

Proactive Release

This document is proactively released by Te Manatū Waka the Ministry of Transport.

Some information has been withheld on the basis that it would not, if requested under the Official Information Act 1982 (OIA), be released. Where that is the case, the relevant section of the OIA has been noted and no public interest has been identified that would outweigh the reasons for withholding it.

Listed below are the most commonly used grounds from the OIA.

<u>Section</u>	<u>Description of ground</u>
6(a)	as release would be likely to prejudice the security or defence of New Zealand or the international relations of the New Zealand Government
6(b)	as release would be likely to prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by <ul style="list-style-type: none"> (i) the Government of any other country or any agency of such a Government; or (ii) any international organisation
6(c)	prejudice the maintenance of the law, including the prevention, investigation, and detection of offences, and the right to a fair trial
9(2)(a)	to protect the privacy of natural persons
9(2)(b)(ii)	to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information
9(2)(ba)(i)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely to prejudice the supply of similar information, or information from the same source, and it is in the public
9(2)(ba)(ii)	to protect information which is subject to an obligation of confidence or which any person has been or could be compelled to provide under the authority of any enactment, where the making available of the information would be likely otherwise to damage the public interest
9(2)(f)(ii)	to maintain the constitutional conventions for the time being which protect collective and individual ministerial responsibility
9(2)(f)(iv)	to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials
9(2)(g)(i)	to maintain the effective conduct of public affairs through the free and frank expression of opinions by or between or to Ministers of the Crown or members of an organisation or officers and employees of any public service agency or organisation in the course of their duty
9(2)(h)	to maintain legal professional privilege
9(2)(i)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry out, without prejudice or disadvantage, commercial activities
9(2)(j)	to enable a Minister of the Crown or any public service agency or organisation holding the information to carry on, without prejudice or disadvantage, negotiations (including commercial and industrial negotiations)



28 August 2024

OC240986

Hon Simeon Brown

Action required by:

Minister of Transport

Wednesday, 4 September 2024

COST RECOVERY FOR INDEPENDENT REVIEW FUNCTION: DRAFT CABINET PAPER

Purpose

- Seek feedback on the attached draft Cabinet paper and consultation document. These papers are to enable public consultation on cost-recovery options for the new independent review function created by the Civil Aviation Act (the 2023 Act).

Key points

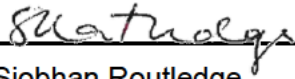
- On 19 August 2024 you instructed the Ministry to consult on three options for setting fees to partially recover the operational costs of the independent review function [OC240768 refers].
- Attached for your feedback are:
 - a draft Cabinet paper seeking Cabinet's agreement to the release of a consultation document that seeks stakeholder feedback on three options for partial cost recovery for the independent review function
 - a draft of the consultation document: *Independent reviews of the Director of Civil Aviation's decisions: Proposed fees for applicants*.
- Once you are comfortable with the draft papers, we propose to consult the Treasury, Ministry of Justice, and the Civil Aviation Authority (CAA) on the drafts, and inform the Department of Prime Minister and Cabinet.
- We will then update the papers for your approval for Ministerial consultation.
- Subject to your feedback, and the outcome of departmental and Ministerial consultation, we propose that the Cabinet paper and consultation paper be lodged with Cabinet Office by 18 September 2024. This will allow final proposals to be taken to Cabinet by December 2024, and for regulations to be put in place by 5 April 2025.
- Separately, the Ministry is currently consulting on the scope of the independent review function. This consultation started on 27 August 2024 and finishes on 24 September 2024. The consultation document on the scope of the review function signals that cost recovery may be put in place.

Recommendations

We recommend you:

Yes / No

- 1 **approve** departmental consultation on the attached draft Cabinet paper and draft consultation document entitled *Independent reviews of the Director of Civil Aviation's decisions: Proposed fees for applicants.*



 Siobhan Routledge
Director Aviation, Policy Group
 28 / August / 2024

 Hon Simeon Brown
Minister of Transport
 / /

- Minister's office to complete:**
- Approved Declined
 - Seen by Minister Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Siobhan Routledge, Director Aviation, Policy Group	s 9(2)(a)	
Tom Forster, Manager, Aviation		✓
Gary Tonkin, Manager, Civil Aviation Act Implementation		

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 MINISTRY OF TRANSPORT TE MANATŪ WAKA

[IN CONFIDENCE]

Office of the Minister of Transport

Cabinet Economic Policy Committee

Independent reviews of the Director of Civil Aviation's decisions: consultation on cost recovery

Proposal

- 1 I seek the Committee's agreement to release the attached consultation document 'Independent reviews of the Director of Civil Aviation's decisions: Proposed fees for applicants'. The consultation document seeks stakeholder feedback on three options for partial cost recovery for the new independent review function created by the Civil Aviation Act 2023 (the 2023 Act) (refer Appendix One).

Relation to government priorities

- 2 The Government is committed to rebuilding the economy, easing the cost of living and delivering the frontline services New Zealanders need in an efficient way. The independent review function created by the 2023 Act will enhance the rights of aviation participants and will support improvements in the performance of the civil aviation regulatory system over time.

Background

- 3 The 2023 Act provides for the independent review of specified decisions made by (or on behalf of) the Director of Civil Aviation (the Director) to enable a faster and less costly avenue for sector participants to seek independent reviews of decisions than action through the courts. At present aviation participants can wait around 3-4 years for a District Court hearing and associated costs can amount to over \$300,000 a case.
- 4 On 29 July 2024, Cabinet agreed that public consultation be carried out to inform the development of the regulations to set the scope of the function [ECO-24-MIN-0128 refers]. That consultation closed on 24 September 2024.
- 5 The 2023 Act will enter into force on 5 April 2025. There will be a range of costs arising from the operation of the function, including the remuneration of reviewer(s), any required independent contracted technical advice, and secretariat and functional support for the review process.
- 6 It is difficult to predict the likely volume and nature of reviews that will be carried out once the function is operational. The Ministry of Transport Te Manatū Waka (the Ministry) estimates that between 30 and 90 participants a year may apply for a review, contingent on several factors, including the yet-to-be-determined scope of reviewable decisions. The widest possible scope of reviewable decisions could lead to a much greater number of applications for review.

Review applicants will be the primary beneficiaries of the review function

- 7 The review function has been established specifically for the benefit of aviation participants, enabling them to seek an independent review of the Director's decisions through a process that avoids the costs and delays of going through the courts. Reviewers will carry out reviews, drawing on expert advice as appropriate, and then report their recommendations to the Director. The Director must then decide whether

to accept any or all of the reviewer's recommendations. The review may result in the Director modifying or withdrawing a decision, or the decision may be upheld.

There will also be wider public benefits arising from reviews

- 8 The review function is expected to promote good decision-making by the Civil Aviation Authority (the Authority) by strengthening accountability and transparency around regulatory decisions. This will generate public good benefits over time through enhanced effectiveness of the regulatory system and increased public confidence in the regulatory system.

In the absence of a cost recovery charge, the Ministry would need to fully meet the operational and support costs of the function within baselines

- 9 The Ministry has assessed a range of options for meeting the costs of the review function. This assessment was based on key principles for cost recovery derived from agency guidelines, including, but not limited to, that fees should be structured simply, fairly, and efficiently and should not be set at levels that significantly impede the statutory rights of sector participants to seek reviews, nor should they be set so low as to encourage speculative or meritless review applications.¹

I consider that partial cost recovery is appropriate for reviews

- 10 While a review is mainly for the benefit of an applicant, charging applicants the *full* cost of reviews would likely compromise the achievement of the policy intent of the function – to enable a less costly (and faster) avenue for sector participants to seek independent reviews of decisions than action through the courts. Review fees should not present a barrier to well-founded review applications.
- 11 Applying partial cost recovery will also reflect the wider public benefits of the new review function – enhanced effectiveness of, and increased public confidence in, the regulatory system.
- 12 The attached consultation document, 'Independent reviews of the Director of Civil Aviation's decisions: Proposed fees for applicants', sets out three options for partial cost recovery²:
- 12.1 Option 1 – a **single fixed fee** for all participants. This would be based on a representative average review cost (rather than based on the actual costs of each respective review, which will vary from case-to-case). The proposed fee would be \$1,000 (excl. GST) per application.
- 12.2 Option 2 – a **two-tiered fixed fee**. Organisations would pay a higher fixed fee than in Option 1. This reflects that reviews of decisions affecting organisations are likely to be more technical and complex. The proposed fees would be \$1,000 (excl. GST) per application for individuals, and \$1,500 (excl. GST) per application for organisations.

