and alcohol risk management to be incorporated as part of the SMS and to audit this like any other part of the operation.

### ***Offences and penalties***

I agree that provisions recommended around the limitation periods should be incorporated in the Bill.

The further work required on the current drafting in relation to offences and penalties needs to be undertaken in further consultation with the industry. The aim for everybody is safety first, and then ensuring that nobody gets away with purposely flouting the rules without suffering consequences. However Just Culture principles need to apply when there have been inadvertent oversights, with the emphasis being on education and help to get it right.

### ***Improving the process to determine if someone is 'fit and proper' to participate in the aviation system.***

The current drafting does achieve the policy decision. I agree that the changes are necessary and believe that it will be a benefit to businesses to have the additional information available to the Director in coming to a decision.

### ***Amendments relating to unmanned aircraft (drones)***

I believe that the proposed changes are necessary and that it is also important to be able to delegate the Director's authority to other agencies to adequately control compliance with the rules, much in the same way as the police are used to control compliance with road transport. There are a number of issues that need to be addressed outside of aviation rule compliance and safety, and some powers will need to be provided under local body bylaws. Due to the rapid spread of quite sophisticated drones for non-commercial purposes, it would not be fair for the aviation sector to carry the full cost of compliance monitoring, and the government will need to make provision for funding from other sources.

As well as the operation of unmanned aircraft, there needs to be a very clear definition around the design and maintenance requirements of these machines. Depending on the safety risks, in any circumstances where there is likely to be people or property beneath the aircraft, all of the same design and maintenance requirements as for manned aircraft should apply. This should include full traceability of spare parts and technical data, and qualified and approved service providers. This will generate an industry in itself, that will ensure a certain level of quality.

In relation to the Person In Charge (PIC) question, it may become very difficult in future to identify who is the PIC and this person could conceivably even be in a different country or be in charge of several autonomous aircraft at once, which raises some interesting questions in relation to future operations. It may be more prudent to target the definition at the owner or the owners delegate as being the responsible person.

The current exposure draft probably addresses the objectives as they currently stand, but this is a moving feast, which will require plenty of flexibility to be built into the legislation.

The whole unmanned aircraft area will require a holistic approach, involving designers, Original Engineering Manufacturers, owners, operators, maintenance organisation, customers, regulators and the public. It is important that the regulations accurately categorize drones and their uses at the point of entry into the country, or at the manufacturer if locally produced or modified. Depending on the categorization and the associated safety risks, different levels of regulation and compliance should apply. The Act may require the CAA, and the Director, to take the lead in establishing the rules around the various categories under separate Parts of the Act in much the same way as is currently done for manned aircraft categories.

### ***Improving the regime for authorization of airline cooperative arrangements***

Proposals related to airline cooperative agreements make good sense, but should not bind carriage of air freight, which should be excluded at the start of the Section. Airfreight provisions are included in the vast majority of bilateral agreements, whereas airline cooperative agreements usually only apply to the carriage of passengers. Sections 185 to 194 of the exposure draft are relevant almost exclusively to passenger operations. The normal provisions of the Commerce Act should apply to any freight application.

### ***Airport price setting***

The integration of the Airports Act into the Civil Aviation Act and the modernisation of the Airports Act is supported, as is removal of Section 4A of the Airports Act that gives powers to airport companies to set charges as they think fit. However, a more efficient and cost-effective disputes resolution mechanism compared to that provided under the Commerce Act should be considered.

***Improving the international airline licensing regime***

Issues raised are not applicable to our business, as we only operate domestically in New Zealand at this stage, but I support in principle the current drafting as proposed.

***Modernising provisions related to Airport Authorities***

I agree that the current drafting achieves the policy decision, and that the provisions of schedule 8 of the draft are out of date.

***Amendments to airline liability provisions***

Not relevant to our business in relation to passenger rights.

***Clarifying the Avsec search powers in the landside part of security designated aerodromes***

This seems to relate more to baggage than freight, but I agree that the current drafting seems to achieve the policy decision.

***Clarifying that Avsec can search suspicious items of hold baggage without passenger consent***

This seems to relate more to baggage than freight, but I agree that the current drafting seems to achieve the policy decision.

