

# Independent reviews of the Director of Civil Aviation's decisions

Regulations to set the scope of reviewable decisions

Consultation document  
Not Government policy  
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## PREFACE

# Preface

The purpose of this paper is to seek your views on the setting of the scope of decisions to be covered by the new independent review function created by the Civil Aviation Act 2023 (the 2023 Act).

In this document, the Ministry of Transport Te Manatū Waka (the Ministry) invites your feedback on three indicative options for setting the scope of the review function. A series of questions are set out on pages 6 and 15. Your responses to these questions will help us to understand the impact the different options could have on you.

Please also feel free to provide us with any other comments you consider to be relevant to any of the issues canvassed in this paper.

Your feedback will help inform final policy advice on the scope of decisions to be covered by the independent review function. Depending on the feedback received, the scope that is finalised may differ from the options presented in this paper.

You can provide feedback on part or all of the issues and proposals by writing and sending your input to [civilaviationact@transport.govt.nz](mailto:civilaviationact@transport.govt.nz) with the subject line “feedback - independent review”.

The consultation period will close on 24 September 2024.

### **Please note your feedback may become publicly available**

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.

## Summary

- 1 The 2023 Act creates a new function that enables independent reviews of regulatory decisions made by the Director of Civil Aviation (the Director) or persons delegated by the Director. The function will be independent of the Civil Aviation Authority (CAA), and independent of the appeal and judicial review rights that aviation participants already possess.
- 2 The purpose of the new function is to provide an expert independent review option for sector participants that is quicker and less costly than the courts, and to promote accountability and good decision-making in the regulatory system.
- 3 The 2023 Act leaves the scope of decisions to be covered by the new function to be specified in regulations. This consultation paper identifies three indicative options for setting the scope of reviewable decisions. Depending on the consultation feedback received, the scope that is finalised may differ from the indicative options presented in this paper, in order to ensure the new function is effective in meeting its intended purpose.
- 4 The indicative options are:
  - **Option 1** – the scope of reviewable decisions would be based on relevant categories of decisions taken by (or on behalf of) the Director that are appealable to the District Court
  - **Option 2** – the same as Option 1, except that decisions on the granting of individual exemptions from regulations and Civil Aviation Rules (the Rules) would also be included
  - **Option 3** – all regulatory decisions taken by (or on behalf of) the Director would be reviewable, except where inappropriate or not relevant.
- 5 Your feedback on the options and issues canvassed in this paper will help to provide a more solid information base upon which to determine the most appropriate approach for setting the scope of reviewable decisions.

## The review function was created in response to stakeholder concerns

- 6 Submitters who engaged the Transport and Infrastructure Committee (the Committee) during its consideration of the Civil Aviation Bill (the Bill), over 2021-2022, raised concerns about what they viewed as the limited ability to challenge the decision-making powers of the Director.
- 7 Under the current system, there are several existing avenues for independent reviews of decisions made by (or on behalf of) the Director that the 2023 Act carries over:
  - Applicants may appeal key regulatory decisions to the District Court, under section 453(1) of the 2023 Act (previously section 66(1) of the Civil Aviation Act 1990). Appealable decisions primarily relate to certification – ie the granting, suspension,

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## THE REVIEW FUNCTION WAS CREATED IN RESPONSE TO STAKEHOLDER CONCERNS

revocation of, or imposition of conditions on, 'aviation documents'<sup>1</sup>. These decisions control participation in the aviation system – including licensing pilots and air operators, and controlling the use of aircraft, equipment and flight systems.

- An applicant also has the right to make an application for judicial review, to the High Court, of any decision made by the Director pursuant to functions under the Act or powers granted under the Rules.<sup>2</sup>
- Individuals may also challenge medical certification decisions by lodging an application for review with the medical convener, under Schedule 2 of the 2023 Act (previously Part 2A of the Civil Aviation Act 1990). This process is separate from the ability to appeal to the courts.
- The Ombudsman also has a role in investigating complaints relating to government agencies, including the CAA, where people do not feel that they have been treated fairly.<sup>3</sup>

8 During the Committee's consideration of the Bill, submitters expressed concerns about the drawbacks of appealing CAA decisions through the courts. They noted that undertaking judicial actions is costly and 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.

9 It was noted in submissions that it can take 3-4 years before there is a District Court hearing and associated costs can amount to over \$300,000 a case.<sup>4</sup> There were only 13 appeals to the District Court regarding CAA decisions between 2013 and 2022. This may partly reflect the disincentives to taking court action presented by the associated costs and time delays.