¹ The principles were derived from the Ministry's Transport regulatory system funding principles, Treasury and Office of the Auditor-General guidelines, and the Ministry of Justice cost recovery principles.

² By comparison, the Australian Administrative Appeals Tribunal (AAAT) applies a standard single application fee of AU\$1,082 for reviews of decisions made by the Australian Civil Aviation Safety Authority (CASA). The fee payable for appeals to the New Zealand Immigration and Protection Tribunal under the Immigration and Protection Tribunal Regulations 2010 is set at \$910 per appeal.

12.3 Option 3 – an **hourly fee up to a cap**. This option would provide the potential to base the level of cost recovery more closely on the actual costs arising from each respective review. However, it would introduce uncertainty as to the amount of the fee that applicants would have to pay and would be more complex and time-consuming to administer than the other two, fixed fee, options. This option features a base fee of \$432 (excl. GST), plus an hourly fee of \$189 (excl. GST), up to a cap of \$1,000 (excl. GST) for individuals and \$1,500 (excl. GST) for organisations.

13

s 9(2)(f)(iv)

14 Any residual costs would be met out of Budget 2023 funding provided to the Ministry for the implementation of the 2023 Act.

15 Public consultation on the scope of decisions to be covered by the independent review function was carried out over a four-week period that closed on 24 September 2024. The Ministry is now assessing the feedback arising from that process and I will report back to the Cabinet Economic Committee with final advice on the scope of the function by November 2024 [ECO-24-MIN-0128 refers]. The document released to support that consultation signalled that cost recovery may be put in place.

16 I propose that the Ministry carry out public consultation on the three proposed partial cost recovery options and fee levels for the new function over a four-week period during October 2024. Feedback from the consultation process will help inform final decisions on the approach to partially recover costs of independent reviews.

Final policy decisions on the partial fees will be sought in December 2024

17 The table below sets out the indicative timeframes for the remaining stages of the work on cost recovery for the independent review process.

Public consultation commences	1 October 2024 for 4 weeks
Cabinet approval of final policy decisions and drafting instructions issued to Parliamentary Counsel Office	December 2024
LEG paper to approve final fees, Cabinet approval of final fees and Order in Council signed. Fees notified in NZ Gazette and 28-day minimum notice period begins.	February 2024 – 1 March 2025
Civil Aviation Act 2023 comes into force; rules, regulations, and notices made under that Act come into effect. New fees come into effect.	5 April 2025

A review of the applied fee structure would be carried out once the function is operational

- 18 Once the function is operational and has generated sufficient performance and cost data, the Ministry will re-examine the fee levels for review applications and examine any changes to fee levels that may be warranted. I expect that sufficient information would become available to undertake such a review within the usual three-year cycle that is best practice for reviews of fees and charges.

The proposals in this paper are separate from the consultation underway on the Civil Aviation Authority's funding review

- 19 The Authority's new pricing review proposals, which are currently out for consultation, are intended to meet the future costs of the Authority's functions and services Out of Scope
[REDACTED] In contrast, the proposals in this paper cover cost recovery options to help the Ministry fund the independent review function.

Cost-of-living Implications

- 20 The fee proposals set out in the attached consultation document will not have a material impact on the cost-of-living.

Financial Implications

- 21 The residual costs to the Ministry arising from partial cost recovery for reviews would be met from the Crown funding provided in Budget 2023 for the implementation of the 2023 Act. This funding totals \$7.305 million over four years, with \$1.910 million per year in the Ministry's baseline in 2025/26 and out-years.
- 22 Based on the application of the preferred option of a two-tier fixed fee (Option 2) and an estimated demand for reviews of between 30 and 90 reviews a year, the Ministry estimates that partial cost recovery would raise in the range of \$30,000 to \$105,000 (excl. GST) a year to help meet the costs of the independent review function.

Legislative Implications

- 23 There are no legislative implications from releasing the consultation document 'Independent reviews of the Director of Civil Aviation's decisions: Proposed fees for applicants'. Legislative proposals would follow consultation. Section 415(1) of the 2023 Act provides that regulations may be made prescribing, or providing for the fixing of, fees and charges payable "... to reimburse the Secretary and the reviewer for costs directly and indirectly associated with the reviewer's functions under subpart 5 of Part 10". The Parliamentary Counsel Office has been consulted on the upcoming work to deliver regulations for this purpose by the end of February 2025.

Impact Analysis

- 24 A combined stage one and stage two CRIS was prepared for the proposed options for partial cost recovery outlined in this paper. This is attached at Appendix Two.
- 25 The CRIS has been reviewed by a panel of representatives from the Ministry. It has been assessed as partially meeting Cabinet's quality assurance criteria for impact analysis. Overall, the CRIS is clear, concise, and contains adequate analysis of the feasible options. Where assumptions are made, due to limited evidence of the costs and uptake of the new independent review function, these are clearly set out. The CRIS is not able to achieve a full 'meets' rating because the proposal has not yet been subject to public consultation. The panel notes that the CRIS will be updated post-consultation to inform Cabinet's final decisions.

Climate Implications of Policy Assessment

- 26 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal, as the threshold for significance is not met.

Population Implications

- 27 There are no population implications from the release of the attached consultation document.

Human Rights

- 28 There are no human rights implications from release of the attached consultation document.

Use of External Resources

- 29 No external resources have been engaged to develop the proposals outlined in the attached consultation document.

Consultation

- 30 The following agencies were consulted on the contents of this paper: the Ministry of Justice, the Treasury, the Ministry for Regulation and the Civil Aviation Authority. The Department of the Prime Minister and Cabinet has been informed.

Communications

- 31 With Cabinet's agreement, the Ministry will publish the attached consultation document on its website, and will contact stakeholders to invite submissions.

Proactive Release

- 32 Following Cabinet agreement to the release of the attached consultation document I intend for it to be released on the Ministry's website.

Recommendations

The Minister of Transport recommends that the Committee:

- 1 **note** the Civil Aviation Act 2023 creates a new function to enable applicants to seek independent reviews of decisions made by (or on behalf of) the Director of Civil Aviation that will become operational on 5 April 2025, and provides for the making of regulations, fees and charges to reimburse costs associated with the new independent review function
- 2 **note** that public consultation on the scope of decisions to be covered by the new independent review function closed on 24 September 2024, and the Minister of Transport is to report back to the Cabinet Economic Committee with final advice on the scope of the function by November 2024 [ECO-24-MIN-0128 refers]
- 3 **agree** to the public release of the attached consultation document 'Independent reviews of the Director of Civil Aviation's decisions: Proposed fees for applicants' and for the Ministry of Transport to carry out public consultation for a four-week period on the options and fee levels proposed in the consultation document

IN CONFIDENCE

- 4 **agree** that the Ministry of Transport may make minor or technical changes to the consultation document, if necessary, prior to its release
- 5 **note** that I will report back to Cabinet in December 2024 on the outcome of this consultation and to seek authorisation to issue drafting instructions for regulations setting application fees for the independent review function.

Hon Simeon Brown

Minister of Transport

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Appendix One

Draft consultation document

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Independent reviews of the Director of Civil Aviation's decisions

Proposed fees for applicants

Not Government Policy
Consultation Paper
October 2024

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Preface

The purpose of this paper is to seek written feedback on options to set application fees for reviews to be carried out by the new independent review function created by the Civil Aviation Act 2023. This new function will be operational from 5 April 2025, when the 2023 Act comes into effect.

Page 7 of the paper includes questions on these options that you may wish to respond to. Please also feel free to provide us with any other comments you consider to be relevant to the proposals in this paper.

Your feedback will help to inform final policy decisions on the fees to be charged to review applicants.

You can provide feedback on part or all of the issues and proposals by writing and sending your input to civilaviationact@transport.govt.nz with the subject line “feedback – proposed fees for independent review function”.

The consultation period will close at 5pm on 28 October 2024. Following this, we will review all feedback and finalise any proposed changes, taking your views into account.

Use of information

Please note the feedback you provide us with may become publicly available. The Ministry of Transport Te Manatū Waka (the Ministry) may publish any information you submit and identify you as the submitter.

Therefore, please clearly indicate if your comments are commercially sensitive or should not be disclosed for another reason, and/or the reason why you should not be identified as the submitter. Any request for non-disclosure will be considered under the Official Information Act 1982.