***Clarifying Avsec's powers to deal with dangerous goods***

This seems to relate more to baggage than freight, but I agree that the current drafting seems to achieve the policy decision. It needs to be clear that freight only carriers with approvals to carry dangerous goods are exempt from this provision.

***Avsec's institutional arrangements***

I agree that the current drafting seems to achieve the policy decision.

***Providing for alternative airport terminal configurations and implications for security screening***

Not applicable to our business.

***New security designation for aerodromes***

I agree that the current drafting seems to achieve the policy decision

***Enabling New Zealand Defence Force personnel to act as ASOs***

I agree that the current drafting seems to achieve the policy decision

***Notices of Direction made under section 77A***

I agree that the current drafting seems to achieve the policy decision

***Addition of 'airlines' to the list of organisations permitted to provide aviation security services***

Not applicable to our business.

***Replacing consent requirements in section 79A of the CA Act with consult***

Not applicable to our business.

***Assaulting an Aviation Security Officer (ASO) and killing, injuring or obstructing an Avsec dog***

I agree that the current drafting seems to achieve the policy decision and agree with these changes.

***Airport identity cards (AIC)***

I agree that the current drafting seems to achieve the policy decision.

***In Flight Security Officers***

Not applicable to our business.

***Infringement offence for being found in a security area without being screened, or without authorisation***

I agree that the current drafting seems to achieve the policy decision.

***National security considerations within the civil aviation system***

I agree that the current drafting seems to achieve the policy decision.

***Transport Instruments***

The current drafting seems to achieve the stated policy decision creating additional power for the Director to make "transport instruments" pursuant to Rules. However, the proposed changes are not supported, as they circumvent the existing provisions and obligations to consult on rulemaking. It is important that an open-door approach and adequate consultation be maintained.

***Amalgamation of the CA and AA Acts***

I do not see any unintended consequences from this proposal.

***Purpose statement***

The proposed purpose statement does not reflect enough what the full purpose of the Act should be, but does seem to reflect the existing vision statement of the Civil Aviation Authority. It is not particularly future orientated. I tend to agree with IQ Aviation's submission that the Short Title should not be removed from the Act i.e.

- (a) to establish rules of operation and divisions of responsibility within the New Zealand civil aviation system in order to promote aviation safety; and
- (b) to ensure that New Zealand's obligations under international aviation agreements are implemented; and
- (c) to consolidate and amend the law relating to civil aviation in New Zealand.

I also agree that the type of wording as used in the purpose statement of the recently passed Health and Safety at Work Act, and alignment to this would be appropriate for clarification

***Structure of Part 8 of the CA Act containing aviation security provisions***

Not applicable to our business.

***Offence provisions relating to Levies Order***

I agree that the current drafting seems to achieve the policy decision, but the wording is very black and white and there is no mention of the way in which the CAA is likely to apply the proposed new offence provisions as stated in 236 and 237 of the commentary document.

***Minor changes related to levies***

The current drafting probably achieves the stated policy decisions, but these decisions are not necessarily in line with thinking of the industry in terms of how levies should be set.

The fees and levies charging regime does not provide any protection to users of the system against cost escalations resulting from inefficiencies in the running of the regulator.

I am in agreement with IQ Aviation's submission that:

- Prior to setting new fees and charges there is to be agreement as to how much money the Authority requires to discharge its functions. The users of services will not unreasonably withhold agreement.
- Fees are to be set first based upon an appropriate benchmark for comparable services – for example the Ministry of Transport has produced benchmarking data across central and local government hourly rate comparable services.
- Where there is no comparable service in New Zealand, CAA shall look to rates charged by other international regulators.
- There is to be consultation with the appropriate persons or groups within the aviation community to set these benchmarks and rates.
- The government shall pay the same hourly rate for services consumed as that paid by non-government consumers.
- The right to appeal to the Commerce Commission for full information disclosure.
- The right to dispute any individual charge or invoice and be heard by the Disputes Tribunal.

Thank you again for the opportunity to make this submission, and as stated at the beginning of this letter, I hope that more time will be taken to complete a thorough review and overhaul of the Act to better prepare us for the aviation future all New Zealanders would aspire to.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'W Price', with a long horizontal flourish extending to the right.

Wayne Price

General Manager  
Fieldair Holdings Limited