10 In response, Parliament agreed to include provisions in the Bill to enable regulatory decision-making by the CAA to be subject to additional scrutiny, by providing for independent reviews of how the Director exercises their functions and powers.<sup>5</sup>

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<sup>1</sup> "Aviation documents" are defined under section 5 of the 2023 Act to mean "any licence, permit, certificate, or other document issued under subpart 1 or 2 of Part 4 to or in respect of any person, aircraft, aerodrome, aeronautical product, or aviation-related service".

<sup>2</sup> The right to judicial review exists independently of any statutory appeal rights, and cases consider only matters of procedural justice (ie whether the decision was made in accordance with the law, and is within the range of reasonable decisions possible). Judicial review cases of CAA decisions tend to be more costly to applicants than appealing to the District Court, and thus are extremely rare.

<sup>3</sup> Investigations by the Ombudsman relating to the CAA are relatively rare. For example, in 2021 the Ombudsman's office engaged with the CAA on five complaints it had received. Four of those complaints were related to the CAA declining to provide information under the Official Information Act, and one was in relation to the Civil Aviation Rules.

<sup>4</sup> <https://bills.parliament.nz/v/6/259400c2-8ca0-483c-a959-edf2c2b86b4d?Tab=sub>

<sup>5</sup> The creation of this function was recommended in Ministry advice to the Committee, and the Committee recommended the inclusion of these provisions in its report-back to Parliament <https://www.legislation.govt.nz/bill/government/2021/0061/latest/LMS49346.html>

- 11 The purpose of the new function is to:
- provide an expert independent review option that is quicker and less costly than consideration by the courts, without replacing or duplicating existing mechanisms
  - promote good decision-making by the CAA by strengthening accountability and transparency around the rationale for decisions – thus enhancing the effectiveness and public confidence in the regulatory system over time.

## The 2023 Act sets out the key features of the new function

- 12 Subpart 5 of Part 10 of the 2023 Act sets out the key feature of the new function.
- 13 Specified categories of decisions made by the Director of Civil Aviation, and persons acting under delegated authority for the Director, are to be reviewable. Reviews are to be available to *“a 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”*.
- 14 The categories of decisions that may be subject to review are to be set out in regulations. This is intended to provide more flexibility than prescribing them in the primary legislation, whilst retaining a high level of executive scrutiny.
- 15 The main requirements for the operation of the function are that:
- the Minister of Transport is to appoint one or more independent reviewers with the appropriate range of expertise to carry out reviews
  - applications for review must be made within 20 working days after the date on which the applicant was notified of the decision to which the application relates
  - the reviewer may reject an application for review that is trivial, frivolous, or otherwise an abuse of process or vexatious in nature
  - reviewers will carry out reviews, drawing on advice and expertise of other suitably qualified and experienced people, and report their recommendations to the Director
  - reviewers' recommendations are non-binding – this is to ensure that the role of the reviewer does not conflict with the Director's overall responsibility to oversee a safe and secure civil aviation system<sup>6</sup>
  - the Director must, within 10 working days, make a final decision on whether to accept any, or all, of those recommendations and must provide an explanation of the reasons for the final decision – the Director's final decision may involve either a new decision or confirmation of the existing decision

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<sup>6</sup> <https://selectcommittees.parliament.nz/v/SelectCommitteeReport/af1a75ae-bf70-44af-9fbc-0e7876d7dc2d>

## FACTORS RELEVANT TO DEVELOPING THE REGULATIONS

- the outcome of a review will not affect an applicant's right to then appeal the decision through the Courts should they wish to do that once the independent review is complete (provided the decision is of a type that is appealable under the Act) or to take a complaint to the Ombudsman.
- 16 Reviewers will not have the power to require any form of compensatory payments, or actions, following the outcome of a review.
- 17 The following parameters apply to reviews:
- reviews may consider both the substance of a decision and the process by which the decision was made, meaning that both the technical and procedural merits of a decision may be reviewed
  - reviews may cover decisions relating to things, such as aircraft, insofar as they affect a person's ability to operate within the civil aviation system
  - reviews do not extend to the *setting* of standards across the aviation system, they only apply to the application of those standards
  - the function will not carry out reviews of medical certification decisions, as these decisions are already reviewable through the medical convener procedure that the 2023 Act continues.
- 18 The function will be operational from 5 April 2025, when the 2023 Act comes into force.
- 19 The Ministry is currently working on the establishment of the review function, including the appointment of reviewers, the development of the necessary secretariat and functional support, and exploration of options for cost recovery. The focus of this paper is the development of regulations to set the scope of the function.

