



Cabinet Economic Development Committee

Minute of Decision

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Civil Aviation Bill: Drone Intervention and Minor Policy Matters

Portfolio Transport

On 11 March 2020, the Cabinet Economic Development Committee (DEV):

Background

- 1 **noted** that on 15 April 2019, Cabinet agreed to the release of an exposure draft of the Civil Aviation Bill and to an accompanying commentary document that seeks stakeholder views on options to provide law enforcement agencies with powers necessary to detain, seize or destroy drones [CAB-19-MIN-0167];

Amendments to regulate the use of drones

- 2 **agreed** that the Civil Aviation Bill create a special power for constables, and suitably qualified and trained individuals authorised by the Director of Civil Aviation, to intervene against drones that are being operated in a manner that is an offence under civil aviation law or being used in the commission of an imprisonable offence under another Act, including the power to seize the drone's controlling mechanisms;

Withheld for security reasons

- 3 [Redacted]

- 4 [Redacted]

- 5 [Redacted]

Other, minor policy proposals

- 6 **noted** that the Minister of Transport is proposing a number of relatively minor policy changes (including transitional provisions) relating to matters arising from submissions on the Civil Aviation Bill and further work on particular provisions in the Bill, as outlined in paragraphs 7-14 below;

Regulator powers

- 7 **agreed** the Civil Aviation Bill provide for modern regulatory powers, including:
- 7.1 the ability to accept enforceable undertakings from regulated parties;
 - 7.2 court injunctions to restrain contraventions of civil aviation law;
 - 7.3 the ability to issue improvement and prohibition notices;
 - 7.4 powers for all types of authorised aviation security personnel to arrest and detain a person until handed over to police;
 - 7.5 clearer exemption powers within civil aviation legislation;
 - 7.6 appropriate powers for the Secretary for Transport, to support their regulatory role;

Time for filing charging document

- 8 **agreed** that the Civil Aviation Bill model provisions found in the Health and Safety at Work Act 2015 regarding time for filing charging documentation;

Airways' monopoly

- 9 **agreed** to include a mechanism within the Civil Aviation Bill whereby the Minister of Transport can establish, amend or revoke Airways' monopoly through Gazette notice;

Aviation statistics

- 10 **agreed** that the Civil Aviation Bill include a regulation-making power to ensure the Secretary for Transport can collect, use and publish data and statistics from aviation participants;

Flight recorders

- 11 **agreed** that the Civil Aviation Bill amend the Transport Accident Investigation Commission Act 1990, to better define what equipment or information is covered under the legislative protections relating to cockpit voice and video recorders;
- 12 **agreed** that the Civil Aviation Bill provide protections relating to the admissibility of flight data recorder information in criminal proceedings;

The purpose statement

- 13 **agreed** that the Civil Aviation Bill's additional purpose statements include the promotion of efficiency, effectiveness and innovation in civil aviation;

Transitional arrangements

- 14 **agreed** that the Civil Aviation Bill include transitional provisions to manage the transition to the new regime in a manner that provides certainty for operators, the regulator and the public, while minimising unnecessary compliance costs and risks;

Legislative implications

- 15 **invited** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the above paragraphs;

- 16 **authorised** the Minister of Transport to make final decisions, consistent with the overall policy intent, on details that arise during the drafting of the policies referred to in the paper under DEV-20-SUB-0030 without further reference to Cabinet.

Janine Harvey
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Phil Twyford
Hon Dr Megan Woods (Chair)
Hon Chris Hipkins
Hon David Parker
Hon Nanaia Mahuta
Hon Iain Lees-Galloway
Hon Damien O'Connor
Hon James Shaw
Hon Eugenie Sage

Hard-copy distribution:

Minister of Transport

Officials present from:

Office of the Prime Minister
Officials Committee for DEV

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Office of the Minister of Transport

Chair, Cabinet Economic Development Committee

CIVIL AVIATION BILL – DRONE INTERVENTION AND MINOR POLICY MATTERS

Proposal

1. This paper seeks Cabinet approval for new powers to intervene in relation to unlawfully operated drones and other minor policy proposals for inclusion in the Civil Aviation Bill.

Executive Summary

2. The Civil Aviation Bill (the Bill) seeks to repeal and replace the two main pieces of primary legislation governing aviation in New Zealand, the Civil Aviation Act 1990 and Airport Authorities Act 1966. It aims to enhance safety, security and efficiency in civil aviation.
3. I am seeking Cabinet approval for new and amended policy proposals under the Bill.

