

Questions for your submission

This submission form is intended to be used alongside the consultation document to guide your feedback. Please give reasons for your answers or in support of your position so that your viewpoint is clearly understood, and also to provide more evidence to support decisions.

You can send us a written submission focusing on the questions in this document that are relevant to you by completing all or part of this submission template.

Please email your written submission to ca.act@transport.govt.nz with the word "Submission" in the subject line, or post it to:

Civil Aviation Act Review
Ministry of Transport
PO Box 3175
Wellington 6140

The deadline for all forms of submission is 31 October 2014.

Your role

Your name _____

Your email address _____

*Why is your email needed?
Your email address is needed in case we need to contact you with any questions about your submission.*

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

Are you:

- A private individual?
- Part of the transport industry?

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

Part A: Statutory framework

Item A1: Legislative structure

Question A1a: Which option do you support?

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

Please state your reasons:

Part A: Statutory framework

Item A2: Purpose statement and objectives

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

Subject area of the Act or Acts	Purpose	Do you support?
Safety and security related	To contribute to a safe and secure civil aviation system	<input type="checkbox"/> Yes <input type="checkbox"/> No
Economic - airport related	To facilitate the operation of airports, while having due regard to airport users	<input type="checkbox"/> Yes <input type="checkbox"/> No
Economic – airline related	To provide for the regulation of international New Zealand and foreign airlines with due regard to New Zealand’s civil aviation safety and security regime and bilateral air services	<input type="checkbox"/> Yes <input type="checkbox"/> No
	To enable airlines to engage in collaborative activity that enhances competition, while minimising the risk resulting from anti-competitive behaviour ¹	<input type="checkbox"/> Yes <input type="checkbox"/> No
	To provide a framework for international and domestic airline liability that balances the rights of airlines and passengers	<input type="checkbox"/> Yes <input type="checkbox"/> No

Please state your reasons:

¹ Depending on the outcome of the review, international air carriage competition provisions may be moved out of transport legislation and into the Commerce Act 1986.

Part A: Statutory framework

Question A2b: What other concepts do you think should be included in the purpose statement of the Act or Acts? (Please specify)

Question A2c: Should the revision of statutory objectives align with the purpose of the Act or Acts?

Question A2d: Do you support the revision of statutory objectives to include a requirement that decision-makers (for example, the Minister, the CAA, and the Secretary of Transport) be required to carry-out their functions in an effective and efficient manner?

Item A3.4: Independent statutory powers

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

Yes

No

Please state your reasons here.

Entry into the system

Item B1: Provisions relating to fit and proper person assessment

Question B1a: Which option do you support?

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

Please state your reasons here.

Participant obligations

Question B2: Are there any issues in relation to participant obligations and Director's powers in Part 2 of the Civil Aviation Act 1990 that you think should be addressed? If so, what options do you propose to address the issue(s)?

Medical certification

Item B3: Certification pathways and stable conditions

Question B3a: Which option do you support?

- Option 1:** Status quo – two pathways for medical certification
- Option 2:** Develop a third pathway for medical certification for individuals affected by stable, long-term or fixed conditions.
- Some other option** (please describe):

Please state your reasons

Part B: Safety and security

Question B3b: What savings would likely occur from a third pathway to medical certification?

Item B4: Provision for the recognition of overseas and other Medical Certificates

Question B4a: Should the Act allow the Director to recognise medical certificates issued by an ICAO contracting State?

- Yes
- Yes, but only those without any operational endorsements issued by States with a robust aviation medical certification regime
- No

Please state your reasons

Question B4b: Should the Director of Civil Aviation or the State that has issued the medical certificate provide oversight?

Part B: Safety and security

Question B4c: If you agree that the Director of Civil Aviation should provide oversight, what provisions in Part 2A of the Civil Aviation Act should apply?

Part B: Safety and security

Question B5b: How much would you be prepared to pay to have your case reviewed by the Medical Convenor?