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Glossary of terms and abbreviations

Applicant	Person in respect of whom a decision is made, or the owner, operator, or person, for the time being, in charge of an aircraft or aeronautical product that is the subject of a decision
Application	Application or request for the review of a decision made by the Director of Civil Aviation
Director of Civil Aviation	Person who, for the time being, is the Director of Civil Aviation (or the Acting Director) together with all persons who hold a relevant delegation to act on behalf of the Director
Final decision	Final decision made by the Director after receiving the independent reviewer's report, on whether to accept any, or all, of the reviewer's recommendations
Independent reviewer(s)	Person(s), appointed by the Minister of Transport, responsible for carrying out reviews and reporting their recommendations to the Director.
IRF	independent review function
Reviewable decisions	Decisions made by the Director that are covered by the Independent Review Function, as specified in Regulations.
The Act	The Civil Aviation Act 2023
The Authority	The Civil Aviation Authority

Executive summary

- 1 The Civil Aviation Act 2023 (the 2023 Act), which will enter into force on 5 April 2025, provides for independent reviews of specified decisions made by (or on behalf of) the Director of Civil Aviation. This will provide a faster and less costly avenue for sector participants to challenge decisions made by the Civil Aviation Authority (the Authority) than through court action.
- 2 The independent review function (IRF) will be administered by the Ministry of Transport Te Manatū Waka (the Ministry), which will incur the operational costs of the function, including reviewer remuneration and expenses, the costs of independent technical advice (where required) and administrative and support costs.
- 3 Based on agency cost recovery guidelines and principles it is appropriate that the Ministry partially recover the costs of reviews from applicants. A partial cost recovery approach will reflect the mix of private and public good benefits the review function is expected to generate, and present less of a barrier for individuals of lesser means to access reviews than full cost recovery.
- 4 This paper proposes three possible options for partial cost recovery:
 - Option 1: a single fixed-fee for all applicants
 - Option 2: a two-tiered fixed fee structure, where organisations pay a higher fee than individuals [preferred option]
 - Option 3: the application of an hourly fee for individuals and organisations, up to maximum capped levels.
- 5 This paper seeks your views on the three proposed options. Your feedback will help inform final decisions on the approach to be taken to partially recover costs of independent reviews.

The proposals in this paper are separate from the consultation underway on the Civil Aviation Authority's funding review

- 6 The Authority's new pricing review proposals, which are currently out for consultation, are intended to meet the future costs of the Authority's functions and services. In contrast, the proposals in this paper relate to cost recovery options to help the Ministry fund the independent review function.

Background

- 7 The 2023 Act establishes a new function that enables the independent review of regulatory decisions made by the Director of Civil Aviation (the Director) and persons acting under delegated authority from the Director.
- 8 The IRF will become operative when the 2023 Act enters into force on 5 April 2025.
- 9 The purpose of the review function is to provide a more agile, less costly alternative to court action through statutory appeal rights that the 2023 Act carries over from the Civil Aviation Act 1990 or through judicial review. A person who is dissatisfied with a reviewable decision will have the opportunity to challenge the decision without incurring the expense of court proceedings or being subject to the delays inherent to the court system.

- 10 The function is also intended to strengthen the quality of, and sector confidence in, decision-making by the Authority in its capacity as the aviation safety regulator.
- 11 The main parameters for how the function will operate are set out in Subpart 5 of Part 10 of the 2023 Act. These include the following elements:
- The Minister will appoint the reviewer(s).
 - Any person or entity affected by a reviewable decision may apply for a review. The reviewer must, as soon as reasonably practicable, review the decision and all relevant information and report their (non-binding) recommendations to the applicant and the Director.
 - The final decision in response to a review rests with the Director – this is to ensure that the Director retains the ultimate responsibility for the safe and secure operation of the civil aviation system.
- 12 The Director must, within 10 working days, make a final decision on whether to accept any or all recommendations and notify the applicant of the decision and the reasons for that decision.

Consultation has already been carried out on the scope of decisions to be covered by the function

- 13 The 2023 Act requires the scope of decisions to be covered by the function to be set out in regulations.
- 14 On 27 August 2024, the Ministry began consultation with stakeholders on options to set the scope of the review function. Details on this consultation may be found at this link: <https://www.transport.govt.nz/consultations/independent-review-function-scope-of-reviewable-decisions> This consultation closed on 24 September 2024. The Ministry is currently assessing the outcome of the feedback received.
- 15 While the precise scope of reviewable decisions is still to be determined, we expect decisions relating to the aviation documents that govern a person's or entity's ability to operate within the civil aviation system will be the central focus of decisions covered by the function.

Secretariat and support for the function will be provided by the Ministry

- 16 As the department responsible for administering the 2023 Act, the Ministry will provide the administrative and functional support necessary to ensure the effective delivery of the review function.
- 17 The Ministry will establish and maintain procedures for handling review applications, record keeping, provision of guidance to applicants and liaison between applicants, the reviewer(s), and the Authority. The Ministry will also be responsible for the remuneration of the reviewer(s).

There will be a range of costs arising from the operation of the review function

- 18 We anticipate the main costs of the review function will comprise:
- the remuneration of reviewer(s) and incidental costs
 - the costs of any independent contracted technical advice, where reviews centre on technical matters beyond the expertise of reviewers
 - the cost of secretariat and functional support for the review process that will be provided by the Ministry, as the department responsible for administering the 2023 Act.
- 19 The Ministry estimates that review costs will average in the region of \$3,300 (excl. GST) per review. This estimate is largely derived from data relating to the current medical convener function, which carries out reviews of the Director's medical certification decisions, and is the model upon which the new review function is based.
- 20 It is difficult at this stage to speculate on the likely total costs of the review function once it is operational, as this will depend on the scope of reviewable decisions to be specified in regulations and the scale and nature of demand for reviews.
- 21 In the absence of a cost recovery charge, these costs would need to be fully met within Ministry baselines.

What is the most appropriate approach to meeting the costs of the review function?

- 22 The Ministry has assessed a range of options for meeting the costs of the review function. This assessment was based on the key principles for cost recovery derived from agency guidelines¹, as follows:
- allocation of review costs should broadly reflect public and private benefits of the service
 - all relevant direct and indirect departmental costs should be included in the base cost of the function
 - fees should not be set at levels that preclude or significantly impede the statutory rights of sector participants seeking well-founded reviews
 - fees should be structured simply, fairly, and efficiently.
- 23 The following sections highlight the issues considered as part of this Ministry assessment.

¹ The principles were derived from the Ministry's Transport regulatory system funding principles, Treasury and Office of the Auditor-General guidelines, and the Ministry of Justice cost recovery principles.

There is a sound policy rationale to apply cost recovery for review applications

Review applicants will be the primary beneficiaries of the function

- 24 The review function has been established specifically for the benefit of aviation participants, enabling them to challenge a Director's decision through a process that avoids the costs and delays involved in challenging a Director's decision in court.
- 25 An application for a review of a Director's decision will give applicants the opportunity to have decisions opened to independent scrutiny, and potentially modified or withdrawn to their advantage as a result of the reviewer's recommendation(s) to the Director.

There will be wider public benefits arising from reviews, but these are less clearly defined

- 26 The review function is expected to promote good decision-making by strengthening accountability and transparency around the rationale for regulatory decisions over time, which will generate public good benefits through:
- enhanced effectiveness of the regulatory system
 - increased public confidence in the regulatory system.

Partial cost recovery is the most appropriate option

- 27 While a review is principally for the benefit of an applicant, charging applicants the *full* cost of reviews would be likely to compromise the achievement of the policy intent of the function. This is because it would likely deter some sector participants of lesser means from exercising their statutory right to well-founded reviews and would not reflect the broader public good elements the function is expected to provide over the longer-term.
- 28 The Government therefore considers the application of *partial* cost recovery for reviews would be a more appropriate approach, given that it would:
- present less of a barrier for individuals of lesser means to access reviews than full cost recovery, and so ensure that the intent of the review function is not compromised
 - broadly reflect the mix of private and public good benefits the review function is expected to generate
 - support efficiency in the operation of the function.²

The Ministry has identified three options for partially recovering review costs

- 29 Based on the above principles we consider it appropriate to set fees at a level that:
- fully recovers the direct administrative costs of processing an application, given the administrative steps will be broadly similar for all applications
 - partly reflects the direct costs of the review itself

² This would mean that the ability of the function to meet demand for the reviews of the most impactful decisions made by the Authority would not be compromised by demand for speculative and meritless reviews

- is sufficiently high to discourage trivial applications, but not so high as to compromise the IRF purpose of providing a cheaper and faster review mechanism than court action for well-founded review applications.