The main proposal in this Cabinet paper relates to new powers to regulate the use of drones

4. In mid-2019, Cabinet agreed that officials would undertake public consultation on proposed powers to detain, seize and destroy unmanned aircraft (drones) [CAB-19-MIN-0167 refers]. This consultation was undertaken through a commentary document and an exposure draft of the Bill.
5. The Ministry of Transport received submissions from a number of interested parties, including aviation hobbyists, commercial drone users, airports, and airlines. The comments presented a wide range of views about the best way to regulate drones and enable enforcement of the rules governing drone use.
6. As a result of these submissions, and consultation with the Civil Aviation Authority and the New Zealand Police, I seek Cabinet approval that the Bill create a special power for constables and suitably qualified and trained individuals authorised by the Director of Civil Aviation to intervene against drones (including their controlling mechanisms – e.g. a remote control held by the operator), when a drone is being used in the commission of an offence under the new Act or in the commission of an imprisonable offence under another law.

I am also seeking Cabinet approval for a number of other, more minor policy proposals

7. Since Cabinet was briefed in April 2019, my officials have reviewed regulator powers and functions, and the overall enforcement framework, to ensure it is up to date and consistent with other, more modern regulatory regimes.
8. As a result of this work, I am proposing amendments to support a well-performing regulatory framework. This includes the addition of new regulator powers, modelled on the Health and Safety at Work Act 2015, and amendments to modernise and deal with discrepancies in existing powers.
9. I am also seeking approval for a number of other minor policy proposals, some of which arose out of stakeholder submissions on the Bill. These include:
 - 9.1. changes to the time available for filing charging documentation, modelled on the Health and Safety at Work Act;
 - 9.2. a mechanism whereby the Minister of Transport can amend or revoke Airways New Zealand's monopoly through *Gazette* notice;
 - 9.3. a regulation-making power to provide for the collection, use, and publication of data and statistics about aviation;
 - 9.4. amendments to the Transport Accident Investigation Commission Act 1990, to more clearly define what equipment or information is covered under the legislative protections relating to cockpit voice and video recorders;
 - 9.5. protections relating to the admissibility of flight data recorder information in criminal proceedings;
 - 9.6. provisions to manage the transition to the new regime to provide certainty for operators, the Civil Aviation Authority and the public, while minimising unnecessary compliance costs and risks.

Background

The Civil Aviation Bill makes a number of improvements to primary aviation legislation

10. The Civil Aviation Bill (the Bill) repeals and replaces New Zealand's two main pieces of primary aviation legislation – the Civil Aviation Act 1990 (the 1990 Act) and the Airport Authorities Act 1966.
11. The Bill is the result of a comprehensive review of both pieces of legislation, first initiated in 2014. It contains a large number of policy proposals to improve the safety, security and efficiency of the civil aviation system.

12. It also seeks to modernise New Zealand's civil aviation legislation, which has not been substantially reviewed in decades. It does this by:
 - 12.1. aligning with other similar or overlapping regulatory systems, such as the Health and Safety at Work Act 2015 (HSWA)
 - 12.2. incorporating amendments which account for new technology (such as drones and increasing automation)
 - 12.3. incorporating modern drafting techniques, thereby improving the accessibility of the legislation.
13. In April 2019, Cabinet confirmed the decisions made by the previous government on the Bill in 2016. It also approved additional and revised policy proposals which arose while working with the Parliamentary Counsel Office on drafting, and agreed to release an exposure draft of the Bill for consultation with industry [CAB-19-MIN-0167 refers].

An exposure draft of the Bill was released for consultation last year

14. The Ministry of Transport consulted on an exposure draft of the Bill in mid-2019 and received feedback from 120 submitters, on a range of topics covered in the Bill.
15. The Ministry of Transport intends to release a consolidated table summarising stakeholder feedback on the Bill at introduction.
16. No significant unexpected issues were raised through consultation. However, a number of relatively minor policy issues arose that require amendments, and Cabinet approval. These are addressed in this paper.
17. In addition, I have submitted a further Cabinet paper proposing a licensing regime for airports, for inclusion in the Bill. This Cabinet paper also recommends amendments to previous airport-related policy proposals regarding airport pricing and leasing provisions. The airport licensing proposal addresses concerns about the balance between commercial incentives and public policy objectives, to achieve better outcomes at airports. This proposal was not included in the exposure draft of the Bill, as the policy was in development. I will seek agreement to undertake targeted consultation on the proposal for airport licensing.
18. Comments on the drafting of the Bill have also resulted in a number of improvements within the existing policy decisions. These technical amendments will be reflected in the Bill as introduced.