## Factors relevant to developing the regulations

- 20 There are a range of factors that have implications on the assessment of options, as detailed below.

### ***It is difficult to forecast the likely level of demand for, and costs of, independent reviews***

- 21 One of the key challenges in assessing the scope of function is the difficulty in predicting the likely level and nature of demand for independent reviews once the function is operational.
- 22 The weight of opinion expressed across the submissions to the Committee over 2021-2022 suggests there may be substantial demand for a readily accessible independent review function. Informal feedback from some representative organisations since that time, though, indicates this may not necessarily be the case.



## FACTORS RELEVANT TO DEVELOPING THE REGULATIONS

- 23 Overall, there are no directly applicable data that can be used to forecast accurately the level and nature of demand and there is only limited wider contextual information available.<sup>7</sup>
- 24 The uncertainties around the demand for reviews also make it difficult to forecast the likely costs and resourcing requirements across the different options for setting the scope of the function.
- 25 We anticipate the main costs of the review function will comprise:
- the remuneration of reviewer(s) and incidental costs
  - the costs of any required independent contracted technical advice, where reviews centre on technical matters beyond the expertise of reviewers
  - the costs of secretariat and functional support for the review process provided by the Ministry, including overheads.<sup>8</sup>
- 26 There will also be funding and capacity demands on the CAA from the operation of the review function. This is because the 2023 Act requires the CAA to provide relevant case information to reviewers on request. The Director will also be required to consider and make final decisions in response to the reviewer's recommendations in each case.

***Cost recovery is under consideration***

- 27 The 2023 Act enables fees to be charged to reimburse the direct and indirect costs associated with reviews and/or for levies to meet the wider delivery costs of the review function.
- 28 The Ministry is exploring potential options for cost recovery in relation to the independent review function. Your feedback on the scope of the review function will help inform this work, by providing information on the likely scale and costs of the function once it is operational.
- 29 A separate stakeholder consultation process would be carried out if a decision is made to progress options for cost-recovery.

***The core policy intent needs to be met as efficiently as possible***

- 30 There is a need to ensure the function appropriately balances the intent of the Act with the practicalities of maintaining a manageable workload for the independent reviewers.

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<sup>7</sup> While there have been few appeals to the District Court since 2013, it is difficult to read much significance into this, given the major delays and cost barriers inherent to Court action.

Comparable independent review entities in the UK, Australia and Canada carry out relatively few reviews a year across larger civil aviation sectors. However, the scope of these review functions is generally limited to decisions regarding a relatively narrow range of key certificates, permits or licences (such as pilot licences or air operator certificates). Also, civil aviation agencies in those countries tend to have relatively extensive internal review procedures available to sector participants, which may serve to stem much of the demand for independent reviews (see Annex 2).

<sup>8</sup> The nearest reference point to help gauge the likely costs of the review function is the medical convener process, given it has many similar design features to the review function. Around 20 reviews a year are carried out by the medical convener function, at an estimated average cost of around \$5,500 per review (comprising convener remuneration, contracted specialist advice and Ministry support costs and overheads).

## QUESTIONS FOR FEEDBACK

- 31 To maximise effectiveness of the function in meeting its core policy intent there may be a need for the scope of reviews to be focused primarily on more significant decisions, which have a 'material impact' on a person or operator. That is, decisions that have a major bearing on their ability to participate in the sector and/or their livelihoods – for example the suspension or revocation of an 'aviation document', such as a pilot's licence or an air operator's certificate.
- 32 If reviews were to extend to lower-level regulatory decisions that do not fundamentally affect someone's ability to operate in the aviation system, there might be a need to accord them a lesser priority. Otherwise, reviews of this nature could take up time and resources at the expense of the review function's capacity to consider more impactful decisions.
- 33 These considerations reflect the Legislation Design and Advisory Committee (LDAC) guidelines on creating systems of appeal, review, and complaint, which specify that:
- "The value of an appeal must be balanced in the particular circumstances against a consideration of the potential costs, implications of delay, significance of the subject matter, competence and expertise of the decision-maker in the first instance, and the need for finality. However, concerns about cost and delay should usually be dealt with by limiting the right of appeal, rather than denying it altogether"*<sup>9</sup>

## Questions for feedback

- What types of decisions made by (or on behalf of) the Director of Civil Aviation do you think have a "material impact" on you or your business?
- Do you have a view on the likely demand for independent reviews of the Director's decisions once the function is operational, including the kind of decisions where the demand for reviews may be most prominent?
- Have you or your business ever been subject to a decision that you think warranted independent review (had that option been available at the time)? Please provide any information you think would be helpful for us to understand the type of decision made and how it affected you or your business.