30 We have identified three options based on these considerations, as set out in the following table.

Option	Comment
Option 1 – a single fixed fee for all applicants	This would be based on partly recovering a representative average review cost (rather than based on the actual costs of each respective review, which will vary from case-to-case). A fixed-fee approach would be relatively simple to administer.
Option 2 – a two-tiered fixed fee structure	Under this option, organisations would pay a higher fixed fee than in Option 1. The rationale for this two-tier approach is the likelihood that: <ul style="list-style-type: none"> • application costs are likely to be more of a barrier for individuals than organisations • reviews of decisions affecting organisations are likely to be more technical and complex.³ As with Option 1, this option would be relatively simple to administer.
Option 3 – recovering costs through an hourly fee, up to a cap	This option would provide the potential to base the level of cost recovery more closely on the actual costs arising from each respective review. It would, however, introduce uncertainty as to actual fee levels and the level of cost recovery, and would be more complex and time-consuming to administer than the other, fixed fee, options.

The Ministry proposes the following fees for the respective options

31 These fees are set out in the table below.

Option 1	\$1,000 (excl. GST) per application
Option 2	\$1,000 (excl. GST) per application for individuals \$1,500 (excl. GST) per application for civil aviation organisations
Option 3	\$432 (excl. GST) base fee to cover standard administrative expenses, plus an hourly fee for each application of \$189 (excl. GST)/hour, up to total capped levels of \$1,000 (excl. GST) for individuals and \$1,500 (excl. GST) for organisations

³ Organisations are subject to extensive operational and technical aviation rule requirements that do not apply to individuals. Consequently, the matters at issue in an organisation's review application are likely to be more technically complex, and thus time-consuming to consider, than in an individual's case.

32 These fee levels are based on an assessment of expected review costs, and on relativities with charges set for other comparable purposes. For example, the level of the fixed application fees proposed in Option 1 and for individuals under Option 2 are broadly comparable to fees applied in certain other contexts, such as:

- the Australian Administrative Appeals Tribunal (AAAT) applies a standard single application fee of AU\$1,082 for reviews of decisions made by the Australian Civil Aviation Safety Authority (CASA)
- the fee payable for appeals to the New Zealand Immigration and Protection Tribunal under the *Immigration and Protection Tribunal Regulations 2010* is set at \$910 per appeal.

At this stage the Ministry considers Option 2 to be the preferred option

33 The Ministry's initial assessment suggests Option 2 to be the preferred option because:

- a two-tier fixed fee structure would accommodate the likelihood that organisations will generally have greater capacity to pay than individuals, and the tendency for decisions affecting organisations to be more technical and complex⁴
- Option 2 utilises a fixed fee structure it would be reasonably simple to administer, unlike Option 3
- Option 2 will raise more revenue than Option 1, and is not subject to the revenue uncertainty that Option 3 would involve.

34 A more detailed assessment of the three options is set out in Annex One.

A review of the applied fee structure would be carried out once the function is operational

35 Once the function is operational and has generated sufficient performance and cost data, we will re-assess the fee levels for review applications. Operational data will enable the Ministry to re-evaluate demand and cost assumptions, assess implications for the level of cost recovery, and identify any consequential fee changes that may be warranted.

36 We expect that sufficient information would become available to undertake such a review within the usual three-year cycle that is best practice for reviews of fees and charges.

⁴ Organisations are subject to extensive operational and technical aviation rule requirements that do not apply to individuals. Consequently, the matters at issue in an organisation's review application are likely to be more technically complex, and thus time-consuming to consider, than in an individual's case.

Questions for feedback

- Do you have any comments on the three options for partial cost recovery set out in this paper, and the fee levels proposed for each option?
- Do you favour, or have specific concerns about, any of these options? If so, why?
- Are there any amendments to these options you think are warranted, or other options you think would be more appropriate for applying partial cost recovery for independent reviews?
- What do you think would be the impact of these options for you/your organisation or others considering applying for reviews?
- Would any of them cause you or your business significant concerns? If so, please elaborate.
- Do you have any other general or specific comments on the issues canvassed in this paper?

Please send any responses to these questions to: civilaviationact@transport.govt.nz

Annex One: Assessment of options against cost recovery principles

Principle	Option1 Single fixed fee	Option 2 Tiered fixed fee	Option 3 Hourly charge
Allocation of IRF costs should broadly reflect public and private benefits of the service	Yes Fees reflect private benefits to IRF users and Crown funding reflects public benefits relating to the operation of the civil aviation regulatory system.	Yes Fees reflect private benefits to IRF users and Crown funding reflects public benefits relating to the operation of the civil aviation regulatory system.	Yes Fees reflect private benefits to IRF users and Crown funding reflects public benefits relating to the operation of the civil aviation regulatory system.
All relevant direct and indirect departmental costs should be included in the base cost of the IRF	Yes IRF costs include direct reviewer costs and IRF-related direct and indirect costs of the Ministry.	Yes IRF costs include direct reviewer costs and IRF-related direct and indirect costs of the Ministry.	Yes IRF costs include direct reviewer costs and IRF-related direct and indirect costs of the Ministry.
Fees should not be set at levels that preclude or significantly impede applicants seeking well-founded reviews	Yes The fee level recognises individuals' limited ability to pay a high fee. It does not factor in organisations' ability to pay and to pass on costs. Not does it reflect that reviews relating to organisations are likely to be more complex and costly to consider.	Yes This two-tiered fee approach, with a higher fee for organisations, recognises that organisations have greater ability to pay than individuals, and that their review applications are likely to involve more complex considerations. Recovers more revenue than Options 1 and 3.	Yes Capping fees at the same levels as for Option 2 would recognise the same ability to pay and complexity of review considerations. Under this option, fees for organisations are more likely to be charged at less than the capped amount than fees for individuals.
Fees should be structured simply, fairly, and efficiently	Yes All applicants pay the same fee and have certainty as to costs. Fixed fee is simple to administer.	Yes Applicants have certainty as to costs. A higher fee for organisations better reflects relevant costs. Fees simple to administer.	No A variable charge does not provide applicants with certainty as to costs and is more complex to administer than a fix fee.
Provisional overall assessment	Meets the cost recovery principles but does not fully take into account differences between individuals' and organisations' ability to pay. Is relatively simple to administer.	Meets the cost recovery principles. Better recognises ability to pay and that reviews of decisions affecting organisations are likely to be more costly. Is relatively simple to administer.	Does not provide certainty as to costs to applicant or the amount of fee to be received. Is complex to administer and less efficient than fixed fee (s).

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Independent Review
Function

Proposed fees for applicants

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Appendix Two

Stage 1 & 2 Cost recovery Impact Statement

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Stage 1 & 2 Cost Recovery Impact Statement

Civil Aviation Act 2023 implementation: cost recovery for the Independent Review Function (IRF)

Agency Disclosure Statement

This Cost Recovery Impact Statement has been prepared by the Ministry of Transport. It provides an analysis of options to recover costs associated with independent reviews of regulatory decisions of the Director of Civil Aviation. This is a new function provided for under the Civil Aviation Act 2023.

The analysis addresses:

- the economic character of a review
- the appropriate level of cost recovery
- cost recovery options
- key cost drivers, assumptions, and revenue and expense estimates
- consultation, expected impacts, implementation and review.

Key constraints on the analysis are:

- the independent review function was established in response to aviation sector advocacy for an expert independent review option that is quicker and cheaper than an appeal through the District Court.
- the rarity of appeals means that they offer little insight as to the types of decision likely to become the subject of applications for independent reviews.
- because the review function is new, assumptions regarding costs of and demand for the review function draw on experience with reviews of aviation medical decisions, on which the new function is modelled.
- the precise scope of reviewable Director decisions is still to be determined. The scope of reviewable decisions has the potential to influence demand for review and costs of delivering the review function.

For the above reasons, the level and nature of demand for reviews, and the level of resource intensity for reviews, are uncertain.

This CRIS was originally published on 13 September 2024.