I seek Cabinet approval for detention, seizure and destruction of unmanned aerial vehicles (drones)

19. In 2019, Cabinet agreed that officials would undertake public consultation on proposed powers to detain, seize and destroy drones [CAB-19-MIN-0167 refers]. This consultation was undertaken through a commentary document accompanying an exposure draft of the Bill in mid-2019.
20. New Zealand will gain significant economic, environmental, safety and social benefits if drones are successfully integrated into the civil aviation system. A recent Ministry of Transport study estimated the benefit to the New Zealand economy of the integration of drones is up to \$7.9 billion over 25 years.
21. Alongside these benefits, however, drones present some potential safety and security risks that need to be managed. Sensible, proportionate regulation and appropriate regulatory powers are needed to support “good” operators to obtain the social licence needed for the operation of this technology.
22. Drones are becoming increasingly commonplace in New Zealand, and many small-to-medium sized models are easy to obtain from electronics retailers and online suppliers. Unlike other aircraft, registration and an aviation document (essentially a licence) is not currently required to own or operate a small drone, provided the user complies with civil aviation rules made under the Act.
23. These rules include rules for operation (e.g. maintaining visual line of sight) and location restrictions (including no operation within 4km of an airport or over private property without consent and below 400ft). Drone operators may also apply for an aviation document if they seek less restricted use.
24. The Ministry of Transport and the Civil Aviation Authority (CAA) are reviewing these rules to ensure they provide for the safe and effective integration of drones into the civil aviation system, and that the rules maintain alignment with international best practice. This work programme includes the investigation of measures such as registration, pilot competency, and remote identification. I intend to bring that work programme and a discussion document to Cabinet in the second quarter of this year.
25. For the rules to be effective, however, they need to be supported by intervention and enforcement powers in primary legislation. Administrative enforcement enabled under the 1990 Act, is not, on its own, sufficient for this purpose.
26. International experiences demonstrate that drones have the potential to cause significant risk and disruption to other aircraft, aviation operations, and people on the ground. Many of our international partners are pursuing intervention powers, and are trialling intervention technologies.

27. The 1990 Act does not provide specific powers to take action in relation to an aircraft in operation. For obvious reasons, taking action in relation to aircraft with people on board has not been seen as appropriate, and the regulator has focussed on preventing take-off or taking regulatory action against the pilot or operator subsequent to an event.
28. Police can respond to aviation incidents as they unfold the same way they respond to other incidents. If prompt action is required due to an imminent threat, constables can take action without a warrant. This type of action relies on NZ Police's law enforcement functions and the availability of defences and prosecutorial discretion.
29. However, the current regulatory framework does not provide specific powers to take action against a drone operating in contravention of the law, if the operation does not also pose an immediate threat to people or property.
30. While this has been broadly sufficient until now, the proliferation of drones and advancements in drone technologies justify a special power to address contraventions of the law, even where there is no imminent risk to people or property.
31. The Ministry of Transport received submissions on this proposal from a number of interested parties, including aircraft hobbyists, commercial drone users, airports, and airlines. The comments received presented a wide range of views around the best way to regulate drones and enable enforcement of the rules governing drone use.

Proposed suite of intervention powers for unlawful drone activity

32. As a result of the submissions, and consultation with the CAA and NZ Police, my preferred option is to create a special power for constables (in accordance with NZ Police procedures), and other suitably qualified and trained persons authorised by the Director of Civil Aviation (the Director). The power will enable these people to intervene against drones that are being operated in manner that is an offence under civil aviation law or being used in the commission of an imprisonable offence under another Act, and their controlling mechanisms (e.g. a remote control), in a graduated fashion.
33. The Director's power to authorise persons other than constables could be used, for example, to authorise employees of government agencies (such as the Department of Corrections) to use drone intervention powers in appropriate circumstances. Authorised persons will be able to use any lawful means as part of their work.
34. The Ministry of Transport will work with the Ministry of Justice, NZ Police, and other interested agencies (e.g. the Department of Corrections) to work through the test and the threshold as the Bill develops.

