

## **Submission**

This submission is lodged by Bill MacGregor, Civil Aviation Director (DCA) Niue. I welcome the opportunity to comment on the exposure draft. My submission is made as a private citizen not as an officer of the Government of Niue although I call upon my experience as a regulator using the NZ Rules system and common Civil Aviation Acts. The reason for making this submission is that Niue is in the process of reviewing its own Civil Aviation Act and I do not wish to see us deviate too much from the New Zealand Act. I wish to thank the Ministry of Transport for making available an exposure draft before the Bill enters the House, and for permitting submissions to be made on the draft Bill.

### **1 Introduction**

I have held positions as DCA in Solomon Islands (2005-2008) and Niue since 2010. I have also been a Pacific Aviation Safety Office (PASO) Council member since 2005. Most of the Pacific Island States who are PASO members have developed Civil Aviation Acts closely modeled on the NZ Act and have adopted the NZ Rules system. I am pleased to see that the basic structure of the Act remains essentially the same and that it continues to support the Rules system.

While recognising that NZ has a vastly larger civil aviation sector than the Pacific Islands, and therefore has to take into account a wider scope, I feel that a more progressive stance could have been taken in the draft Bill to acknowledge that the revised Act will have to suffice for the next 20-30 years.

The draft provides a once in 30 years opportunity to set the scene for the future of the NZ aviation sector. The draft should allow NZ to borrow from other countries the best of breed of regulatory practice. During the last 20 years several changes have been made to the Act which have significantly changed the thrust of the drive for safety. The original 'safety at reasonable cost' has been replaced by 'safety at any cost'. From a Small Island State (SIS) view this imposes unacceptable cost without a revenue base to support it. This is addressed in specifics in the body of this submission.

The Act in its current form has emerged from 30 odd years of case law being applied to the original Act. The philosophy which framed the original Act moved NZ aviation from a prescriptive system where aviation operators were told by the regulator what to do and how to do it, to a descriptive system where Government told aviation what it wanted to see and industry held responsibility for producing the outcome, with a light handed regulator overseeing industries operation and only acting where required to bring operators back into line. The SIS have been sold this descriptive model and I am disturbed to see an increasingly prescriptive approach being taken to aviation regulation in NZ.

### **2 Background: Bill MacGregor**

I have been a regulator in small island states for the past 14 years. I spent 28 years in the RNZAF as a General Duties Officer (Pilot) accumulating some 5,500 flying hours and completing my service as a senior officer commanding the Operations Wing at RNZAF Base Auckland (60+ aircraft and 625 personnel). I worked with a services company for two years

post RNZAF then formed my own consultancy business prior to becoming a regulator in Solomon Islands in 2005. I worked within CAA NZ from 2014 to 2017 as the Principal Aviation Examiner (flight examining not medical). I therefore have a wide range of knowledge of both operational aviation as well as aviation regulation within NZ and internationally. I hope my input will be viewed as constructive.

### **3 Form of Response**

This response focuses on those parts of the draft Bill relevant to SIS aviation activity. My submission comments on what I would like to see in the draft as it directly affects SIS Acts as the new NZ Act when enacted will be closely studied by the SIS with a view to incorporating changes into our legislation. I also make comment on some of the current draft Bill with the aim of ensuring the new Act does not disadvantage the SIS.

### **4 Philosophy**

The original Act was based on the work completed by the Swedavia McGregor research team during the 1980s. Their philosophy was to, amongst other things, produce an Act and Rules that were 'flexible, agile and responsive'. Their desire was to have a regulatory system that was flexible enough to deal with a variety of approaches to the same issue; to be agile enough to respond to changes in technology which permitted better ways of doing things; and to be legislatively responsive to change. The past 30 years has seen these three principals eroded by an increasingly inflexible approach to regulation and a legislative logjam in an increasingly complex world.

My view is that NZ should be more amenable to adopting best international practice from similar aviation regulatory agencies such as the Civil Aviation Safety Authority of Australia (CASA), Transport Canada (TC), the US Federal Aviation Administration (FAA), the United Kingdom Civil Aviation Authority (UK CAA) and the European Aviation Safety Agency (EASA) rather than trying to develop inhouse solutions such as seen in NZs approach to Safety Management Systems (SMS) with its one size fits all approach. PASO states are struggling with the NZ CAA approach as the majority of aviation activity in the Pacific is conducted by small operators. The EASA approach holds a much more flexible process than the NZ CAA approach.

Approaches to NZ CAA by various SIS for assistance haven't been rebuffed outright but are generally redirected to PASO. The reason is that NZ CAA is under resourced to conduct its perceived regulatory role in NZ without adding on additional work in the Pacific. NZ does not have a legislative mandate to provide assistance to the Pacific but is seen as the Pacific's big brother and thus is assumed to be able to assist when asked. Recognising that NZ CAA is under resourced leads me to suggest that a greater amount of government funding be allocated to this economically important sector of the NZ economy.

Finally, the original Act and most of those in the Pacific use the concept of 'safety at reasonable cost' whereas the current NZ Act has moved away from this concept and indicates 'safety at any cost'. PASO States cannot afford to implement safety at any cost so espouse safety at

reasonable cost. Should the new NZ Act continue with safety at any cost we will see the PASO States move away from the NZ Act and we face the danger of regulatory drift away from NZ.

## **5 The life cycle approach to regulation**

The Swedavia McGregor project introduced to NZ the concept of the life cycle approach to aviation regulation. This requires any participant in the system to undergo an entry procedure, known as certification, maintenance within the system, known as routine audit and surveillance, and exit from the system either through regulatory requirements or by surrender of the certification.

The life cycle concept means that an individual or entity meets entry requirements then can operate within its certificated area. Maintenance may consist at an individual level of maintaining a license through holding a current medical certificate or at an entity level by continuing to meet its responsibilities by demonstrating compliance at routine audit or not raising any concerns with the regulator. Exit may be via a failure to maintain a license or certificate or to have them revoked by the regulator.

The ICAO driven introduction of Safety Management Systems (SMS) to aviation operations sees operators required to have an operationally effective system of safety management which is proactive in identifying and mitigating risk. This means an ongoing system which keeps the organisation up to the minute with overcoming risks to safety. The current Rules stipulate a maximum five year recertification period meaning that the organisation has to undergo a complete re-entry process into the aviation system. This is a nonsense in a number of ways as it is contrary to the philosophy of a life time licence, takes a one time view of the operators systems, and is expensive in dollar terms to the operator and resource intensive for the CAA.

Niue's legislative review is removing this process from the Rules by stating in the new Act that documents subject to the life cycle approach are lifetime documents not subject to re-certification providing they remain current under a functioning SMS or medical system. I suggest that NZ follow a similar approach.

## **6 Protection of Safety Information under Just Culture**

I am pleased to see Just Culture being included in the draft Bill. Just Culture is fundamental to all aspects of the aviation system to ensure safety information is not held back by operators or the regulator. Allied to Just Culture is that all parties must act in good faith and I am keen to see this concept also brought into the draft Bill as it will then be easier to introduce it to the Pacific where it can be a difficult concept to sell on its own.

## **7. Offences**

There appears to be a provision in the draft Bill that may well see a pilot or company liable for prosecution even if they report correctly. This would be a dangerous concept to introduce to the Pacific so I would rather see something along the lines of action being taken in the case of willful, deliberate or gross negligence.

Thank you for taking the time to read my submission. As stated in the introduction this submission is made in my capacity as a private citizen of NZ not as an agent of Niue. I have used my experience in the Pacific to try to highlight a couple of areas where changes to the NZ Act may have an adverse effect in the Pacific. I am happy to discuss any of the points made and would appreciate the opportunity to speak at the committee stage of the Bill process.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bill MacGregor', with a stylized, cursive script.

Bill MacGregor

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