Tom Forster, Manager, Aviation, Ministry of Transport



13 September 2024

Executive summary

1. The Civil Aviation Act 2023 (the 2023 Act), which will enter into force on 5 April 2025, provides for the independent review of regulatory decisions of the Director of Civil Aviation.
2. The purpose of the review function is to enable an individual or entity that is the subject of a relevant Director's decision to challenge a Director's decision through a process that avoids the costs and delays involved in challenging a Director's decision in court.
3. Access to the review function will be available to around 35,000 individuals, including pilots, engineers, flight instructors and air traffic controllers, as well as around 890 organisations such as air operators, aircraft maintenance organisations and aerodrome operators.
4. Reviewers will be appointed by the Minister of Transport and the review function will be administered by the Ministry of Transport. The Ministry will incur the associated costs, including reviewer remuneration and related expenses, and costs of related technical advice if so required.
5. In the absence of a cost recovery charge, the full costs of the review function must be met by the general taxpayer despite the function only being accessible to persons or entities that are participants in the civil aviation system, and the benefits of a review accruing specifically to the applicant for that review.
6. The 2023 Act provides for the making of regulations to prescribe fees and charges to reimburse costs associated with the review function.
7. The Minister of Transport has instructed the Ministry to progress work on options for recovery of costs associated with the independent review function (IRF). This Cost Recovery Impact Statement (CRIS) has been prepared to accompany a submission seeking Cabinet approval to release of a discussion document on those IRF cost recovery options. The CRIS addresses expected demand for reviews (estimated at between 30 and 90 per annum), and the level of costs of the IRF.
8. Partial cost recovery of IRF costs through application fees is considered appropriate, based on Government cost recovery guidelines and the principles and objectives guiding the cost recovery proposal. The CRIS considers three options for fees at a level that the Ministry considers would reflect benefits to review applicants and encourage allocative efficiency in use of the IRF but would not be so high as to compromise the purpose of the IRF.
9. As the review function is new, with cost estimates and demand assumptions yet to be tested in practice, a review of the cost recovery arrangements will be undertaken once sufficient empirical information is available on IRF demand and costs. The Ministry expects sufficient information to have become available to undertake the review within the three-year cycle that is best practice for reviews of fees and charges.

Status quo

Description of the activity and why it is undertaken

10. The 2023 Act establishes a new function that enables the independent review of regulatory decisions made by the Director of Civil Aviation (the Director) and persons acting under delegated authority from the Director. Reviewers will be appointed by the

Minister of Transport. Regulations will specify the types of decision that are to be reviewable. The precise scope of reviewable Director decisions is still to be determined.

11. Any person or entity affected by a reviewable decision may apply for a review. The reviewer must, as soon as reasonably practicable, review the decision and all relevant information and report their (non-binding) recommendations to the applicant and the Director.
12. The Director must, within 10 working days, make a final decision on whether to accept any or all recommendations and notify the applicant of the decision and the reasons for that decision.
13. The purpose of the IRF is to provide a more agile, less costly alternative to court action through statutory appeal rights that the 2023 Act carries over from the Civil Aviation Act 1990 or through judicial review. A person who is dissatisfied with a reviewable decision will have the opportunity to challenge the decision without incurring the expense of court proceedings or being subject to the delays inherent to the court system.
14. Potential scrutiny through the IRF process is expected also to strengthen the quality of, and sector confidence in, decision-making by the Civil Aviation Authority in its capacity as the aviation safety regulator. There will be a public benefit from such a development, albeit that it will take time to emerge and may not be readily measurable.
15. An applicant for review could be any of the 35,095 individuals and 890 organisations that hold an aviation document (as at June 2023,) or a person seeking to become an aviation document holder.
16. While the number of aviation document holders is large, only a relatively small proportion of those persons would, in any given year, be subject to a reviewable decision, such as a decision to issue or renew a document or to impose conditions on, suspend or revoke a document.
17. As discussed later, the Ministry estimates that between 30 and 90 participants a year might apply for a review.
18. Under the status quo, no fee or charge will apply to IRF review applications.
19. The IRF will become operative when the 2023 Act enters into force on 5 April 2025.
20. The Civil Aviation Act 1990 will continue in force until then but is not pertinent to this proposal, which relates to courses of action available only in relation to the 2023 Act.

Problem definition

21. As the department responsible for administering the 2023 Act, the Ministry of Transport will provide administrative and functional support necessary to ensure the effective delivery of the review function. This role will include secretarial support for the reviewer(s). The Ministry will establish and maintain procedures for handling review applications, record keeping, provision of guidance to applicants and liaison between applicants, the reviewer(s), and the Civil Aviation Authority. The Ministry will be responsible for remuneration of the reviewer(s).
22. In the absence of a cost recovery charge, the costs of the review function must be met exclusively by the general taxpayer despite the IRF only being accessible to the individuals and organisations that operate within the civil aviation system, and despite the benefits of a review accruing specifically to the applicant for a review.

23. Although the IRF is expected to produce collateral public benefits through its longer-term influence on CAA regulatory decision-making and aviation sector confidence in CAA as a regulator, such benefits do not outweigh the far more immediate benefits that a review affords to an individual or organisation,
24. Consequently, full Crown funding of IRF costs fails to recognise the division of benefits between the wider public and the individuals or organisations that choose to exercise the right to seek a review of a Director's decision that relates specifically to them.

Policy decision

25. The Minister of Transport has instructed the Ministry to progress work to cost recover for expenses that it incurs directly and indirectly in relation the IRF, including, as appropriate, remuneration of the reviewer(s).

Statutory authority to charge

26. Subpart 5 of Part 10 of the 2023 Act establishes a new function that enables the independent review of regulatory decisions made by the Director of Civil Aviation (the Director) and Civil Aviation Authority (CAA) personnel acting under delegated authority from the Director. Regulations will specify the types of decisions that are to be reviewable. Development of regulations is in progress, so the precise scope of reviewable Director decisions is still to be determined.
27. Section 415(1) of the 2023 Act provides that the Governor-General may, by Order in Council, on the recommendation of the Minister, make regulations prescribing, or providing for the fixing of, fees and charges payable for a range of listed purposes, including: "to reimburse the Secretary and the reviewer for costs directly and indirectly associated with the reviewer's functions under subpart 5 of Part 10".

New or amended fee?

28. The proposed fee would be new. No cost recovery regulations yet exist for Ministry services provided under civil aviation legislation.

Cost Recovery Principles and Objectives

29. The principles guiding the cost recovery proposal are:
 - allocation of IRF costs should broadly reflect public and private benefits of the service
 - all relevant direct and indirect departmental costs should be included in the base cost of the IRF
 - fees should not be set at levels that preclude or significantly impede applicants commencing a meritorious review
 - fees should be structured simply, fairly and efficiently.
30. These principles are derived from Treasury and Office of the Auditor General guidance and informed by the Ministry's 'transport regulatory system funding principles' and the Ministry of Justice cost recovery principles.
31. The objectives of the proposal are that:
 - fees reflect private benefits to IRF users and Crown funding reflects public benefits from the civil aviation regulatory system

- fees are set at a level sufficient to encourage efficient use of the IRF resource but not so high as to preclude or significantly impede applicants commencing a meritorious review.

Policy Rationale: Why a user charge? And what type is most appropriate?

The review function provides clear private good benefits

32. The IRF has been established specifically for the benefit of aviation participants, enabling them to challenge a Director's decision through a process that avoids the costs and delays involved in challenging a Director's decision in court.
33. There is typically a long interval between when a contested decision was made and the conclusion of the court process. This means court action can be an ineffective remedy, particularly in the face of adverse decisions that have an immediate, significant impact – for example, where someone has been suspended from operating within the aviation system, and thus loses their ability to earn income.
34. As an alternative to an appeal, the review function offers applicants the benefit of reduced costs and quicker resolution of matters that are in dispute.
35. An application for the review of a Director's decision gives the applicant the opportunity to have the decision opened to independent scrutiny and potentially modified or withdrawn to their advantage as a result of the reviewer's recommendation(s) to the Director.
36. Because a review of a Director's decision must relate explicitly to the individual or entity that is the subject of that decision, the associated benefits are exclusive to the applicant, and thus have the attributes of a private good.
37. Costs incurred for processing an application and for the services of the reviewer that considers the application will all relate specifically to that application. These costs would not otherwise be incurred.

Public good benefits are less clearly defined

38. The review function is expected to promote good CAA decision-making by strengthening accountability and transparency around the rationale for regulatory decisions, which will generate public good benefits through:
 - enhanced effectiveness of the regulatory system
 - increased public confidence in the regulatory system over time.
39. While they will be valuable if realised, such benefits are secondary to the benefits to aviation participants, are likely to emerge only gradually, and will not be readily measurable.

Cost recovery through a levy is not considered a feasible option

40. Although the 2023 Act provides for the imposition of levies on aviation participants for the purpose of enabling the Secretary for Transport and the independent reviewer to carry out their respective functions under the Act, the Ministry considers that a levy to recover costs associated with the review functions would be inappropriate because:

- a levy on all 36,000-odd individuals and organisations entitled to apply for a review would be inefficient, as the complexity and cost of establishing and administering a levy would be disproportionate to the amount of costs that it is estimated will be associated with the function
- use of existing civil aviation levies to meet the costs of the IRF would be inequitable because the levies are paid by aviation operators, not by individuals, such as pilots, but most applicants are expected to be individuals. It would also divert levies from their purpose of funding the Civil Aviation Authority's aviation safety functions.

Full or partial cost recovery

41. The Ministry considers there are sound policy grounds for partial cost recovery from the applicant for an IRF review.
42. The IRF has been established with the objective of overcoming the barrier that the costs of court action present to aviation participants that wish to challenge a CAA Director's decision.
43. Although the regulations to specify the types of decision that will be reviewable are yet to be made, most potential applicants are likely to be individuals rather than businesses because the great majority of aviation participants are individuals. There is a risk that high fees could undermine the policy intent of the IRF by deterring participants from exercising their right to seek a review. Cost estimates based on the existing aviation medical review function indicate that full cost recovery could result in average application fees of approximately \$3,300 (ex. GST)¹ after also taking into account administrative costs relating to the application.
44. Fees at that level would considerably exceed any application fee for access to a court or other specialist tribunal. Cost recovery should not be a potential barrier to a well-founded review application.
45. Conversely, an unduly low fee could compromise allocative efficiency by encouraging speculative or meritless review applications, thereby placing demands on the review function that reduce the resources available to consider more substantive review applications. Nor would it reflect the private good benefits that the IRF will provide for review applicants.
46. Partial cost recovery can take these competing considerations into account in the context of the cost recovery principle and objectives.
47. Crown funding of IRF costs not feasibly recoverable through partial cost recovery fees will ensure that the public policy objectives of the IRF are not compromised by cost recovery policy. In Budget 2023, Crown funding of \$7.305 million over four years, with \$1.910 million per year in the Ministry's baseline from 2025/26 onwards, was provided to help meet the costs of implementing functions, including the IRF, for which the Ministry is responsible under the 2023 Act².

¹ Figures relating to IRF cost recovery throughout this document are GST exclusive, to reflect net revenue that would be received by the Ministry.

² In addition to administration of the IRF, the Ministry is responsible for new regulatory regimes for airport registration and for airport spatial undertakings at airports where space must be provided for government border agencies, a strengthened international air carriage competition regime, and regulatory functions relating to the international air services and carbon offsetting and reduction scheme for international aviation (CORSA).

The Ministry has identified three partial cost recovery options

Option 1 – a single fixed fee for all applicants

48. Because the applicant receives the monetary and time benefits, a fixed fee payable by the applicant is an appropriate cost recovery mechanism. The fixed fee would:
- treat all applicants equally and provide certainty as to costs
 - be simple and efficient to administer.
49. The fee can be set at a level that:
- fully recovers the direct administrative costs of processing an application: the administrative steps will be identical for all applications
 - partly reflects the costs of the review itself
 - is sufficient to discourage unmeritorious applications
 - is not so high as to compromise the IRF purpose of providing a cheaper and faster review mechanism than court action, taking ability to pay into account.
50. The Ministry considers that a single fee of \$1,000 (ex. GST) would align with the above considerations for the individuals that comprise the largest single group of potential review applicants. The fee would include a component of \$432 (refer paragraphs 83 and 84) to recover direct administrative costs, with the balance partially recovering costs of the review itself.
51. However, a single fee does not take into account likely differences between reviews of decisions affecting individuals and decisions affecting organisations. In particular:
- organisations are subject to many more, and more technically complex, rules than individual and reviews of decisions affecting them are more likely to be complex and time-consuming, and thus more costly.
 - unlike individuals, organisations can pass on costs through commercial operations.

Option 2 – a two-tiered fixed fee structure

52. Under this option, an individual would pay the same \$1,000 (ex. GST) fee as under Option 1 and an organisation would pay a higher fee to reflect the different considerations that apply to organisations.
53. The higher fee for organisations can be set at a level that:
- fully recovers the direct administrative costs of processing an application: the administrative steps will again be identical for all applications, regardless of whether the review related to an individual or organisation
 - recovers a greater share of the costs of the review itself, to reflect the likely higher complexity and cost of reviews of decisions that affect an organisation
 - recognises that organisations can pass on costs, unlike individuals
 - is sufficient to discourage unmeritorious applications
-

- is not so high as to compromise the IRF purpose of providing a cheaper and faster review mechanism than court action, taking ability to pay into account
54. The Ministry considers that a fee of \$1,500 (ex. GST) for organisations would align with the above considerations. The fee would include the component of \$432 to recover direct administrative costs, with the balance of the fee partially recovering costs of the review itself.

Option 3 – recovering the cost through an hourly fee up to a cap

55. As with Options 1 and 2, the \$432 direct administrative cost of processing an application would be recovered in full but the reviewer cost component of the fee would be based on the actual amount of reviewer's time taken, subject to a cap on the total amount of the fee. The all-up fee payable would be either the total of the fixed administration charge plus the cost of actual reviewer time or the capped total fee, whichever is less.
56. The reviewer cost component could be administered in two ways.
57. One approach would be a two-part fee, with an initial payment of \$432 for administrative costs and a second payment to cover actual reviewer time or the balance of the capped total fee amount.
58. Alternatively, full payment at the capped fee level would be required on application, with a partial refund if the charge for actual reviewer hours resulted in a total fee lower than the capped amount. The latter approach would avoid the risk of an applicant failing to pay the second fee component if dissatisfied with their review.
59. After taking into account the \$432 fixed administrative charge, a fee capped at the level of the \$1,500 fee for an organisation under Option 2 would mean that, if a review took fewer than 5.65 hours, at \$189 per hour in direct reviewer costs (refer paragraph 77), the applicant would pay commensurately less than the capped fee level. For an individual applicant, with a fee capped at the Option 1 fee level of \$1,000, a reduced fee would apply if the review took fewer than 3 hours.
60. This approach to fee setting would:
- share the merits of Option 2 and, for individuals, Option 1
 - open up the possibility of a reduced fee in the case of a review that took significantly less time than the expected average.
61. However, it would:
- be considerably more complex, time-consuming and costly to administer than Options 1 and 2
 - introduce a revenue uncertainty factor that does not apply to Options 1 and 2

Assessment of proposed user charge against principles

62. The following table provides an assessment of full and partial cost recovery against the cost recovery principles.

Table 1: Assessment against cost recovery principles

	No cost recovery	Full cost recovery	Option1 Single fixed fee	Option 2 Tiered fixed fee	Option 3 Hourly charge
	Conforms to the cost recovery principles?				
Allocation of IRF costs should broadly reflect public and private benefits of the service	No All costs are borne by the general taxpayer. Private benefits are not reflected in IRF cost allocation.	No All costs are borne by IRF users. Public benefits are not reflected in IRF funding.	Yes Fees reflect private benefits to IRF users and Crown funding reflects public benefits from the civil aviation regulatory system	Yes Fees reflect private benefits to IRF users and Crown funding reflects public benefits from the civil aviation regulatory system	Yes Fees reflect private benefits to IRF users and Crown funding reflects public benefits from the civil aviation regulatory system
All relevant direct and indirect departmental costs should be included in the base cost of the IRF	Yes IRF costs include direct reviewer costs and IRF-related direct and indirect costs of the Ministry.	Yes IRF costs include direct reviewer costs and IRF-related direct and indirect costs of the Ministry.	Yes IRF costs include direct reviewer costs and IRF-related direct and indirect costs of the Ministry.	Yes IRF costs include direct reviewer costs and IRF-related direct and indirect costs of the Ministry.	Yes IRF costs include direct reviewer costs and IRF-related direct and indirect costs of the Ministry.
Fees should not be set at levels that preclude or significantly impede applicants commencing a meritorious review	Yes No fee applies	No Full cost recovery would require fees to be so high as to undermine the purpose of the IR	Yes The fee level recognises individuals' limited ability to pay a high fee. It does not factor in organisations' ability to pay and to pass on costs. It does not reflect that reviews relating to organisations are likely to be more complex and costly to consider.	Yes Tiered fee levels, with a higher fee for organisations, recognise that organisations have greater ability to pay and recover costs than individuals and that their review applications are likely to involve more complex considerations. Recovers more revenue than Options 1 and 3.	Yes Capping fees at the same levels as for Option 2 would recognise the same ability to pay and complexity considerations as Option 2. Fees for organisations are more likely to be abated under this option than fees for individuals.
Fees should be structured simply, fairly, and efficiently	≤	No Full cost recovery fees would unfairly restrict IRF access to only the most financially well-resourced applicants.	Yes All applicants pay the same fee and have certainty as to costs. Fixed fee is simple to administer.	Yes Applicants have certainty as to costs. A higher fee for organisations better reflects relevant costs. Fees simple to administer.	No A variable charge does not provide applicants with certainty as to costs and is more complex to administer than a fix fee.
Overall assessment	Full Crown funding does not reflect private benefits of the IRF.	Full cost recovery would undermine the purpose of the IRF.	Meets the cost recovery principles but does not fully take into account differences between individuals' and organisations' ability to pay.	Meets the cost recovery principles. Better recognises ability to pay and that reviews of decisions affecting organisations are likely to be more costly.	Does not provide certainty as to costs to applicant or the amount of fee to be received. Is complex to administer and less efficient than fixed fee (s).