35. The response powers will be graduated, and, while authorised persons will have the power to destroy drones, this would remain a last resort. NZ Police will need to develop operational procedures for use of the equipment (and will consult the Director on these), and operational procedures for other authorised persons will be subject to the Director's approval.

Withheld for security reasons

36. [Redacted]

37. [Redacted]

38. [Redacted]

39. [Redacted]

40. I consider that these intervention powers are necessary to ensure the drone regulatory system is fit for purpose. [Redacted] to reflect the need for permanent legislation. Withheld for security reasons

41. However, merely creating the power is not enough. Significant investment in capability and equipment [Redacted] Withheld for security reasons [Redacted], and clear operational procedures, will be necessary if these powers are to be credible and are able to be safely used to deal with unlawful activity by drone operators. [Redacted]

Free and frank

I seek agreement to a number of more minor policy proposals

42. I also seek approval for a range of relatively minor policy proposals, including changes which have arisen from stakeholder submissions and transitional provisions to support the transition to the new regulatory regime.

43. Officials have also taken the opportunity to review the regulator powers and functions, and the compliance and enforcement framework, to ensure they are up to date and fit for purpose to support a well-performing modern risk-based regulatory system.
44. The regulatory powers and compliance and enforcement framework in the 1990 Act largely reflect the 1980s context of its development, with some incremental improvements in the intervening three decades. The time is right to refresh these provisions and introduce regulatory tools that we would expect to be present to support a modern risk-based regulator.
45. I therefore propose the following changes to regulator powers and the compliance and enforcement framework in the Bill. None of these changes should be controversial – or even particularly note-worthy - given that they simply keep the regime in line with other overlapping regulatory systems – principally HSWA (under which the CAA is the health and safety at work regulator for aviation).

Regulatory powers

46. The 1990 Act is missing some modern regulatory tools available in equivalent regimes. The missing tools are described below.
- 46.1. *Enforceable undertakings* – statutory frameworks for enforceable undertakings support operators and the regulator in reaching sensible outcomes where the operator is willing to make voluntary changes that would avoid the need to prosecute or take other action. They ensure that an operator is accountable for their promises, while giving certainty that no action will be taken if they honour them. Enforceable undertakings are a feature of many regulatory regimes including health and safety, competition, consumer protection and financial markets laws, and are being progressed for land transport through the Land Transport (NZTA) Legislation Amendment Bill.
- 46.2. *Court injunctions* to restrain contraventions of civil aviation law – prosecution for an offence and administrative action, such as removal of an aviation document, are usually effective tools to deal with non-compliance. There are, however, circumstances where a participant may choose continued non-compliance, and to pay any fines that might eventuate. One option the 1990 Act uses to deal with this risk is to provide penalties for continuing offences in some cases, but that approach is inconsistent with the Legislation Design and Advisory Committee Guidelines and is not being carried over into the new Bill. An alternative is to provide for the regulator to apply to the court for injunctions to restrain breaches of statutory offence provisions. While these are available in the High Court's inherent civil jurisdiction, a statutory framework provides more certainty and prominence to its availability. Similar injunctions are used in a number of regimes including financial markets, and are planned in other parts of the transport regulatory system.