Please send any responses to these questions to: [civilaviationact@transport.govt.nz](mailto:civilaviationact@transport.govt.nz)

<sup>9</sup> Legislation Design and Advisory Committee, Legislation Guidelines (2021 edition): <https://www.ldac.org.nz/guidelines/legislation-guidelines-2021-edition/appeal-and-review-2/chapter-28>

## Indicative options

- 34 We have identified three indicative options for the scope of decisions to be subject to review, outlined below for your consideration and feedback.
- 35 Under these options, given that section 446(2) of the Act provides for the rejection of applications for review that are “*trivial, frivolous or vexatious or otherwise an abuse of process*”, we expect that applicants will have used all available avenues to work through with the CAA concerns they have about the Director’s decision in question, during the period of the Director’s consideration and after the Director’s decision before deciding to apply for an independent review.

### Option 1 – Aligning with the 2023 Act’s right of appeal to the District Court

- 36 This option would set the scope of decisions **based on the relevant scope of decisions that are already subject to appeal to the District Court**, as set out in section 453(3) of the 2023 Act (previously section 66(5)) of the 1990 Act).
- 37 This option would focus reviews primarily on decisions linked to the granting, suspension, revocation, or imposition of conditions of ‘aviation documents’– eg a pilot’s licence or an air operator’s certificate, airworthiness certificate or maintenance engineer’s licence. These decisions primarily determine whether an applicant is a ‘fit and proper’ person or operator to participate in the civil aviation system and set the key conditions for their participation (see Annex 1).
- 38 This would mean the key categories of decisions in scope for the function would be the following decisions made by (or on behalf of) the Director set out in section 453:
- to decline to register an aircraft [Section 453(3)(a)]
  - concerning the grant, issue, revocation, or suspension of an aviation document [Section 453(3)(b)]
  - to impose conditions on an aviation document [Section 453(3)(c)]
  - to issue an improvement notice [Section 453(3)(d)]
  - to amend a New Zealand Air Operator Certificate (AOC) with ANZA privileges or withdraw those privileges <sup>10</sup> [Section 453(3)(l)].
- 39 Around 2,000 decisions a year are made covering the above categories.
- 40 Under this option, certain categories of decisions set out in section 453(3) would need to be excluded on the grounds that it would be inappropriate, or not relevant, to include them, as set out in Table 1 below.

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<sup>10</sup> An AOC with ANZA privileges issued by the aviation safety authority of one country authorises the holder of that AOC to operate aircraft in the other country, without needing to hold an AOC issued by the aviation safety authority of the other country.

## INDICATIVE OPTIONS

Table 1 Categories of decisions in section 453(3) excluded under Option 1

Category	Rationale
<ul style="list-style-type: none"> <li>Decisions to issue a non-disturbance notice [Section 453(3) (e)]</li> <li>Decisions to exercise powers to detain aircraft, seize aeronautical products, or impose prohibitions and conditions relating to aerodromes, aircraft, and aeronautical products [Section 453(3) (f)]</li> </ul>	These relate to matters where there is a need to act promptly to address immediate risks relating to public safety or security.
<ul style="list-style-type: none"> <li>Medical certification decisions [section 453(3) (g)-k]</li> </ul>	Reviews of these are covered by the medical convener process.
<ul style="list-style-type: none"> <li>Decisions made by the Secretary for Transport, rather than the Director [section 453(3) (m)]</li> </ul>	Decisions made by the Secretary are not covered by the independent review function.

41 The scope of decisions subject to review under this option would broadly be in line with the types of decisions covered in similar review functions in Australia, Canada and the United Kingdom (UK). Those functions also tend to focus on decisions relating to civil aviation documents (see Annex 2).