Are there any other issues with the provisions in Part 2A of the Civil Aviation Act that you think should be addressed? If so, what options do you propose to address the issue(s)?

Offences and penalties

Item B6: Penalty levels

Question B6a: Which is your preferred option?

- Option 1:** Status quo – penalty levels remain unchanged
- Option 2:** Increase penalty levels
- Other option:** Please describe

Question B6b: If you consider that increases to penalty levels are necessary, which penalties, and by how much?

Item B7: Acting without the necessary aviation document

Question B7: Which is your preferred option?

- Option 1:** Status quo
- Option 2:** Amend the provision to separate out the offences (Ministry of Transport preferred option)
- Other option:** Please describe

Please state your reasons

Appeals

Item B8: Appeals process

Question B8a: Should a specialist aviation panel or tribunal be established in addition to the current District Court process?

Yes

No

Please state your reasons:

Questions B8b: How much would you be prepared to pay for a panel review?

Rules and regulatory frameworks

Item B9: Rule making

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

Question B9b: Which is your preferred option?

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

Part B: Safety and security

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

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

- Yes
- No

Please state your reasons:

Item B10: Possible amendments to Part 3

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

Information management

Item B11: Accident and incident reporting

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

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

Part B: Safety and security

Item B12: Accessing personal information for fit and proper person assessments

Question B12a: What information does the Director need to undertake a fit and proper person assessment?

Question B12b: Should the Director be able to compel an organisation to provide information about a person in order to undertake a fit and proper person test?

- Yes
- No

Please state your reasons:

Security

Item B13: Search powers

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

- Yes
- No

Please state your reasons here.

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

- Yes
- No

Please state your reasons here.

Part B: Safety and security

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

Yes

No

Please state your reasons:

Part B: Safety and security

Issue B15: Security check procedures and airport identity cards

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

Item B16: Alternative terminal configurations

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

Yes

No

Please state your reasons here.

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

Part C: Carriage by air - airline liability

Items

Item C1: The necessity of specific domestic airline liability provisions

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

- Yes
- No

Please state your reasons:

Question C1b: The Civil Aviation Act delay provisions relate to passenger delay. Should there be a presumption of fault for delay in the carriage of baggage as well?²

- Yes
- No

Please state your reasons here:

² Note that the Carriage of Goods Act appears to cover the loss of or damage *to* baggage but not losses/damages resulting *from* delayed baggage. So the passenger would need to seek redress under the Consumer Guarantees Act.

Part C: Carriage by air - airline liability

Item C2: The effectiveness of specific domestic airline liability provisions

Question C2a: Which is your preferred option?

- Option 1:** Status quo and potential educational measures developed (Ministry of Transport preferred option)
- Option 2:** Strengthen the consumer protection provisions in the Act
- Other option:** Please describe

Please state your reasons:

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

- Yes** (please tick one or more below)
 - Online information on the provisions in the Civil Aviation Act.
 - A 'Know Your Rights' pamphlet or other printed materials for passengers.
 - Government departments working with carriers to introduce a 'Customers Charter' or something similar.
 - Other. Please specify:

- No**

Part C: Carriage by air - airline liability

Please state your reasons here:

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

Yes

No

Please state your reasons here:

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

Part C: Carriage by air - airline liability

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

Question C3a: Which is your preferred option?

- Option 1:** Status quo – liability is capped at an amount representing 10 times the sum paid for the carriage
- Option 2:** Revise the domestic liability limit for damage caused by delay
- Other option:** Please describe

Please state your reasons:

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

Part D: Airline licensing and competition

International air services licensing

Item D1: Commercial non-scheduled services

Question D1a: Which is your preferred option?

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

Please state your reasons:

Part D: Airline licensing and competition

Question D1b: Do you agree with the proposal to remove the need for authorisation of services that do not follow a systematic pattern?

- Yes**
- No**

Please state your reasons:

Question D1c: If you answered yes to Question D1b, which approach to determining what is systematic do you prefer?