- 46.3. *Improvement and prohibition notices* – the 1990 Act provides a general power for CAA enforcement officers to enter aircraft and aviation-related workplaces for the purposes of carrying out regulatory functions under the Act. While there, the enforcement officer can, if prompt action is necessary to prevent danger to people or property, exercise powers to detain aircraft and prohibit or impose conditions on the use of aircraft delegated to that officer. These powers are very targeted and limited. The officer does not, for example, have powers under the 1990 Act to take immediate action beyond the use of the aircraft. These same officers could have such powers under HSWA, but only as far as the CAA's current HSWA designation, which extends only to aircraft in operation. To address this, I am proposing powers to issue improvement and prohibition notices under civil aviation legislation modelled on the Health and Safety at Work powers. This will provide CAA enforcement officers with a wider range of regulatory tools to require up-front action to address safety concerns. Such front line regulator powers are not needed for the Secretary for Transport (see paragraph 46.6).
- 46.4. *Aviation security officer powers to arrest and detain* - The Bill provides flexibility for airlines, aerodromes or navigation installation operators to be authorised to provide aviation security services alongside the Aviation Security Service (AvSec) in the future [CAB-19-MIN-0167 refers]. While there are currently no plans to remove AvSec's status as sole provider of these services, it is crucial that the Bill provides the tools to enable aviation security services to be provided effectively and safely irrespective of who provides them.¹ Under section 81 of the 1990 Act, non-AvSec officers would have all of the powers of an AvSec officer, except the power to arrest and detain any person until they are able to be handed over to a constable. A practical consequence of this exception is that a non-AvSec officer would have no effective means of ensuring a person who was found to be carrying dangerous goods remained in a designated area to be collected by NZ Police. This creates an impractical gap that would effectively prevent the use of non-AvSec officers at, for example, an airport that does not have a constable present. I therefore propose to omit this exception.
- 46.5. *Exemption powers* – The exemption powers in the 1990 Act lack some necessary features for exemptions and do not reflect modern best practice. In particular, the current provisions do not give regulators clear powers to grant class exemptions, revoke exemptions, set time limits on exemptions, amend exemptions, or enable exemptions from regulations. In September 2019, Cabinet agreed to clarify powers of exemption in the Land Transport Act and the Maritime Transport Act due to similar issues with those powers [DEV-19-MIN-0222 refers]. As noted in that paper, there is also a need to make equivalent changes in aviation legislation, which I propose be included in this Bill.

¹ AvSec is an operational unit within the CAA. It is the sole provider of aviation security services in accordance with a gazette notice currently made under section 79A of the 1990 Act [1997-go3702 refers]. Before another provider could offer aviation security services, the Minister would need to terminate the monopoly by issuing another notice under the Act, and CAA would need to issue an aviation document to the provider covering the services.

46.6. *Secretary for Transport powers* – the Secretary for Transport has regulatory functions under the Bill that are not supported by powers to enable the Secretary to carry out this role effectively, including powers to obtain information and documents and supporting offences. I propose amendments to the Bill to expand or replicate powers of the Director, as appropriate, to support the Secretary's performance of their role. This includes the ability to fund the Secretary's functions through regulations prescribing fees, charges and levies.

Time for filing charging document

47. Section 65 of the 1990 Act provides a limitation period of 12 months after the date on which an offence was committed to file charging documentation. At times, the CAA has been unable to pursue enforcement action because some offences are often not disclosed or uncovered in time to complete the work necessary to file a charge within 12 months of the offending conduct. This issue is particularly relevant for offences relating to information disclosure/documentary type offending, such as providing false information to gain medical certificates or aviation documents.
48. The previous government agreed to amend the limitation period for certain offences² to 12 months from when the offence was detected. This was to ensure that delayed disclosure of relevant information would not prevent the CAA from pursuing enforcement action.
49. The commentary to the exposure draft released in 2019 sought stakeholder feedback on this proposed change, as well offering an alternative option of aligning the limitation period with HSWA.
50. The Ministry received only a few submissions on this proposal when the exposure draft was released.
51. The submission from aviation consultancy IQ Aviation (which was endorsed by a large number of stakeholders in the aviation community) supported a move to the HSWA provision which provides that the 12 month limit applies when the offence ought reasonably to have been known by the regulator. They note that this places some constraint on the regulator, and ensures a potential charge does not live on in perpetuity.
52. The New Zealand Airline Pilots Association was concerned that tying the filing period to when the offence becomes known would be a significant overreach, which would essentially provide unlimited exposure to charges. I consider it is inappropriate to prevent the regulator from taking enforcement action, merely because the offence was hidden, or not uncovered in sufficient time to take action.
53. I recommend the provision be modelled on HSWA where:

² Offences where this applies include – communicating false information, acting without a medical certificate or aviation document, failing to notify accidents and incidents, failing to disclose information relevant to granting an aviation document and fraudulent, misleading and false statement to obtain a medical certificate.

- 53.1. proceedings for an offence can be brought 12 months after the date on which the incident, situation, or set of circumstances to which the offence relates first became known, or ought reasonably to have become known, to the regulator
 - 53.2. proceedings may also be brought within 6 months after the date on which a coroner completes and signs a certificate of findings if it appears from the certificate of findings (or the proceedings of an inquiry) that an offence has been committed
 - 53.3. a District Court may extend the time available by an additional 12 months, on application of the regulator, provided certain conditions are met (i.e. complex and time consuming cases, which are in the public interest, and where extension will not unfairly prejudice the defendant in defending the charge).
54. The HSWA model provides a good balance between ensuring CAA has adequate time to discover and bring charges for offences, and thereby properly enforce and administer civil aviation law, while the objective test “ought reasonably to have become known”, provides some restraint on prosecuting historic offences.