## Option 2 – Based on Option 1, but with decisions on exemptions also included

42 This option would include all the categories of decisions covered under Option 1, but would also include decisions made by (or on the behalf of) the Director **to grant, or not to grant, exemptions** from regulations or Rules made under Section 322(1)(a) of the 2023 Act.<sup>11</sup>

43 Exemptions may be granted, with appropriate conditions, where an aviation participant is unable to comply with a prescriptive rule requirement and there is no alternative means of compliance available to them.<sup>12</sup> Exemptions give the CAA flexibility to accommodate unforeseen or exceptional situations, without changing the law. The critical issue for an exemption decision is whether it enables the same level of safety, or risk control, to be achieved as the Rule is intended to achieve.

44 Exemption decisions can relate to requirements specified in most of the 50 Rule Parts. They can range from significant (including granting special dispensation from a particular Rule to enable an individual or entity to participate in the civil aviation system) to relatively minor (such as exemptions from operating, technical, experience, training or competency requirements, or required maintenance or safety schedules).

<sup>11</sup> Decisions to apply exemptions to any *class* of “aviation participant, aeronautical product, aircraft, aerodrome, aviation-related service or other things” under section 322(1)(b) of the 2023 Act would however not be reviewable, as ‘class exemptions’ are deemed secondary legislation under section 322(5), and thus they are effectively part of the *settings* of the regulatory framework.

<sup>12</sup> In effect exemptions relate only to Rules, as under existing settings, no regulations impose regulatory requirements on individual aviation participants.

- 45 Decisions on exemptions are not subject to a right of appeal to the District Court. This is because they are not categorised as decisions on 'aviation documents', under the Civil Aviation Act 1990 and the new 2023 Act. However, individuals have the right to apply to the High Court for judicial review of any such decision.
- 46 Less than 100 decisions on exemptions are made each year.

### Option 3 – A broad scope of regulatory decisions subject to review

- 47 Under this broader option, **all regulatory decisions** taken in relation to sector participants by (or on behalf of) the Director would potentially be reviewable. The only exceptions would be categories of decisions that would be inappropriate or inapplicable to include, as detailed in Table 2 on the following page.
- 48 This option would include CAA decisions covered under Option 1 and Option 2, but would also include a wide range of other decisions, primarily more minor miscellaneous decisions made by personnel (delegated by the Director), which do not fundamentally alter the privileges of those operating in the system.
- 49 These lower-level decisions would include numerous decisions on:
- operating, technical, experience, training and/or competency requirements – such as decisions on the approval of minor maintenance matters, paint schemes and markings, acceptable courses and exams, forms of ID, technical data, minimum equipment requirements, and alternative means of compliance to those prescribed in the Rules – eg under Rule Parts 19, 21, 39, 43, 47, 61, 91, 121 and 125
  - amendments to an aviation document holder's operations, routines and procedures (such as minor changes to maintenance schedules, data systems, record keeping or safety procedures) or its organisation (such as changes to personnel or the location of operations) that may be subject to the Director's acceptance – eg under Rule Parts 19, 115, 119, 121, 125, 129 and 137.
- 50 Under both the current Act and the 2023 Act, the main existing right applicants have to challenge decisions of this type is to lodge an internal complaint directly with the CAA.<sup>13</sup>
- 51 In the region of 100,000 decisions a year are made covering all the categories within scope of this option.

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<sup>13</sup> CAA advise this internal complaints avenue is currently used to resolve some lower order Rules-based decisions mentioned above: [Authority Complaints Policy \(aviation.govt.nz\)](https://www.aviation.govt.nz/authority-complaints-policy)