Type of charge proposed: a fixed fee

Rationale

64. Because the applicant receives the monetary and time benefits, a fee payable by the applicant is an appropriate cost recovery mechanism and commensurate with the policy intent of the review function.

66. A fixed fee will provide applicants with certainty as to costs and be simpler and more efficient for the Ministry to administer.
67. A two-tiered fee structure, with a lower fee for individuals than for organisations is intended to reflect differences between regulatory requirements for individuals and organisations operating in the civil aviation system. Organisations are subject to extensive operational and technical aviation rule requirements that do not apply to individuals. Consequently, the matters at issue in an organisation's review application are likely to be more technically complex, and thus time-consuming to consider, than in an individual's case. An organisation paying the same fee as an individual would therefore be contributing less towards the relevant review costs than an individual and, conversely, an individual applicant would be paying proportionately more.

Who will pay the cost recovery charges?

68. An applicant for review could be any of the 35,985 individuals or entities that hold an aviation document (as at June 2023,) or a person seeking to become an aviation document holder. Most aviation document holders are pilot licence holders (30,061 individual licences). Other licensing categories include engineer, flight instructor and air traffic controller. Additionally, as at June 2023, 890 organisations held aviation documents, such as air operator, aircraft maintenance organisation, aerodrome operator and aircraft registration certificates.³
69. While the number of aviation document holders is large, only a relatively small proportion of those persons would, in any given year, be subject to a reviewable decision, such as

³ Source: Civil Aviation Authority of New Zealand 2022–2023, Annual Report (2023)

a decision to issue or renew a document or to impose conditions on, suspend or revoke a document. In turn, based on experience with medical convener reviews of aviation medical decisions of the Director, the Ministry anticipates that a very much smaller proportion of decisions will result in a review application.

70. The Ministry estimates that between 30 and 90 participants a year might apply for a review, contingent on several factors, including the yet-to-be-determined scope of reviewable decisions. The upper end of the estimated range reflects that the more types of decision are specified as reviewable, the greater the potential for review applications, even if, as anticipated, only a very small proportion of decisions are contested. The lower end of the range draws on experience with medical convener but assumes that, because the IRF will apply to more than just the one type of Director's decision, the annual number of review applications is likely to be greater than the typical 15-20 medical review applications.

The level of the proposed fee and its cost components (cost recovery model)

Design of cost recovery charges

Proposed charge level

71. It is proposed that, as proposed under Option 2, a single fixed fee of \$1,000 (ex. GST) should apply to individual review applications and a single fixed fee of \$1,500 (ex. GST) to organisations.
72. The charge levels are designed to recover the full cost of Ministry administrative effort relating directly to applications and a proportion of the cost of reviewer remuneration at a total cost level that meets the principles and objectives for the proposal.

Cost drivers and business activities

73. The main costs of the review function will comprise:
- the remuneration of reviewer(s) and incidental costs
 - the cost of secretariat and functional support for the review process provided by the Ministry, including overheads
 - the costs of any independent contracted technical advice where reviews centre on technical matters beyond the expertise of reviewers.

Reviewer costs

74. The drivers of reviewer costs will be:
- the daily remuneration rate paid to the reviewer(s)
 - incidental costs
 - the number of reviews
 - the hours of reviewer time involved in carrying out a review.
75. Because the IRF is new, there is limited information from which to gauge how long it may take to perform reviews, and the scope of reviewable decisions is still to be determined. In the absence of other data, the Ministry has drawn on experience with the medical convener procedure for reviews of Director's aviation medical decisions, which is the model for the IRF.

76. Over the period February 2020 to March 2024, medical convener reviews involved, on average, approximately 30 hours of convener effort. This reflects that the reviews often involve complex, sometimes contentious, medical issues that are inherently time-consuming to resolve. The Ministry anticipates that, although the two review processes are similar, the average IRF review will require less reviewer effort. While the scope of reviewable decisions will be greater than for medical reviews, the nature of the matters at issue is expected to be more straightforward, with complex cases the exception rather than a consistent theme. For these reasons, it is assumed that the average IRF review will involve no more than two days or 15 hours of reviewer effort.
77. The daily remuneration rate for the independent review function is yet to be determined. However, in view of the similarity between the role of the independent reviewer and the medical convener, it is assumed that the remuneration rate will align with the \$1,513 daily rate (\$189 per hour ex. GST) for the convener⁴.
78. The likely annual number of independent review applications is estimated at between 30 and 90, as discussed at paragraph 70.
79. Based on the above assumptions, the annual cost of reviewer hourly remuneration would range between \$85,000 and \$255,000, – at an average cost of approximately \$2,800 per review. Within that average, the actual effort and cost for individual reviews can be expected to vary considerably, depending on the subject matter and complexity of the decision at issue.

Cost of independent technical advice

80. Although the scope of Director's decisions to be covered by the IRF is still to be finalised, reviews will necessarily involve issues of widely varying technical complexity. There may be an occasional need for specialist technical advice but the Ministry expects such instances to be rare, as relevant CAA technical expertise will feed into the evidence that the Director must provide to the reviewer on the matter at issue under the review. Additional technical advice could add approximately \$10,000 to \$15,000 to the cost of a review. Against this background, and at present stage of IRF implementation, the impact of any such costs on IRF funding cannot realistically be gauged.

Ministry costs

81. The Ministry will provide secretarial and functional support for the IRF, including establishing and maintaining procedures for handling review applications, record keeping, provision of guidance to applicants and liaison between applicants, the reviewer(s) and the CAA.
82. The drivers of Ministry costs will be:
- staff time spent on IRF-related activity
 - staff remuneration rates
 - overhead costs.
83. The intention to recover only Ministry administrative costs related *directly* to review applications reflects that those costs can be linked more transparently to an application than would be the case for more general secretariat and reviewer support effort. It also

recognises that partial recovery of reviewer costs, combined with full recovery of direct application administration costs, already brings fees to what the Ministry considers the reasonable threshold for cost recovery.

84. Based on the expected volume of review applications, the Ministry does not consider that administrative support for the IRF will require new or additional resources. Fees can be handled and accounted for through the Ministry’s manual payments system within existing resources. The expected annual volume of applications and fee revenue will be insufficient to justify the expense of designing and implementing an IT solution.

Costing the activity.

85. For all options, the following assumptions apply to the costing of Ministry administrative support for the IRF application process:

- work will be performed by a mid-range Level 2 advisor at a salary of \$105,000 including KiwiSaver and ACC oncosts, plus an overhead of 45% for corporate costs, equating to \$152,250
- based on 1,400 available person hours in a year, the average hourly cost of Ministry IRF activity is \$108
- unlike the effort required for the review itself, which will vary according to subject matter and complexity, the effort required for administrative steps associated with a review application is expected to be consistent
- based on workflow process mapping for all administrative steps from receipt of an application through to notification of a final decision, the Ministry estimates that each application will involve a cumulative 4 hours of administrative effort.

86. The resulting cost to the Ministry equates to \$432 per application.

Forecast revenue

87. Revenue from fees will be driven by the number of review applications and the proportions of applications submitted by individuals and organisations. Based on the expectation that most review demand will come from individuals, forecasting has assumed a 2:1 ratio for applications from individuals and organisations.
88. Applying this assumption to the estimated range of application numbers, estimated annual revenue and costs under Option 2 will be as shown below.

Table 2: Fee revenue estimates (ex. GST)

	Total applications = 30		Total applications = 90	
	Type	Revenue	Type	Revenue
Individual	20	\$20,000	60	\$60,000
Organisation	10	\$15,000	30	\$45,000
Total revenue		\$35,000		\$105,000

Table 3: Cost estimates (ex. GST)

	Total applications = 30	Total applications = 90
Ministry staff costs	\$12,960	\$38,880
Reviewer remuneration	\$85,050	\$255,150
Total	\$98,010	\$294,030

89. Based on the above revenue and cost estimates, the residual cost to the Ministry of the IRF function will range from \$63,010 for 30 annual reviews to \$189,030 for 90 annual reviews.
90. As indicated in the policy rationale analysis and assessment against the policy principles for the proposal, it would not be possible to align revenue with expenses. The relationship between revenue and expenses will be monitored and would inform the application fee review to be undertaken once the IRF has accumulated sufficient information on actual demand and costs.

Changes in the underlying assumptions will affect financial estimates.

91. If the effort necessary to process applications in practice varies materially from current estimates, resulting in over recovery of expenses, it would be necessary to adjust the cost recovery regulations accordingly.
92. If the number of reviews is greater than predicted, other funding options will need to be explored, including additional Crown funding or higher levels of cost recovery.

Impact analysis

Number of people and businesses affected

93. The proposed fee will only apply to a person, business or other entity that applies for the review of a Director's decision.
94. It is assumed that the maximum level of demand will be around 90 reviews per annum and that most applicants will be individuals rather than businesses.
95. For review applicants, the application fee would be additional to any fee applicable to the CAA in respect of the relevant decision. It would, however, be far lower than the costs associated with court action to challenge that same decision.
96. For example, fees for most aviation documents range between \$171 and \$260 (incl. GST) under existing regulations (though these amounts will increase by 47% (i.e. between \$251 and \$382) with effect from July 2025 if proposals under the current pricing review of CAA charges are implemented).

Impact on the Ministry

97. Based on the expected volume of review applications, the Ministry considers that the collection and administration of review application fees is an isolated activity that can be

managed from within existing Ministry capability, without materially affecting other business activities.

Reasonableness of proposed fee

98. Comparable fees in New Zealand or another jurisdiction do not distinguish between individuals and organisations.
99. The fee for an individual is comparable to the \$910 (incl. GST) fee payable under the Immigration and Protection Tribunal Regulations 2010 in respect of applications for appeal to the Tribunal under the Immigration Act 2009.
100. The fee is also comparable to the standard application fee of AU\$1,082 that applies to Australian Administrative Appeals Tribunal reviews of a wide range of decisions by authorised decision-makers, including the Civil Aviation Safety Authority. However, we note the Transportation Appeal Tribunal of Canada has similar jurisdiction over civil aviation decisions - no fee applies to a review request. The UK civil aviation system provides multi-tiered review regime, also with no fees.

Consultation

101. This Cost Recovery Impact Statement has been prepared to accompany a Cabinet paper seeking approval to release a consultation document inviting stakeholder submissions on the proposed partial cost recovery options for the IRF.

Conclusions and recommendations

102. Based on the available information, the Ministry considers partial cost recovery to be appropriate, through fixed application fees payable by review applicants. Fixed fees will provide applicants with certainty as to costs and be simpler and more efficient for the Ministry to administer, given that full cost recovery is not proposed.
103. Although a review is principally for the benefit of an applicant, full cost recovery is likely to have the perverse effect of deterring potential aviation participants from taking up their statutory right to seek a review of a Director's decision.
104. If the number of reviews is as predicted, the Ministry would be able to meet the remaining costs of the review function from within the baseline funding provided in Budget 2023 to help meet the costs of implementing the functions for which the Ministry is responsible under the 2023 Act.
105. A Crown contribution to IRF costs would ensure that the public policy objective of the review function is not compromised and would reflect that, over time, the review function is expected to produce public good benefits through improvements to regulatory performance and confidence in the civil aviation regulatory system.
106. The Ministry recommends fees of \$1,000 (ex. GST) for individuals and \$1,500 (ex. GST) for businesses.
107. The fees will be reviewed once sufficient information is available to do so in light of information gained through implementation of the review function.

Implementation plan

108. Subject to Cabinet approval, and regulations being drafted, it is intended that fees will apply with effect from 5 April 2025, when the Civil Aviation Act 2023 come into force.
109. The fee and the application procedure will be notified on the Ministry's and CAA's websites.
110. Fees will be handled and accounted for through the Ministry's manual payments system. The expected annual volume of applications and revenue will be insufficient to justify the expense of designing and implementing an IT solution.
111. The Ministry will collect the fee at the time an application for a review has been accepted, with the fee payable through internet banking.
112. As the fee must be paid on acceptance, no enforcement action will be necessary in the event of non-payment.

Monitoring and evaluation

113. The Ministry will monitor and record the time spent by Ministry staff in dealing with review applications, and will evaluate the results to ensure that the associated procedures are being undertaken in a timely and efficient manner.
114. The Ministry will monitor the performance of the reviewer/reviewers, record the time that it takes for a reviewer to review each application, and monitor and record associated costs such as costs for specialist technical expertise to assist in consideration of a review application.

Review

115. Once the IRF is 'bedded in' and monitoring of the IRF has generated sufficient performance and cost data to do so with a reasonable level of confidence, the Ministry will review the IRF cost recovery arrangements. With the benefit of that hard data, the review will be able to revisit demand, effort and cost assumptions, assess implications for the level of cost recovery, and identify any consequential fee changes that might be necessary. As part of the review, the Ministry will also consider whether the fee has had any impact on uptake of the right to seek independent reviews of Director's decisions. The Ministry expects sufficient information to have become available to undertake the review within the three-year cycle that is best practice for reviews of fees and charges.

PROACTIVELY RELEASED BY
MINISTRY OF TRANSPORT, INFRASTRUCTURE AND WATER



Cabinet Economic Policy Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Civil Aviation Authority Independent Review Function: Release of Consultation Document on Cost Recovery

Portfolio **Transport**

On 24 September 2024, the Cabinet Economic Policy Committee (ECO):

- 1 **noted** that the Civil Aviation Act 2023 creates a new function to enable applicants to seek independent reviews of decisions made by (or on behalf of) the Director of Civil Aviation that will become operational on 5 April 2025, and provides for the making of regulations, fees and charges to reimburse costs associated with the new independent review function;
- 2 **noted** that public consultation on the scope of decisions to be covered by the new independent review function closed on 24 September 2024, and that the Minister of Transport is to report back to ECO with final advice on the scope of the function by November 2024 [ECO-24-MIN-0128];
- 3 **agreed** to the public release of the consultation document *Independent Reviews of the Director of Civil Aviation's Decisions: Proposed Fees for Applicants*, attached to the paper under ECO-24-SUB-0214, and for the Ministry of Transport to carry out public consultation for a four-week period on the options and fee levels proposed in the consultation document;
- 4 **authorised** the Ministry of Transport to make minor or technical changes to the consultation document, if necessary, prior to its release;
- 5 **noted** that the Minister of Transport will report back to ECO in December 2024 on the outcome of this consultation and to seek authorisation to issue drafting instructions for regulations setting application fees for the independent review function.

Rachel Clarke
Committee Secretary

Present:

Hon David Seymour (Chair)
Hon Shane Jones
Hon Brooke van Velden
Hon Simeon Brown
Hon Paul Goldsmith
Hon Louise Upston
Hon Mark Mitchell
Hon Tama Potaka
Hon Penny Simmonds
Hon Mark Patterson

Officials present from:

Office of the Prime Minister
Officials Committee for ECO



Cabinet

Minute of Decision

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Report of the Cabinet Economic Policy Committee: Meeting of 24 September 2024

On 30 September 2024, Cabinet made the following decisions on the work of the Cabinet Economic Policy Committee for the period ended 27 September 2024:

ECO-25-MIN-0214 **Civil Aviation Authority Independent Review** CONFIRMED
Function: Release of Consultation Document on Cost Recovery
Portfolio: Transport

Out of Scope

Rachel Hayward
Secretary of the Cabinet

PROACTIVELY RELEASED BY
MINISTRY OF TRANSPORT TE MANATŪ WAKA