Airways monopoly

55. Section 99 of the 1990 Act provides that the Airways Corporation is the sole provider of certain air traffic control and flight information services. A 1992 amendment to the 1990 Act, if brought into force by Order in Council, would have repealed section 99, ending the Corporation’s statutory monopoly. This provision has intentionally not been brought into force. This “latent legislation” is functionally equivalent to the *Gazette* notice that provides for AvSec’s sole provider role for aviation security services.
56. The exposure draft of the Bill sought comment on whether it was desirable to retain the power to remove Airways’s monopoly, given that it has been unused for well over 20 years, and there is no current intention to remove the monopoly.
57. The Ministry of Transport received a number of submissions from airlines, airports and aviation experts which had concerns about removing this latent legislation. They noted future technology may make it possible for other organisation to offer these services. As it stands, the statutory monopoly Airways enjoys would prevent this.
58. I agree with stakeholders that it would be beneficial to continue to have a mechanism which could be used to remove Airways’ monopoly. This would provide flexibility if another provider entered the market who could safely and efficiently offer these services.
59. Rather than achieving this through retaining the latent legislation, I propose to mirror the equivalent AvSec mechanism, so that the continuation or removal of Airways’ monopoly is a decision made by the Minister of Transport, and that civil aviation legislation contain a mechanism whereby the Minister of Transport could establish, amend or revoke Airways’ monopoly by way of a *Gazette* notice. This is similar to how Avsec’s monopoly for aviation security services is provided for under the 1990 Act.

60. This change would reflect the administrative nature of the decision being taken, and provide the flexibility needed to provide for targeted changes to the scope of the monopoly in the future.
61. Should Airways' monopoly be removed, any organisation that sought to provide these services would be required to meet standards set by civil aviation rules, and be certified by the CAA.

Aviation statistics

62. The 1990 Act currently has limited powers to require aviation participants, such as airlines and airports, to collect, provide to government or publish information about their operations, such as for example, on time performance. This puts us out of step with other countries such as Australia, and severely limits our ability to obtain authoritative data about the aviation system.
63. I propose adding a regulation-making power to the Bill to ensure this is provided for. I expect some of the information will be commercially sensitive, and should be provided to the Secretary for Transport on a confidential basis for statistical purposes. As a result, any proposed regulations will need to be carefully designed and be subject to rigorous regulatory impact assessment before being made.

Flight recorders

64. Flight recorders, known colloquially as the 'black box', are electronic recording equipment installed in aircraft. Their purpose is to preserve the history of a flight, so it can be used to assist safety investigators in the event of an accident or incident.
65. These devices have been developed and mandated with the intention that the information obtained will be used for system safety. The information is not intended for the purpose of holding a pilot or other person accountable, for example, as part of legal proceedings.
66. Reflecting this, standards set by the International Civil Aviation Organization (ICAO) promote the protection of flight recorder information, so that it is not disclosed or used for reasons outside accident and incident investigation.
67. Officials have identified two issues with the current protections for flight recorder information in New Zealand legislation.

There is a lack of clarity about what constitutes a cockpit voice and video recorder

68. Cockpit voice and video recorders (CVRs) are a type of flight recorder which capture images and sound within the cockpit.

69. The Transport Accident Investigation Commission Act 1990 (TAIC Act) contains protections which prevent information from CVRs from being disclosed, except by order of the High Court, or under a Privacy Act request. Protections also apply which prevent this information from being used in criminal and civil proceedings, except under certain circumstances.
70. There is no definition of CVR in the TAIC Act, which could lead to uncertainty about what is and is not covered by these protections. Other devices, such as a phone video or a GoPro might be used on the flight for 'observational' or other purposes. These serve no purpose in relation to the conduct of the flight, and are not installed in the aircraft for the purpose of complementing accident/incident investigation. Therefore they should not be included within the definition of flight recorder, or extended the same protection in terms of the information obtained.
71. I propose the Bill make amendments to the TAIC Act to more tightly define what is or is not covered by the protections afforded by that Act.