- Approach 1:** use the same threshold for authorisation by the Secretary as is used for requiring an foreign air operator certificate (that is, more than two take-offs or landings within New Zealand in any consecutive 28 day period, or more than eight take-offs or landings within New Zealand in any consecutive 365 day period)
- Approach 2:** explicitly define systematic as some other number of services on the same route over a particular time.

Please state your reasons:

Part D: Airline licensing and competition

Question D1d: If you selected Approach 2, how should the term systematic be defined?

Part D: Airline licensing and competition

Item D2: Allocation decisions for New Zealand international airlines

Question D2: Which is your preferred option?

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

Please state your reasons:

Part D: Airline licensing and competition

Item D3: Public notice

Question D3a: Which is your preferred option?

- Option 1:** Status quo – the Act provides for a 21 day submission period when an application for a new, amended or renewed scheduled international air service licence by a New Zealand airline is received.

- Option 2:** Amendment to the Act to:
 - reduce the 21 day submission period, for example, to 14 days or 10 days
 - require notice to be given only when limited air services rights for routes or capacity are being allocated.

(Ministry of Transport preferred option)

- Some other option** (please describe):

Please state your reasons here:

Part D: Airline licensing and competition

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

Part D: Airline licensing and competition

Item D4: Transferring licences

Question D4: Which is your preferred option?

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

Please state your reasons here:

Part D: Airline licensing and competition

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

Question D5: Which is your preferred option?

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

Please state your reasons:

Part D: Airline licensing and competition

International air carriage competition

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

Question D6a: Which is your preferred option?

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

Please state your reasons:

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

Part D: Airline licensing and competition

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

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

Part D: Airline licensing and competition

Item D7: Commission Regimes (section 89)

Question D7: Which is your preferred option?

- Option 1:** Status quo – the Act provides for a Commission Regime to be issued and retains the current Commission Regimes
- Option 2:** Repeal and reissue – the Act provides for a Commission Regime to be issued and revises the current Commission Regime
- Option 3:** Complete repeal - repeal the existing Commission Regime and section 89 (Ministry of Transport preferred option)
- Some other option** (please describe):

Please state your reasons:

Part D: Airline licensing and competition

Item D8: Authorisation of unilateral tariffs by the Minister

Question D8: Which is your preferred option?

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

Please state your reasons:

Airport Authorities Act

Item E1: Specified airport companies

Question E1a: Which is your preferred option?

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

Please state your reasons:

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

Yes

No

Please state your reasons:

Item E2: Redundant provisions

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

Question E2b: Do you support repealing section 3BA?

Yes

No

Please state your reasons:

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

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

Yes

No

Please state your reasons here:

Item E3: Consultation on certain capital expenditure

Question E3a: Which is your preferred option?

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

Please state your reasons:

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

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

Item E4: Threshold for consultation on certain capital expenditure

Options for amending the threshold for consultation on certain capital expenditures

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

Question E4: Which is your preferred option?

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

Please state your reasons:

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

Question E5: Which is your preferred option?

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

Please state your reasons:

Item E6: Bylaw making powers

Question E6a: Which is your preferred option?

- Option 1:** Status quo – the existing bylaw making powers of airport companies, airport authorities, and local authorities are retained
- Option 2:** Repeal some bylaw making powers
- Some other option** (please describe):

Please state your reasons:

Question E6d: If bylaw making powers are retained, what is the appropriate level of oversight for local authorities, airport authorities and airport companies seeking to make bylaws?

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

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

Question E7b: Which is your preferred option?

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

Please state your reasons:

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

Question F3: Which is your preferred option?

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

Please state your reasons:

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

Question F4: Which is your preferred option?

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

Please state your reasons:

Item F5: The Civil Aviation Authority’s ability to audit operators that collect levies

Question F5: Which is your preferred option?

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

Please state your reasons:

Item F6: Fees and charges for medical costs

Question F6: Which is your preferred option?

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

Please state your reasons:
