



NEW ZEALAND AIR LINE PILOTS' ASSOCIATION

SUBMISSIONS TO THE

NEW ZEALAND MINISTRY OF TRANSPORT

ON THE

EXPOSURE DRAFT OF THE CIVIL AVIATION BILL

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1. INTRODUCTION

- 1.1. The New Zealand Air Line Pilots' Association (**NZALPA**) appreciates the opportunity to make submissions on the Exposure Draft of the Civil Aviation Bill, and provide comments on the decisions made by government regarding changes to the Airport Authorities Act 1966 (**AA Act**) and the Civil Aviation Act 1990 (**CA Act**). These decisions followed the Civil Aviation Act Review in 2014, the Domestic Aviation Security Review 2014/15, and policy work regarding drug and alcohol regulation in 2014.
- 1.2. NZALPA understand that the Ministry of Transport is seeking submissions on the Exposure Draft of the Civil Aviation Bill before 22 July 2019.
- 1.3. NZALPA makes the following submissions on a without prejudice basis.

2. EXECUTIVE SUMMARY

- 2.1. NZALPA views the role of the Civil Aviation Bill as a legislative framework to provide the highest degree of safety and security within the New Zealand aviation system.
- 2.2. NZALPA submits that that aviation must be legislated in a coherent, consistent and integrated manner. For this reason the amalgamation of the Airport Authorities Act 1966 (AA Act) and the Civil Aviation Act 1990 (CA Act) is an appropriate step. NZALPA does feel, however, that the provisions of the outgoing Acts are not necessarily outdated and contain provisions that if not included in the draft Civil Aviation Bill, should be incorporated elsewhere, either in other legislation, or the associated regulations.
- 2.3. It must be noted that any new legislation must also cover those airports that are not owned by local authorities.
- 2.4. NZALPA submits that to achieve the highest level of safety within the aviation environment it is critical there is an overarching application of the principles of a Just Culture throughout all aspects of the Bill.
- 2.5. NZALPA submits that all accident and incident investigation should be carried out by a totally independent investigative body in accordance with the internationally recognised 'Standards and Recommended Practices' of ICAO.
- 2.6. NZALPA submits that all safety related flight data and recordings must be protected in law, not used punitively against an individual or organisation and that this information should be fully protected against inappropriate use or release.
- 2.7. NZALPA supports the principle of the 'Clear Heads' scheme in relation to a Drug and Alcohol-free aviation system, however the legislation must also address the effect of fatigue on the performance of participants in a similar way to drugs or alcohol.
- 2.8. NZALPA does not agree that the medical certificate regime is undermined by a requirement to prove intention in any falseness, and that the existing requirement of proof of intention to falsify is an appropriately high standard of proof. NZALPA submits that a Just Culture approach must be applied when considering any misleading or false statements when applying for a medical certificate.
- 2.9. NZALPA notes that the aviation industry is rapidly changing and the advent of Drones and

Remotely Piloted Aircraft Systems have significantly altered the aviation landscape. NZALPA submits that it is critical that any related legislation is therefore robust enough to allow for the safe integration of these aircraft into the aviation system.

- 2.10. NZALPA submits that ICAO currently provides a definition of a 'Remote Pilot-in-Command' (PIC) and this definition is the one that must be used in this regard. In the absence of a pilot being on board, the duties, powers and obligations of the PIC fall to the operator of the aircraft.
- 2.11. NZALPA has concerns that sub-contracting Aviation Security services and cost cutting may lead to an associated reduction in security service levels.
- 2.12. NZALPA believes that if the threat to a flight is such that armed In-Flight Security Officers or IFSO's/Skymarshals need to be deployed as a mitigation, then the level of risk associated with that flight would be contrary to its safe operation and therefore the flight should not be operated.

3. ABOUT NZALPA

- 3.1. Established in 1945, NZALPA is an independent member driven aviation professional association for New Zealand pilots and air traffic controllers. Our diverse membership includes general aviation and commercial pilots, flight instructors and air traffic controllers.
- 3.2. NZALPA represents in excess of 90% of unionised pilots in New Zealand. NZALPA monitors and influences a wide range of technical, safety, medical issues and industrial issues within the NZ aviation industry.
- 3.3. NZALPA is affiliated with the International Federation of Air Line Pilots' Associations, an organisation founded to represent the interests of over 100,000 pilots worldwide and the International Federation of Air Traffic Controllers' Associations (IFATCA), which represents 50,000 air traffic controllers worldwide.
- 3.4. Membership to NZALPA is on a voluntary basis.

4. AVIATION SAFETY – JUST CULTURE Protection of safety information (a 'Just Culture' approach)

Ministry Commentary:

The exposure draft provides that enforcement or administrative action should not be taken in respect of infringements of civil aviation law, which come to the CAA's attention through an incident report filed in accordance with the CA Act, and rules made under it.

This protection is not absolute, as the Director does have discretion to take action in certain circumstances. This discretion takes the form of a balancing test, where the Director must be satisfied that the public interest in taking enforcement action in the particular circumstance outweighs the benefit of receiving timely and accurate incident reports. A similar test applies for administrative action.

The exposure draft also contains protections which prevent accident and incident reports from being

used as evidence in criminal proceedings against the person who provided the report.

The confidentiality of information clause in 373 of the exposure draft also applies to safety information provided to the CAA.

MINISTRY QUESTIONS

- *Does the current drafting in the exposure draft achieve this policy decision?*

NZALPA do not believe that the draft wording would achieve a regulatory approach to Just Culture nor a “full suite of protections” for incident or accident related reports.

- *Should the full suite of protections apply to accident reports, or are the non- statutory Just Culture principles which the CAA currently practice sufficient?*

A ‘full suite of protections’ must apply to accident reporting and all aspects of its investigation. Likewise, the associated data must be equally protected. See comments below relating to Just Culture and Data Protection.

- *Are the protections adequate to incentivise safety reporting to the CAA?*

No not as currently proposed. An example of where the Draft is at odds is Sect 94. ‘Endangerment caused by holder of aviation document’ Quote ‘The holder of an aviation document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act or omission, if the act or omission causes unnecessary danger to any other person or to any property’. This is totally at odds with the application of a Just Culture.

- *Are there any unintended consequences as a result of the drafting?*

Yes. An opportunity to fully implement a Just Culture approach to accident and incident reporting and investigation will be missed. An opportunity to protect safety data will likewise be missed with its associated impact on any prospect of the implementation of a Just Culture approach.

NZALPA COMMENTS

NZALPA submits that there would need to be significantly greater transparency or certainty around a decision to prosecute or otherwise. NZALPA believe that if a decision to prosecute remains based on a question of ‘public interest’ – focussing only on accident/incident outcomes then there would appear to be no material change.

The purpose of such a provision within the act, must be to increase the accurate and timely reporting of incidents to the authority so as to ensure it is able in turn to target safety improvements within the aviation system.

In relation to the Protection of Safety Data

The protection of data is comprehensively covered by ICAO’s Annex’s 6, 13 and 19.

NZALPA submits that data and voice recordings should be protected in their entirety including any related transcripts. This protection must be extended to cover the transcripts of ATC units. Releases

of such transcripts to the media significantly undermine all of the principles surrounding the protection of accident data.

The current proposals do not offer the comprehensive protections needed, and as a result undermine the principles of both “Just Culture” and International standards for accident data protection.

The CASA Model

NZALPA notes that the CASA model encourages the development throughout the aviation community of a 'just culture' as an organisational culture in which people are not punished for actions, omissions or decisions taken by them that are commensurate with their experience, qualifications and training, but where gross negligence, recklessness, wilful violations and destructive acts are not tolerated.

Requiring a person to undertake further training and, where necessary in the interests of safety, to refrain from exercising the privileges of a relevant authorisation pending the successful demonstration of competence where deficiencies have been identified, shall not be regarded as discipline or punishment.

Appropriate policies will be developed and implemented to ensure the integrity of this approach, and to guard against any inappropriate punitive action by CASA, or disciplinary action by a service provider, in a manner inconsistent with this principle.

<https://www.casa.gov.au/about-us/standard-page/our-regulatory-philosophy>

EASA

NZALPA also notes: Just Culture is a culture in which front-line operators and others are not punished for actions, omissions or decisions taken by them which are commensurate with their experience and training, but where gross negligence, wilful violations and destructive acts are not tolerated.

Fundamentally then the key to the success of a Just Culture is as above. It is that of non-punishment as is again clearly stated in ICAO’S Doc 9859 Safety Management Manual, Pages 3-7 which states:

“Employee contribution to safety thrives in a reporting environment that fosters trust – trust that their actions or omissions, commensurate with their training and experience, will not be punished. A workable approach is to apply a reasonableness test – i.e. is it reasonable that a person with the same level of experience and training might do the same thing. Such an environment is fundamental to effective and efficient safety reporting.”

NZALPA submits that balancing the principles of a just culture with the Director’s discretion to initiate prosecutions, might be achieved through consideration of other professional models. The Medical profession, through the Health and Disability Commissioner and a raft of legislation (including the Health Practitioners Competency Assurance Act 2003) provides mechanisms to ensure that health practitioners are competent and fit to practise their profession. Hospitals and service providers are similarly overseen under the Health and Disability Services (Safety) Act 2001.

The Health and Disability Commissioner may initiate the investigation of an incident, complaint, or a practitioner self-reporting, to confidentially promote learning, education and/or make recommendations to improve medical and health safety. In this manner, self-reporting is supported. In the most serious or exceptional cases, the Commissioner may recommend that a practitioners

practicing certificate or performance be reviewed by the relevant Medical Council (made up of both practitioners and lay people), or in instances such as gross negligence, be escalated to the Director of Proceedings, who has various statutory powers to provide assistance and to take, or provide representation, in any medical and health proceedings, including prosecutions.

In this manner medical practitioners practice in an environment that fosters full, frank and early self-reporting, and education and safety, over prosecution.

Primacy of TAIC

NZALPA submits that TAIC should have primacy for the oversight of all NZ air accidents and incidents. The CAA Director as Regulator should not be involved in their investigation;

And further submits that

A TAIC, independent of other transport modes and focusing purely on aviation, would be best placed to assist in achieving this. New Zealand continues to be non-ICAO (Annex 13) compliant in terms of an independent air accident investigator for the vast majority of its accidents and incidents.

5. DRUG AND ALCOHOL REGULATION

Ministry Commentary

The exposure draft reflects the full suite of proposed Clear Heads statutory obligations on aviation operators, specifically:

- *a mandatory drug and alcohol testing regime by commercial operators (DAMPs)*
- *mandatory random testing by commercial operators*
- *system oversight by granting the Director of Civil Aviation the power to conduct non-notified testing of safety sensitive workers.*

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

NZALPA submits that the opportunity exists to address fatigue impairment in the new legislation consistently with the intent of the clear heads document (to address operator impairment) and consistently with the manner in which the Canadian legislation does (see below).

- *Transitional provisions relating to Clear Heads are included in Schedule 1 of the exposure draft. Do these provisions raise any practical issues in terms of implementation?*

Not answered – see commentary below

- *Do these provisions appropriately manage the risk of drug and alcohol impairment in aviation?*

Not answered– see commentary below

- *Are there any unintended consequences as a result of the drafting?*

Not answered– see commentary below

NZALPA SUBMITS

NZALPA supports an environment where the aviation industry is free from drugs and alcohol. NZALPA believes that there must be acceptable industry standards developed for DAMP that are available for consultation. It is essential that processes developed for DAMP provide appropriate safeguards and protections for industry participants subject to random testing.

It is noted that DAMP is to be developed and approved under s 107 of the draft CA Act. Section 107(d) says that *“The DAMP must be approved by the Director in accordance with any process specified in the Rules.”*

It is not clear whether a process would actually be required to be specified by amendment to CARs as the word “any” in s 107(d) does not mandate that a process is actually required to be specified in the Rules. ALPA’s primary concern is that specific standards are developed for random drug and alcohol procedures that afford appropriate protections and safeguards to individuals subject to random testing. The development of appropriate standards for random drug and alcohol testing must occur prior to operator implementation of DAMP. NZALPA Medical and Welfare personnel would welcome consultation and involvement in the development of standards and processes associated with random drug and alcohol testing processes. NZALPA feels that the development of standards and processes must precede the implementation of DAMP.

The scope of Director testing seems to be unlimited and is additional to the operator required DAMP. As operators are required to have DAMP / random testing, then it would be appropriate that additional testing by the Director should require “just cause”, for testing.

It is universally accepted that the cumulative effects of fatigue have similar detrimental effect on human performance as impairment due to the consumption of alcohol [Lamond and Dawson – Quantifying the performance impairment associated with fatigue, Centre for Sleep Research, The Queen Elizabeth Hospital, South Australia]

Fatigue as a result requires the same level of consideration as the consumption of drugs and alcohol in this regard. However, unlike drugs and alcohol there is no known universal testing regime to assess levels of fatigue.

Therefore, it seems appropriate that the CA Act also include a provision that would require operators to have an approved fatigue management plan that include provisions for the reporting of impaired performance due to fatigue. Any form of performance impairment due to the effects of fatigue, the consumption of alcohol or drugs or any mental or physical condition should render a flight crew member unfit for duty.

The Canadian Model

A good example which reflects the above are Canada’s recent regulatory changes:

Regulations Amending the Canadian Aviation Regulations (Part I, VI and VII – Flight Crew Member Hours of Work and Rest Periods) as published in Canada Gazette Part II 12 December 2018

Amendments

- 1(4) *Subsection 101.01(1) of the Regulations is amended by adding the following in alphabetical order:...*

fit for duty, in respect of a person, means that their ability to act as a flight crew member of an aircraft is not impaired by fatigue, the consumption of alcohol or drugs or any mental or physical condition; (apte au travail).

NZALPA would also draw attention to the intent of the original 2015 “Clear Heads” consultation paper, and submission process in 2015 which was to address operator ‘impairment’. While drugs and alcohol are two such causes, fatigue impairment has not been addressed but remains a significant risk to operator impairment. NZALPA submits that the opportunity to address fatigue impairment (noting that the Canadian model specifically highlights fatigue impairment) in the new draft legislation should be taken.

6. OFFENCES AND PENALTIES

7. PROVIDING FALSE INFORMATION IN OBTAINING A MEDICAL CERTIFICATE

Ministry Commentary

The exposure draft includes recklessness as an element of the offence.

NZALPA COMMENTS

The Exposure Draft provides that at s 102(1) *a person commits an offence who— (a) makes or causes to be made any fraudulent statement, or knowingly or recklessly makes or causes to be made a false or misleading statement,— (i) for the purpose of obtaining a medical certificate under schedule 2.* (the existing offence provision contains a requirement of proof of ‘intention’ to make out the elements required for culpability, and liability for fines of up to \$10,000 and 12 months imprisonment, or both).

This contrasts with the existing provision which states (at s 46(1): *Every person commits an offence who makes or causes to be made— (a) any fraudulent, misleading, or intentionally false statement for the purpose of obtaining a medical certificate under Part 2A...*

NZALPA accept that the medical certification process is critical to ensuring the safety of the civil aviation system but note that recklessness is a much lower standard of *mens rea* than “intention” of falseness, and a much lower legal threshold of proof is required. If used, the threshold of “recklessness” will not require proof that a person submitting documents, or intended to provide false or fraudulent documents (the harm), only that they failed to appropriately consider circumstances that would have drawn the attention of an ordinary prudent individual.

The standards required in the aviation industry demand very high levels of trust and integrity, and proof of good character, reflecting the industry’s highly technical nature.

The documents covered by the draft provision, are likely to be medical and/or technical in nature, and NZALPA notes that an unintended consequence of the significantly lower level of proof, includes the possibility that a person is found guilty of recklessness based upon the subjective test rule, where

the accused must have had the same reasonable knowledge or ability to know the circumstances surrounding the incident in order to be found guilty of recklessness. Potentially those who simply fail to make what the Court views as 'adequate enquiry' into the veracity of submitted documents will be caught by the law resulting in the highly punitive convictions laid out in the draft provision.

The judiciary have recognised that while recklessness may have severe consequences, the lack of intent attributes an equally lower level of legal culpability in findings of guilt.

NZALPA does not agree that medical certificate regime is undermined by a requirement to prove intention in any falseness, and that the existing requirement of proof of intention to falsify, is an appropriately high standard of proof.

NZALPA therefore submit that if "recklessness" is applied as the standard of proof required, the provision should also reflect the correspondingly lower level of culpability for findings of guilt, by providing for alternative outcomes that better meet the intention of the legislation, and for less punitive outcomes.

8. LIMITATION PERIOD TO APPLY FROM TIME OFFENCE DETECTED

Ministry Commentary

The exposure draft states that the limitation period for the following offences (relating to disclosure of information) will begin 12 months from when the offence was detected:

- *acting without necessary aviation document*
- *acting without required medical certificate*
- *fraudulent, misleading or intentionally false statements to obtain a medical certificate*
- *failure to disclose information required by Director*
- *carrying on scheduled international air service without licence or contrary to licence*
- *failure to notify accident or incident.*

Ministry Questions

The policy regarding limitation period was first developed in 2015. More recently, the Ministry has considered whether it would be useful for the Bill to reflect the approach taken to this subject in similar recent legislation. For example, ss 146 and 147 of the Health and Safety at Work Act 2015 provide more flexibility to reflect different situations from which a prosecution may arise and provides for the District Court to extend the period for filing a charging document in certain circumstances. We are seeking feedback on whether similar provisions should be incorporated in the Bill.

- *Does the current drafting in the exposure draft achieve this policy decision?*

Not answered

- *Are there any unintended consequences as a result of the drafting?*

Not answered

NZALPA COMMENTS

Under the existing CA Act, a charging document must be filed no later than 12 months after the date on which the offence was committed. This proposal makes changes requiring filing of the charging document within 12 months of detection for certain offences under the CA Act.

S65 of the existing CA Act states: *Despite anything to the contrary in s 25 of the Criminal Procedure Act 2011 the limitation period in respect of an offence against this Act ends on the date that is 12 months after the date on which the offence was committed.*

The Exposure Draft at s 300 states:

(1) *Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011—*

- a) *the limitation period in respect of an offence against any of the following sections ends on the date that is 12 months after the date on which the matter giving rise to the charge first became known to the CAA:*
 - i. *acting without necessary aviation documents;*
 - ii. *failing to disclose information relevant to granting or holding of aviation document);*
 - iii. *acting without required medical certificate:*
 - iv. *fraudulent, misleading, or false statements to obtain medical certificate:*
 - v. *failure to notify accident or incident;*
 - vi. *communicating false information; and*
- b) *the limitation period in respect of any other offence against this Act ends on the date that is 12 months after the date on which the offence was committed*

Section 25 of the Criminal Procedure Act 2011 allows up to five years from the date an offence has been committed for all but the most serious (category 4) crimes.

The exposure draft through retaining the words “*Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011*” has reversed the original intent of the existing provision: to limit the extent of the reach of a potential charge to 12 months from commission, and will allow much greater reach, with no limit on the date of the potential date of filing a charge (other than being 12 months from the date of discovery).

NZALPA suggests that this would be a significant and undue over-reach.

It is also worth noting that the section also adds a sub-section that states (at s 300 (2)): Nothing in this section affects the limitation period that applies under s 25 of the Criminal Procedure Act 2011 in respect of the offences in strict liability for acts endangering safety; and intentional interference with crew member’s performance of crew member’s duties.

NZALPA strongly feels that a limitation on potential charge dates is essential in just, fair and reasonable legislation. Unlimited exposure to potential charges, as will be the effect of the current draft, is rarely contemplated in legislation (outside of the most serious category 4 criminal acts).

The Limitation Act 2010 states at s 3 that its purpose is to encourage claimants to make claims for relief without undue delay by providing defendants with defences to stale civil claims. Similarly, outside of fraud, Parliament has always considered that persons should be able to proceed with their lives, without concern of censure for historic liabilities.

NZALPA feel that if the limitation period for filing charges is going to be extended, such a limit should remain tied to a period from the commission of an offence, extendable to five years in the case of fraud and/or concealment.

9. FIT AND PROPER PERSON

10. DIRECTORS CONSIDERATIONS – CLARIFICATION

Ministry Commentary

The exposure draft is more explicit about matters that the Director routinely considers or takes into account as part of a fit and proper person assessment. In particular:

- *the person's use of alcohol and drugs*
- *the person's compliance history with transport security regulatory requirements in New Zealand or in another country*

Ministry Questions

None

NZALPA COMMENTS

The current legislation is wide enough to assess fit and proper status and has successfully achieved its goal. Further, incorporating consideration of a person being charged with an offence but not convicted is a step too far.

Beginning to apply specificities to types of convictions and countries etc, begins to narrow the permit. Anytime when the term "must" is used it erodes the ability for exactly the level of discretion, often required when making these complex decisions, to be applied.

The proposed Act wording removes the "*reasonable grounds*" threshold for the Director to investigate a document holder. Under the current Act if the Director has reasonable grounds to believe the holder has failed to comply with conditions of the document then the Director can investigate. The proposed wording only requires that the "*Director believes*" the holder has failed to comply with conditions of the document before investigating. NZALPA doesn't believe that removing the reasonable grounds threshold will enhance aviation safety.

11. OBTAINING 3RD PARTY INFORMATION – ALIGNMENT WITH PRIVACY ACT

Ministry Commentary

The exposure draft provides certainty that providing the CAA with information in response to a 'seek and receive' request does not breach the Privacy Act 1993.

Ministry Questions

We are seeking feedback on the following questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Not answered

- *Are there any unintended consequences as a result of the drafting?*

Not answered

NZALPA Commentary

S 10 of the existing Act states at s 10(3) that: *The Director may, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act (a) seek and receive such information (including medical reports) as the Director thinks fit; and (b) consider information obtained from any source.*

The equivalent new provision (at s 73) adds a new sub-section (4), which states that: *Nothing in the Privacy Act 1993 prevents a person or agency from disclosing personal information to the Director pursuant to a request made by the Director under subsection (3).*

NZALPA suggests that the Privacy Act 1993 is currently achieving its purpose, and while NZALPA understands that where responding agencies may take some time to respond to information requests, this time reflects appropriate and required due diligence, and consideration of the principles of the Privacy Act.

NZALPA also note that the commentary document acknowledges that in the past, not all requests made by the Director were met, indicating that some requests were found to be inconsistent with the provisions of the Privacy Act requirements at Part 4, and is therefore potentially in conflict with the words of the draft new sub-section 70 (4).

NZALPA notes that although the draft wording declares that there is nothing in the Privacy Act that would prevent disclosure, the Director reserves this right to himself, in the following section of the Exposure Bill (s 74), which provides that the Director may withhold the disclosure of information in his possession, for reasons provided for under Part 4 of the Privacy Act 1993.

12. UNMANNED AIRCRAFT (DRONES)

13. DEFINITION OF ACCIDENT TO INCLUDE UNMANNED AIRCRAFT (DRONES)

Ministry Commentary

The definition of “accident” in the exposure draft is consistent with the definition under Annex 13 to the Convention on International Civil Aviation, which includes drones.

The exposure draft also requires notification of an accident involving drones, where required to do so by rules made under the CA Act.

Rules that identify which drone accidents must be reported can be nuanced to exclude accidents where notification to the CAA would be impractical and unnecessary.

Ministry Questions

None provided

NZALPA COMMENTARY

NZALPA would welcome the addition, not only of Drones or small Unmanned Aircraft (**UA's**), but all of those types which form a sub-set of Unmanned Aircraft Systems (**UAS**) such as Remotely Piloted Aircraft (**RPA's**). This to include incidents relating to their control stations, management and related control links where applicable, into scope in terms of accident reporting and their related investigation.

In terms of the “nuancing” to exclude reports as part of any related regulation or rule making ICAO’s Annex 13, 5.1.2 Note 3 states that “*In the case of [the] investigation of an unmanned aircraft system, only aircraft with a design and/or operational approval are to be considered*”.

We must consider that ‘New Zealand Inc’ is actively marketing itself as a State which wishes to embrace drone development and usage. A significant number of these drones will not have design and/or operational approval. These devices will however, for the foreseeable future, pose a significant threat to not only aviation, but the public at large, in an increasing number.

Considerable thought must therefore be given to encompassing incidents and accidents where the device was not required to have either a design and/or operational approval.

NZALPA would welcome involvement in any related discussions and rule development in terms of accident and incident reporting related to this category

14. AMENDMENTS TO PILOT IN COMMAND PROVISIONS TO ALLOW FOR DRONES

Ministry Commentary

The exposure draft states that in the absence of a pilot, the duties, powers and obligations of the PIC fall to the operator of the aircraft.

NZALPA COMMENTARY

ICAO currently provides a definition of a ‘Remote pilot-in-command’. This can be found within Annex 1 ‘Personnel Licencing’, Edition 12 of July 2018, Chapter 1 ‘Definitions and General Rules Concerning

Licences', page 1-7. This is defined as follows;

Remote pilot-in-command. *The remote pilot designated by the operator as being in command and charged with the safe conduct of a flight.*

As a 'Contracting State' it should be this term used to define a pilot-in-command not onboard the aircraft. In terms of the Exposure Draft this term should be utilised, linking this to the powers, duties and obligations of a 'conventional' pilot-in-command. In the absence of a Remote pilot-in-command operating the device from a control station and via a control/data link, the operator would once again pick-up responsibility – their being the person or persons responsible for the devices operation.

This is also an opportunity to align the current legislation with ICAO's in terms of the Duties of the pilot-in-command.

ICAO Annex 6, Part 1, 4.5 Duties of Pilot in Command.

4.5.1 *The pilot-in-command shall be responsible for the safety of all crew members, passengers and cargo on board when the doors are closed. The pilot-in-command shall also be responsible for the operation and safety of the aeroplane from the moment the aeroplane is ready to move for the purpose of taking off until the moment it finally comes to rest at the end of the flight and the engine(s) used as primary propulsion units are shut down.*

4.5.2 *The pilot-in-command shall ensure that the checklists specified in 4.2.6 are complied with in detail.*

4.5.3 *The pilot-in-command shall be responsible for notifying the nearest appropriate authority by the quickest available means of any accident involving the aeroplane, resulting in serious injury or death of any person or substantial damage to the aeroplane or property.*

Note. A definition of the term "serious injury" is contained in Annex 13.

4.5.4 *The pilot-in-command shall be responsible for reporting all known or suspected defects in the aeroplane, to the operator, at the termination of the flight.*

4.5.5 *The pilot-in-command shall be responsible for the journey log book or the general declaration containing the information listed in 11.4.1.*

NZALPA submits that in addition to 4.5.1 the pilot-in-command shall retain the right to fly the aircraft in accordance with the procedures given in the Flight Manual and shall retain full authority for the application of allowances to take into account operational variables such as turbulence and condition of runway etc.

15. DETENTION, SEIZURE AND DESTRUCTION OF DRONES

Ministry Commentary

Not included in draft but see clause 255 regarding the Director's power to detain and seize aircraft.

Ministry Questions

- *What are the potential costs and benefits of the proposed options for the detention, seizure*

and destruction of drones? Are there other, better, options?

The Director currently possesses significant powers in terms of the seizure and retention of aviation related products, including aircraft. The extension of these powers to UA/Drones would seem a logical step for the reasons already established and applying to conventional aircraft, products and services.

UA/Drones are increasingly being linked to both the threat they pose to manned aircraft and a denial/disruption in the availability of airspace in the vicinity of airfields in particular. The departure and arrival phases of flight are widely accepted as being those where the likelihood of an accident or incident are greatest. As a result of this very real threat powers should justifiably extend to taking control of and/or destroying the device where its presence would pose such a threat.

- *Are any other changes required to primary legislation to take account of unmanned aircraft technology? If so, what?*

In relation to the Safe Transport of Goods by Air: legislation regarding the carriage of Dangerous Goods by UA/Drones also needs to be encompassed so as to provide those protections as applied to conventionally manned aircraft in accordance with *ICAO Annex 18 Dangerous Goods Edition 7, June 2011 as amended* and *ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air*.

- *Does the proposal relating to PIC present any significant issues to aviation operations now and those expected in future?*

See above comments regarding the determination and duties of the PIC.

- *Does the current drafting in the exposure draft achieve the policy objectives?*

Policy Option 2 as outlined could potentially achieve these, in addition to the comments made

- *Are there any unintended consequences as a result of the drafting?*

See above comments.

16. ECONOMIC REGULATION

17. AIRLINE ALLIANCES

Ministry Commentary

The exposure draft updates the regime for considering airline cooperative arrangements to put in place a more transparent process and specify the matters the Minister must take into account in determining whether the arrangement is in the public interest.

Provisions for Commission Regimes have been deleted.

Provision has been retained for authorisation of single airline tariffs where this is required by the

relevant air services arrangement.

Ministry Questions

- *Does the proposal in the Bill rectify the process issues that had been identified with the existing regime?*

Not answered
- *Do the main and additional purposes of the Act sufficiently cover the matters that the Minister should take into account when considering whether to authorise airline cooperative arrangements?*

Not answered
- *Are there any unintended consequences as a result of the drafting?*

Not answered

NZALPA COMMENTS

This is consistent with the global trend of an overall reduction in regulatory oversight of the aviation industry across the spectrum. Unfortunately, experience has shown us that the reduction of independent oversight leads to reckless behaviours resulting in outcomes detrimental to the safety of the industry as a whole. Recent examples such as Boeing's introduction of the 737 MAX series paints a compelling picture as to industry's behaviours when robust oversight is devolved from independent, non-commercial regulators previously charged with this duty.

NZALPA submits this is not the time to be reducing oversight of the aviation industry at any level. New Zealand aviation has a solid reputation for safety. Delegation, or 'off-shoring' of regulatory responsibilities ultimately leads to a 'fox guarding the hen house' environment where financial and competitive pressures take precedence over safety.

"Non-scheduled commercial flights", defined variously in the documentation provided as 'one-off', 'ad-hoc', or 'non-systematic' charter services, are proposed to be removed from any Ministry authorisation to remove "administrative burden". NZALPA opposes this move as these flights, while not party to bilateral air services agreements, still provide a portal for foreign air transport operators to circumvent New Zealand labour and regulatory safety standards.

NZALPA supports free, fair and rational competition for air transport services. Unregulated entry of foreign air transport operators outside the bounds of established air services agreements compromises the ability of New Zealand operators to compete on a level playing field. Importation of foreign air safety and labour standards compromises the ability of New Zealand air transport operators to maintain New Zealand social and economic standards which encourages lowering of such standards in the name of 'competition'.

At Part 7, cl 185, the proposed removal of the applicability of ss 27-30 of the Commerce Act 1986, which prohibits contractual arrangements which substantially lessen competition and prohibits formation on cartels (or cartel-like arrangements) is counterintuitive to the protection of a free and fair competitive environment. NZALPA submits that the Minister, in providing any authority under this Part, must consider the intent of these sections of the Commerce Act in protecting New Zealand's aviation marketplace from anti-competitive behaviours.

NZALPA further submits that any air services agreements must contain robust protections for New Zealand's socio-economic and labour standards by way of stand-alone labour/socio-economic clauses, as well as strong language to ensure safety standards are maintained at the highest level. This should include an authorisation process for proposed "non-scheduled commercial flights" into New Zealand.

Part 7, cl 186 requires the Minister to specify a "period of time" for written representations from any person regarding an application for an aviation license. NZALPA submits the time frame must be sufficient to permit research and preparation of meaningful submissions to the Minister on any application.

Part 7, cl 187(2) requires the Minister to notify an applicant if an application is declined. It is not specified as to whether the Minister must provide an explanation for the denial. NZALPA submits the Minister should be required to provide such an explanation to the applicant.

Part 7, cl 189(2) stipulates any authorisation under this Part must be "in the public interest". NZALPA submits that any authorisation of an air transportation licence under cl 189 must fully consider social and employment standards which meet New Zealand Human Rights and Employment Relations legislation. Additionally, robust language must be included to clearly define ownership and control requirements for foreign registered operators to maintain a free and fair competitive environment and protect flight safety and operational standards.

18. AIRPORT PRICE SETTING

Ministry Commentary

Section 4A of the AA Act, which allows airport companies to set charges as they see fit, is proposed to be repealed.

Ministry Questions

- *Does the proposed policy change, along with recent changes to the Commerce Act 1986, support a robust regulatory regime for major international airports?*

Not answered

- *It is proposed that provisions in the AA Act requiring airport companies to consult regarding charges and certain capital expenditure be retained. Would these provisions still be appropriate if, in future, major airports were subject to a different regulatory regime under the Commerce Act?*

Not answered

- *Are there any unintended consequences as a result of the drafting?*

Not answered

19. INTERNATIONAL AIRLINE LICENSING REGIME

Ministry Commentary

The exposure draft includes two categories of commercial non-scheduled flights. This removes the need for the Secretary for Transport to authorise non-systematic charter flights.

In that circumstance, operators would only need to notify the Ministry of Transport when they intend to operate flights and confirm that they have met safety and security requirements.

This will make it easier for charter service operators to meet ad-hoc demand, without the added burden of seeking authorisation for their services.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Not answered

- *Are there any unintended consequences as a result of the drafting?*

Not answered

NZALPA Comment

See comments in s 17 Airline Alliances

20. AIRPORT AUTHORITY PROVISIONS

Ministry Commentary

The MOT describes the current Airport Authorities Act 1966 as providing the authorisation of a local authority or any other person/association to exercise the powers of an airport authority to establish and operate airport. It also provides airport authorities with a range of functions, powers and responsibilities to establish and operate airports.

In the course of the drafting process the MOT identified that many of the provisions in the Airport Authorities Act 1966 are obsolete. They propose modernising the airport authority regime by omitting these provisions.

In particular, local authorities which own a majority of airports in New Zealand, have significantly enhanced powers pursuant to the Local Government Act 2002 than they had in 1966 when the Airport Authorities Act was first passed (indeed some provisions in that Act date back to the 1920s).

As a consequence, many of the provisions of the Airport Authorities Act specifically empower local authorities to do things that they are now enabled to do in any case.

The exposure draft deletes obsolete provisions.

The provisions we propose deleting are included in schedule 8 of the exposure draft.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes, except for what is described in the answer to Question 2 below.

- *Do you agree that the provisions in schedule 8 of the exposure draft are out of date?*

They are not necessarily all out of date. Under 1, Additional powers of airport authorities, it lists under (a) to (f) a list of objectives. These appear to have operational value to what is required to operate an aerodrome. If these are not included in the civil aviation bill, then consideration should be made to incorporate them in other legislation.

- *Are there any unintended consequences as a result of the drafting/deletions?*

MOT state that local authorities which own a majority of airports in New Zealand and have significantly enhanced powers pursuant to the Local Government Act 2002. NZALPA submits that the legislation must also cover those airports that are not owned by local authorities.

21. AIRLINE LIABILITY – BAGGAGE

Ministry Commentary

Disputes Tribunal jurisdiction to hear claims regarding airline liability

We propose that the Bill make it clear that the Disputes Tribunal has jurisdiction over claims made under civil aviation legislation, for lost, delayed and damaged baggage; and delayed flights.

Clarify the right to bring proceedings under these provisions

The CA Act is currently opaque as to how proceedings are able to be commenced in relation to the airline liability provisions. We propose to clarify this by using provisions similar to those in the Fair Trading Act 1986, which provide very similar rights of action in a court or the Disputes Tribunal.

Disclosure of information regarding passenger rights

The regulation making powers under the CA Act do not currently allow for similar regulations to be made in New Zealand. This may be an issue, should further policy investigation uncover a need for airlines to take a more active role in disclosing this type of information to passengers. We propose that the Bill contain new regulation making powers to require information to be disclosed.

Ministry Questions

- *Do the provisions as drafted adequately address issues relating to the ability of passengers to exercise their rights?*

In principal yes, but there needs to be clear defining on what is goods and what is baggage or are they the same thing. Additionally, the terms “passengers and others” needs a clear definition? Will this include airline employees who are being positioned for work requirements?

- *Are there any other options for ensuring passengers are well informed of their rights. If so, what?*

Airlines should publish the rights of passengers and make this available at the time of booking flights, e.g. their website.

- *Are there any unintended consequences as a result of the drafting?*

Clarity is compromised by not having consistent definitions with all the terms described in the answer to question 1.

NZALPA COMMENTARY

The MOT describes the CA Act as currently opaque as to how proceedings are able to be commenced in relation to the airline liability provisions. They propose to clarify this by using provisions similar to those in the Fair Trading Act 1986, which provide very similar rights of action in a court or the Disputes Tribunal. They also propose new regulation making powers to prescribe requirements for the disclosure of information about passenger rights regarding delay, and lost, damaged and delayed baggage.

From the point of view of NZALPA Flight Crew, the applicability of the CA Bill has some doubt, it does not specifically mention flight crew, it refers to “passengers and others”. The CA Bill does not mention the word “baggage”, it refers to goods. (other than when it refers to the military when it states “persons, cargo and baggage”)

Flight crew baggage may well come under other legislation and/or insurance, being employees of an airline. It would also appear that when they are on positioning flights they are passengers.

NZALPA agrees that the Tribunal is an appropriate forum, if jurisdiction is conferred over claims made under civil aviation legislation, for lost, delayed and damaged baggage; and delayed flights.

NZALPA notes however, that while the Tribunal may speed up the processes involved in reaching a finding, the enforcement of a tribunal finding may still require that a party seek an enforcement order for that finding through the New Zealand District Courts.

22. AVIATION SECURITY

23. LANDSIDE POWERS CLARIFICATIONS

Ministry Commentary

The exposure draft clarifies any potential uncertainty relating to Avsec’s landside search and seizure powers.

Ministry Questions

- *Does the current drafting of the Bill achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

In terms of the application of these extended powers it is essential that these are matched with the additional resources to achieve this.

NZALPA COMMENTARY

The proposals relating to the extension of Avsec Officers landside seem appropriate given the vulnerabilities of airports to landside attacks as we saw so graphically at Brussels and Ataturk (Istanbul) airports.

24. SEARCH POWERS

Ministry Commentary

The exposure draft is explicit that Avsec can conduct hold baggage searches without the consent of the passenger for both domestic and international travel, where there is a risk to aviation safety or security.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

See comment below.

NZALPA COMMENTARY

The introduction of the power to search hold baggage that poses a safety or security risk without the consent of the passenger seem well reasoned.

NZALPA submits that should this be required onboard the aircraft, then the PIC must be informed immediately.

25. AVSEC AND DANGEROUS GOODS

Ministry Commentary

The exposure draft:

- *enables Avsec to take possession of the dangerous goods for prosecutorial purposes*
- *makes it explicit this mandate exists regardless of whether an item(s) is found prior to, or after, the flight occurred.*

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

No

NZALPA COMMENTARY

The introduction of the power to enable Avsec to retain dangerous goods for prosecutorial purposes seems a logical one.

26. AVSEC INSTITUTIONAL ARRANGEMENTS

Ministry Commentary

- *The exposure draft removes the requirement for Avsec to hold an aviation document.*
- *In the absence of an aviation document, Avsec will be required to meet the requirements and standards commensurate with those provided in Civil Aviation Rules.*
- *Consequential changes required as a result of this decision will be made, e.g. removal of legislative requirements to appoint a General Manager of Avsec.*

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

No

27. ALTERNATIVE TERMINAL CONFIGURATIONS

Ministry Commentary

To future-proof legislation for the possibility of alternative terminal configurations, the exposure draft gives the Director, on application by an aerodrome operator for any proposed aerodrome layout within a security designated aerodrome, the power to allow any specified group of persons or member of the public to enter or remain in any security area.

The Director would still need to be assured that an alternative design meets all the security outcomes as required under the legislation and Civil Aviation Rules.

In addition, Cabinet approval would be required for the amendment of the passenger security

charges regulations to support an alternative design, to accommodate an increased number of persons through a security screening point.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

See commentary below.

NZALPA COMMENTARY

NZALPA submits that it should be essential that, should this flexibility of configuration be exercised, the levels of security and integrity currently enjoyed by ‘conventionally segregated’ terminal security regulations are assured, and this appears to be reflected in the Draft.

28. SECURITY DESIGNATIONS FRAMEWORK FOR AERODROMES

Ministry Commentary

The exposure draft includes an amended definition of security designated aerodrome to incorporate the tiered model.

The exposure draft also clarifies that the Minister is required to provide aviation security services Tier 1 security designated aerodromes.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

See commentary below.

NZALPA COMMENTARY

The tiering of Designated aerodromes would seem to be a logical step in terms of a threat-based approach to mitigation of threats at aerodromes. NZALPA very much welcomes the increased focus on airport security, not only at designated airfields – but at all New Zealand aerodromes as a key part of the state’s critical infrastructure.

29. DEFENCE FORCE PERSONNEL AS ASOS

Ministry Commentary

The exposure draft enables defence force personnel to act as ASOs.

This is subject to s 9 of the Defence Act 1990, which places limitations on when and how armed forces may be used to provide public services.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

See commentary below.

- *Are there any unintended consequences as a result of the drafting?*

See commentary below.

NZALPA COMMENTARY

NZALPA recognises that, in times of a national emergency/increased threat, the government would require additional ASO resources in the form of the NZDF. Notwithstanding this, their stand-down should be accomplished, and a return to civilian operations be re-instated, as soon as practicable.

30. POWERS OF MINISTER UNDER s 77A

Ministry Commentary

The exposure draft enables the Minister to delegate to the Director the power to excuse any flight from any screening requirements.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

See commentary below.

- *Are there any unintended consequences as a result of the drafting?*

See commentary below.

NZALPA COMMENTARY

The proposal would seem to be a more practical means of dealing with the specific issue of operational impacting search requirements without incurring a protracted delay.

How many times has the Minister been required to make this decision and what delays have been incurred as a result? Is it anticipated that a significant increase in the requirement is foreseen?

In any case, NZALPA submits that any switch from Minister to Director in terms of such powers

should require the Director to consider the matters currently considered by the Minister in terms of threat when making such judgements.

31. ADDITION OF AIRLINES TO LIST OF GAZETTED ORGANISATIONS ABLE TO PROVIDE AVIATION SECURITY SERVICES

Ministry Commentary

The exposure draft includes ‘airlines’ as an authorised provider of regulated aviation security services.

Ministry Questions

- *Under clause 130, an authorised aviation security service provider, which would include airlines in the exposure draft, must designate aviation security officers. Those designated aviation security officers have all the powers of an Avsec Officer, except the power to arrest and detain. We are interested in stakeholder feedback on whether this is a reasonable limitation or whether it is likely to result in undesired outcomes?*

See commentary below

- *Does the current drafting in the exposure draft achieve this policy decision?*

See commentary below

- *Are there any unintended consequences as a result of the drafting?*

See commentary below

NZALPA COMMENTARY

Aviation Security is a key state responsibility. Avsec has served the industry well. Anything that would or could diminish this level of service would be detrimental to national security.

NZALPA has concerns that sub-contracting and cost cutting may lead to an associated reduction in security service levels. To this end further resources should be put into Avsec rather than to devolve these powers to third parties such as airlines, airports and potentially contractors – working for these organisations.

32. REPLACEMENT OF CONSENT WITH CONSULTATION AT s 79A

Ministry Commentary

The exposure draft replaces the requirement for “consent” with a requirement to “consult”. The Minister of Transport must consult with both the relevant provider and the Director.

This will mean the Minister must consider both the interests of the provider, and through the Director, any interests of civil aviation safety and security.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

No

33. PENALTIES FOR ASSAULTING AN AVIATION SECURITY OFFICER (ASO)

Ministry Commentary

The exposure draft establishes specific offences, consistent with similar offences found in the Summary Offences Act 1981, the Corrections Act 2004 and the Customs and Excise Act 2018, of:

- *harming an ASO*
- *harming or obstructing an Avsec dog.*

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*
- *Are there any unintended consequences as a result of the drafting?*

NZALPA Comments

NZALPA endorses these proposals.

34. AIRPORT IDENTITY CARDS (AICS)

Ministry Commentary

Inconsistency relating to the production of AIC

Section 84(3) of the CA Act requires a person to produce for an “aviation security officer” their authority to be in a security or security enhanced area. Civil Aviation Rule 19.357(e) requires a person to produce for an “authorised person” their AIC or other identity document. There is no definition of authorised person.

Seizure of AIC

The proposal is to clarify that an “authorised person” may seize any AIC or other identity document approved by the Director (but doesn’t include any identity document that is the property of another agency) to determine whether the person is authorised to be present in any security or security enhanced area.

The exposure draft addresses these issues by:

- *requiring people in security and security enhanced areas to produce, on request by authorised employees of the CAA (including Avsec), AIC or other identity documents*
- *giving Avsec the authority to seize an AIC or other identity documents when they are being used in breach of the CA Act or Civil Aviation Rules, or, are being used in circumstances where authorisation has been withdrawn, or where the AIC has expired*
- *addressing minor inconsistencies in terminology between the CA Act and Civil Aviation Rules.*

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

See comments below.

NZALPA Comments

NZALPA would generally endorse these proposals.

35. IN FLIGHT SECURITY OFFICERS

Ministry Commentary

The exposure draft reflects provisions from the Civil Aviation Amendment Act 2007 relating to IFSOs. At this time, the commencement clause of the Bill will provide for these provisions to only come into force by a subsequent Order in Council, as is currently the case.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

See comments below.

- *Are there any unintended consequences as a result of the drafting?*

See comments below.

NZALPA Comments

NZALPA believes that if the threat to a flight is such that armed IFSO's need to be deployed as a mitigation, then the level of risk associated with that flight would preclude its safe operation. We do not therefore endorse the deployment of IFSO's on civil aircraft.

Appropriate security measures should be in place pre-flight so as to ensure that items and persons

onboard all commercial passenger and cargo operations do not pose a security threat to an aircraft.

36. OFFENCES FOR BEING FOUND IN SECURITY AREAS WITHOUT SCREENING OR AUTHORITY

Ministry Commentary

The exposure draft includes an infringement offence for being found in a security area without having been screened, or without authorisation under the Act or Civil Aviation Rules.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

See comment below

- *Are there any unintended consequences as a result of the drafting?*

No

NZALPA Comments

NZALPA agrees that the addition of the offence would seem logical.

37. NATIONAL SECURITY CONSIDERATIONS WITHIN CIVIL AVIATION

Ministry Commentary

The exposure draft incorporates national security considerations through the purpose statement, and by providing the Minister with the ability to direct the Director of Civil Aviation, on the basis of national security concerns, to take a particular action in regard to a specific operator, including:

- *preventing entry of an operator or operation into the civil aviation system*
- *imposing conditions on any operator or operation*
- *removing any operator or operation from the civil aviation system.*

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

See comment below

- *Are there any unintended consequences as a result of the drafting?*

Not answered

NZALPA Comments

NZALPA agrees that this is a logical step given the propensity for terrorists to use aircraft and aviation as a means of undermining national security.

38. LEGISLATIVE FRAMEWORKS

39. TRANSPORT INSTRUMENTS – POWERS OF MINISTER AND DIRECTOR

Ministry Commentary

The exposure draft creates an additional power for the Director to make “transport instruments” pursuant to Rules.

Ministry Questions

- Does the current drafting in the exposure draft achieve this policy decision?
See comments below
- Are there any unintended consequences as a result of the drafting?
See comments below

NZALPA Comments

NZALPA is not in favour of this proposal. The Director already has some powers to vary some CAR's where this is specified in the Rule by means of a CAA Notice. NZALPA submits the current Rule Making system works well incorporating as it does, associated checks and balances as well the ability to comment on any proposed Rule during its development process.

40. AMALGAMATION OF CA AND AA ACTS

Ministry Commentary

The exposure draft incorporates both the CA Act and the AA Act.

Ministry Questions

Are there any unintended consequences as a result of the drafting?

NZALPA Comments:

NZALPA submits there are benefits in locating related legislation in one consolidated Act. Consolidation would facilitate aviation participants' better access to and understanding of their rights and obligations and how the different sectors of the industry relate to each other.

The Purpose of the Civil Aviation Act

This is in our view the primary purpose of the Act. In addition, NZALPA submits, the Act should reflect the State's intention to be ICAO compliant in terms of safety and security.

The "Commentary" should go further than simply referencing ICAO however as ICAO does not provide standards and recommendations on all aspects relating to aviation safety and so it should include reference to "civil aviation industry best practice" where ICAO does not provide this. Otherwise the concept of a "purpose statement" will assist industry participants and the Courts in better understanding of the purpose of the legislation.

41. STRUCTURE OF PART 8 (AVSEC PROVISIONS)

Ministry Commentary

Part 8 of the CA Act (Part 6 in the exposure draft) contains aviation security provisions. The security amendments outlined in this paper and several amendments to Part 8 in the past decade, mean that it would be useful to make improvements to the structure of the Part to aid interpretation and improve the usability of the section.

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Yes

- *Are there any unintended consequences as a result of the drafting?*

No

42. LEVIES

43. PROVISIONS AND OFFENCES

Ministry Commentary

The exposure draft includes new offences for:

- *failure to keep or maintain records as required by a levy order under the CA Act*
- *failure to submit an activity order as required by a levy order*
- *knowingly providing an activity return that is false or misleading.*

Ministry Questions

- *Does the current drafting in the exposure draft achieve this policy decision?*

Not answered

- *Are there any unintended consequences as a result of the drafting?*

Not answered

44. GOVERNOR GENERAL'S ABILITY TO IMPOSE LEVIES

Ministry Commentary

The exposure draft provides that levy regulations may also prescribe the basis on which the rate is to be calculated to provide greater flexibility in how aviation-related levies are calculated.

Levy orders under the CA Act are confirmable instruments which must be specifically confirmed by the House of Representatives. This serves no practical or constitutional purpose, because levy payers are able, and do, seek Regulations Review Committee investigations of levy regulations under the disallowance process and confirmation is unusual for this kind of levy. The exposure draft omits the confirmation requirement.

Section 42A(3)(b) of the CA Act states that the Minister must be satisfied that the CAA's income from other sources is not or will not be sufficient to enable it to perform its functions under this Act without the imposition of a levy at the rate recommended. This section, if read strictly, is inconsistent with relevant Treasury guidelines and Transport Funding Principles. The exposure draft removes this requirement.

The exposure draft expands the levy making power to allow the collection of levies from all aviation participants.

Ministry Questions

- *Does the current drafting in the exposure draft achieve these policy decisions?*

Not answered

- *Are there any unintended consequences as a result of the drafting?*

Not answered