There are no specific legislative protections for flight data recorders

72. Flight data recorders (FDR) are a type of flight recorder which record parameters such as control inputs, altitude, speed, engine settings and aircraft configuration.
73. Unlike CVR information, FDR information is not specifically protected by existing legislation. This is not wholly consistent with ICAO standards. The CAA has also advised that the lack of specific protection may dissuade operators from voluntarily³ installing this equipment on their aircraft.
74. I propose the Bill include protections which prevent the data produced by FDR being admissible in criminal proceedings against the operator or flight crew connected with that equipment. Like CVR, the scope of a FDR would be tightly defined to include only equipment of a type approved by the Director, or that meets the requirements to be installed on aircraft under civil aviation rules. To encourage voluntary up-take, I propose that the protections apply regardless of whether that aircraft is required to install a recorder under civil aviation rules.
75. However, in line with ICAO recommendations, I propose that this protection is not absolute, and that a court may override the protection in circumstances where it is in the interests of justice, having regard to any adverse impact it may have on future accident and incident investigation. This exception might arise, for example, where the presentation of FDR evidence would conclusively demonstrate the falsity of other evidence produced at a trial.

The purpose statement

³ Some smaller commercial aircraft (including many helicopters) do not require flight data recorders under civil aviation rules. Flight data recorders are not required in aircraft used for non-commercial purposes.

76. As is the case with most modern pieces of legislation, the Bill contains a purpose statement to provide guidance and clarity about what the legislation seeks to achieve, guide statutory decisions made under it and help guide interpretation of its provisions.
77. The purpose statement proposed in the Bill takes a safety first approach, by including a main purpose: *“to facilitate the operation of a safe and secure civil aviation system”*. A handful of additional matters are covered by additional purpose statements.
78. A number of stakeholders suggested the main and additional purpose statements expressed in the exposure draft did not sufficiently cover concepts relating to cost-effectiveness, efficiency and the concept of “safety at reasonable cost”.
79. I propose that one of the additional purpose statements be adjusted to more effectively capture the economic benefits the legislation seeks to promote, by expressly including an additional purpose of the promotion of efficiency, effectiveness and innovation in civil aviation. One benefit of this additional purpose is that it will guide decisions relating to approval of airline alliances, airports and international air services, as well as the approach to new technologies.

The Bill will provide for a managed transition from the 1990 Act to the new regime

80. I seek agreement for the Bill to include transitional provisions to manage the transition to the new regime in a manner that provides certainty for operators, the regulator and the public, while minimising unnecessary compliance costs and risks. The key features of the transition are noted below.
 - 80.1. Civil aviation rules and regulations and any other subordinate legislation made under the 1990 Act will be treated as having been made under the new Act.
 - 80.2. There will be a transitional power to remake rules, regulations and other subordinate legislation without complying with statutory prerequisites (e.g. consultation or statutory test), provided that any changes are necessary or reasonably required to ensure the new rules are consistent with the new Act or to rearrange material between levels of subordinate legislation.
 - 80.3. Aviation documents and medical certificates in effect under the 1990 Act will be treated as having been made under the new Act.
 - 80.4. Aircraft registered under the 1990 Act will be reregistered under the new Act automatically.
 - 80.5. Airport authorities under the old Act will have 2 years to transition to the new Act, with a simplified test for transition (automatic transfer is not preferred, because there are incomplete records of airport authority status).
 - 80.6. Airline alliances approved under the 1990 Act will be treated as having been granted under the new Act and retain their expiry dates, and any approval that did not have an expiry date will expire 5 years after transition.

80.7. Any administrative instruments made by the Minister, Secretary for Transport or the Director will be treated as having been made under the new Act.

80.8. Regulations will be able to be made to provide additional transitional provisions.

Consultation

81. The following agencies were consulted on this paper: the Civil Aviation Authority, the Commerce Commission, the Department of Corrections, the New Zealand Customs Service, the Department of Internal Affairs (Local Government), the Department of Conservation, the Ministry of Business, Innovation and Employment (Radio Spectrum Management, Competition and Consumer, Immigration, Health and Safety and Tourism), the Ministry of Defence, the Ministry of Justice, the Ministry for Primary Industries, New Zealand Police, the State Services Commission, the Transport Accident Investigation Commission, the Treasury, WorkSafe New Zealand and the Office of the Privacy Commissioner. The Department of the Prime Minister and Cabinet has been informed.

Financial Implications

82. There are no financial implications directly associated with the legislative proposals in this paper. However, as noted in paragraph 41, investment in equipment and capability will be required in order for the drone intervention powers to be credible.

Legislative Implications

Confidential

83. The proposals outlined above will be included in a Civil Aviation Bill, [REDACTED]

Impact Analysis

84. The Regulatory Impact Assessment (RIA) Panel at the Ministry of Transport has reviewed the RIA "New Civil Aviation Regulatory Powers" written by the Ministry of Transport and considers that it partially meets the quality assurance criteria. The RIA clearly sets out criteria and these have been applied to the options in a way that makes it clear why certain options have been recommended. The panel recognises the limitations of the available evidence base, and for that reason, strongly recommends that before implementation, baseline evidence of the use of counter drone technology should be established, including through undertaking more testing and trialling against which the effectiveness of this policy and collateral consequences can be monitored in future reviews. There will also need to be further work done on when it will be appropriate to use different levels of interference within the graduated interference system suggested, as well striking the right balance in terms of content between operational procedures and the legislation. The impact analysis is constrained by the fact that the costs for the various options have been described in relative terms, but have not been quantified. The panel understands that this information cannot be obtained because of time constraints and lack of evidence.

Human Rights

85. There are no human rights implications.

Gender Implications

86. There are no gender implications.

Disability Perspective

87. There are no disability implications.

Publicity

88. I do not plan to do any publicity relating to the proposals in this paper. Decisions will be made public when the Bill is introduced later this year.

Proactive Release

89. I intend to proactively publish this Cabinet paper on the Ministry of Transport's website, consistent with the Official Information Act 1982, at the same time as the Bill is approved for introduction.

Recommendations

The Minister of Transport recommends that the committee:

Detention, seizure and destruction of unmanned aerial vehicles (drones)

1. **note** the Ministry consulted on policy options to provide law enforcement agencies with powers to detain, seize or destroy drones
2. **agree** that the Bill create a special power for constables, and suitably qualified and trained individuals authorised by the Director of Civil Aviation, to intervene against drones that are being operated in a manner that is an offence under civil aviation law or being used in the commission of an imprisonable offence under another Act, including the power to seize the drone's controlling mechanisms

Withheld for security reasons

3. [REDACTED]

Withheld for security reasons

4. [REDACTED]

5. [REDACTED]

Other, minor policy proposals

6. **note** that I am seeking approval for a range of relatively minor policy proposals relating to matters arising from submissions and further work on particular provisions in the Bill, and provisions to support transition to the new regime

Regulator powers

7. **agree** the Bill provide for modern regulatory powers including:
- 7.1. the ability to accept enforceable undertakings from regulated parties
 - 7.2. court injunctions to restrain contraventions of civil aviation law
 - 7.3. the ability to issue improvement and prohibition notices
 - 7.4. powers for all types of authorised aviation security personnel to arrest and detain a person until handed over to police
 - 7.5. clearer exemption powers within civil aviation legislation
 - 7.6. appropriate powers for the Secretary of Transport, to support their regulatory role.

Time for filing charging document

8. **agree** that the Bill model provisions found in the Health and Safety at Work Act 2015 regarding time for filing charging documentation

Airways' Monopoly

9. **agree** to include a mechanism within the Bill whereby the Minister of Transport can establish, amend or revoke Airways' monopoly through Gazette notice

Aviation statistics

10. **agree** that the Bill include a regulation making power to ensure the Secretary for Transport can collect, use and publish data and statistics from aviation participants

Flight recorders

11. **agree** that the Bill makes amendments to the Transport Accident Investigation Commission Act 1990 which better define what equipment or information is covered under the legislative protections relating to cockpit voice and video recorders
12. **agree** that the Bill provide protections relating to the admissibility of flight data recorder information in criminal proceedings

The purpose statement

13. **agree** that the Bill's additional purpose statements include the promotion of efficiency, effectiveness and innovation in civil aviation

Transitional arrangements

14. **agree** that the Bill include transitional provisions to manage the transition to the new regime in a manner that provides certainty for operators, the regulator and the public, while minimising unnecessary compliance costs and risks

Legislative implications

15. **invite** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the relevant recommendations above
16. **authorise** the Minister of Transport to make final decisions, consistent with the overall policy intent, on details that arise during the drafting of the policies referred to in this paper without further reference to Cabinet.

Authorised for lodgement
Hon Phil Twyford
Minister for Transport