## INDICATIVE OPTIONS

Table 2 Categories of Director's decisions that would be excluded under Option 3

Category	Rationale
Decisions relating to <b>medical certification</b> – under Schedule 2 of the 2023 Act.	These decisions are covered by the review role of the medical convener.
Decisions regarding the creation of <b>Emergency Rules</b> by the Director, under Part 3 (subpart 2) of the 2023 Act.	<p>These decisions enable the regulatory framework to be amended urgently, to address immediate risks not addressed by the existing regulatory framework. There are in-built statutory restrictions on the use of these powers (such as time limitations).</p> <p>As already noted, independent reviews do not extend to the <i>setting</i> of regulatory standards, they only apply to the application of those standards.</p>
Decisions relating to <b>aviation security and monitoring, investigation and enforcement</b> – for example relating to alcohol and drug testing (Part 4, subpart 6), security areas and security checks (Part 5), entry and inspection, searching, detention, seizure, and non-disturbance notices (Part 9).	<p>These relate to matters where there is a need to act promptly to address immediate risks relating to public safety or security.</p> <p>It is generally not possible to undo actions of this nature once they have been carried out – and, as already noted, the function will not have powers to require any retrospective form of compensation or reimbursement.</p>
Decisions to <b>delegate</b> functions, under Part 10, subpart 7 of the 2023 Act.	Delegation decisions are part of the <i>setting</i> of the operation of the regulatory framework, and are not made with respect to specific individual regulated parties, aircraft, aeronautical products or services.
Decisions to <b>initiate proceedings</b> in respect of any offence under the Act, or Rules or regulations made under the Act or to issue an infringement offence notice.	<p>Other more appropriate avenues than the independent review function exist in relation to these matters, eg:</p> <ul style="list-style-type: none"> <li>• decisions to initiate proceedings are governed by the Solicitor-General's prosecution guidelines</li> <li>• there is an established Court process specific to contesting infringement offence notices.</li> </ul>
Decisions to impose or recover fees, charges and levies, primarily under Part 10 (subpart 1).	These are pecuniary matters relating to invoicing and payment, rather than matters of aviation specialist knowledge or procedural justice.

52 The essential differences between the three options are illustrated in Figure 1 below.

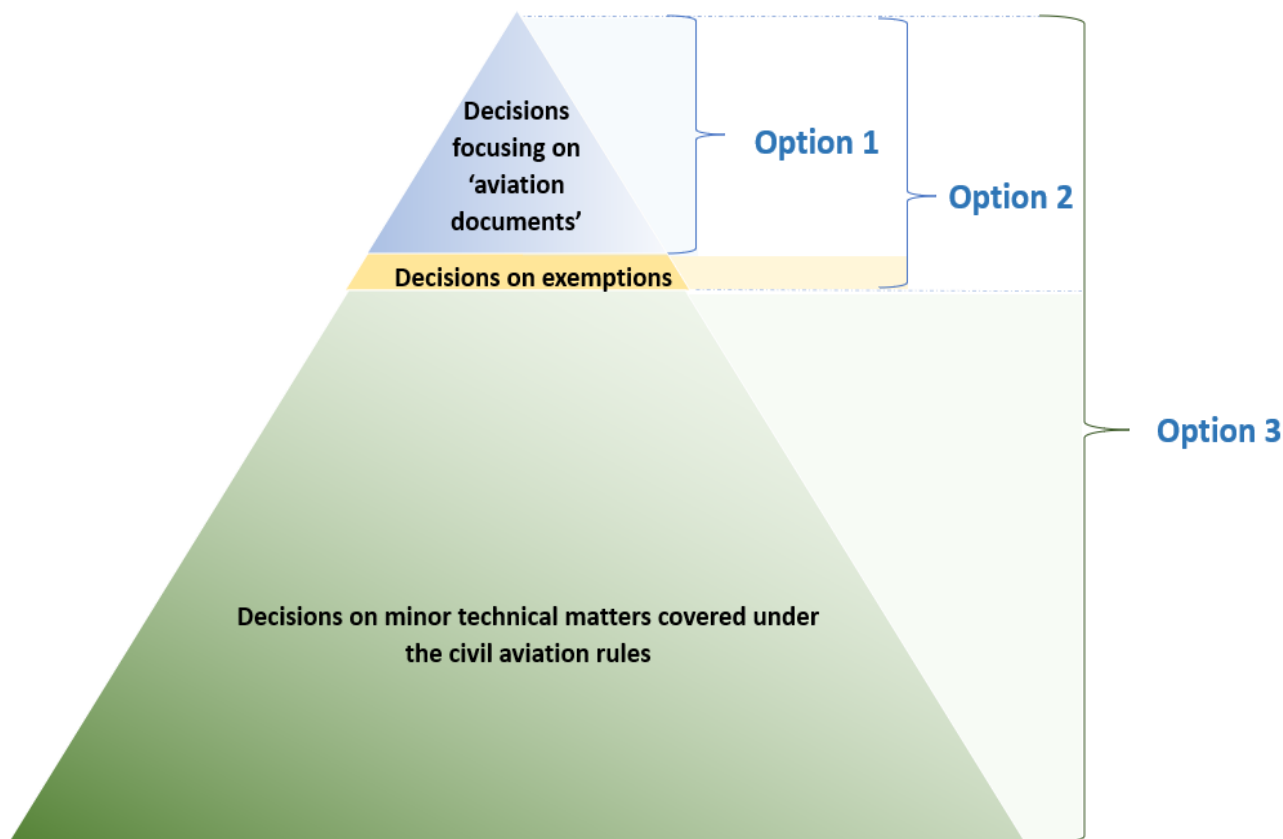


Figure 1 Coverage of options for scope of independent review function

## Comment

53 **Option 1** would:

- respond to the core concerns raised in submissions on the Civil Aviation Bill, regarding the need for a quicker and less costly alternative than going to the courts for reviews of appealable decisions
- focus reviews on the majority of decisions which have a significant impact on aviation participants
- provide the highest degree of certainty that the function would be able to operate on a manageable basis, by avoiding any possible risk of reviews of a broader range of mostly lower-order decisions compromising the delivery of reviews of more impactful decisions.

54 It is possible though that some CAA decisions not captured by **Option 1** may be viewed as significant by some sector participants and thus this option may be seen as materially limiting the new rights provided by the review function.

## IMPACT ASSESSMENT CRITERIA

- 55 As experience with implementation of the review function accumulates, however, the scope of decisions subject to review under **Option 1** could be expanded, if compelling evidence were to emerge that certain categories of decisions not covered under this option should be included.
- 56 **Option 2** would offer essentially the same advantages as **Option 1** except, by making decisions on individual exemptions reviewable, it would also likely provide more complete coverage of decisions which potentially have a significant impact on aviation participants.
- 57 **Option 3** would cover a much broader range of CAA decisions than the other two options, by including a wide range of more minor decisions within scope, thus maximising the coverage of the function. There is a potential risk, however, that the broad range of decisions captured under this option could generate undue pressure on reviewers' time and resources.
- 58 This could compromise the function's capacity to deliver timely reviews of decisions that have a more material impact on applicants. It could also impose demands on CAA resources that intrude on the agency's day-to-day regulatory operations, and potentially compromise the Director's ability to arrive at a final decision on reviewers' recommendations within the statutory time frame.
- 59 As noted earlier, the assessment of these indicative options is limited at this stage by the extent of unknowns about the likely demand for reviews and the potential impacts of different approaches to setting the scope of the function. Your feedback on the issues canvassed in this paper will help to provide a more solid information base upon which to determine the most appropriate approach to setting the scope of reviewable decisions.

## Impact assessment criteria

- 60 In Table 4 on the next page, we summarise our preliminary assessment of these options against the following criteria.

Table 3 Impact Assessment Criteria

Criteria	Description
1 Effectiveness	How well would the option achieve the intended policy objectives - namely to: <ul style="list-style-type: none"> <li>serve as a faster and less costly route for independent reviews of decisions compared to consideration by the courts</li> <li>promote good decision-making by strengthening accountability and transparency around the rationale for decisions - thus enhancing the effectiveness and public confidence in the regulatory system over time.</li> </ul>
2 Equity   Fairness	Would the option achieve the fair treatment of participants?
Positive factors	
Negative factors	



Table 4 Impact Analysis Table

	Option 1: based on the 2023 Act's right of appeal to the District Court	Option 2: based on Option 1 but with decisions on exemptions also added	Option 3: Broad approach
<b>Effectiveness</b>	<ul style="list-style-type: none"> <li>This option would:               <ul style="list-style-type: none"> <li>support the core policy intent of providing a faster and less costly independent review process for specified decisions than consideration by the courts</li> <li>focus reviews on the majority of decisions that affect the ability of individuals and organisations to operate in the civil aviation system</li> <li>provide a degree of certainty that the function would be able to operate on a manageable basis.</li> </ul> </li> <li>The option would be broadly in line with comparable entities that carry out independent reviews of civil aviation regulatory decisions in Australia, Canada and the UK (Annex 2).</li> <li>Eligibility for review could be re-assessed after implementation to ensure the scope of reviewable decisions remains fit-for-purpose. The scope could be broadened, if evidence emerges that other categories of decisions should be included.</li> </ul>	<ul style="list-style-type: none"> <li>This option would offer essentially the same advantages as <b>Option 1</b> but, by making decisions on individual exemptions reviewable, would also likely provide a more complete coverage of decisions that can potentially have a significant impact on aviation participants.</li> </ul>	<ul style="list-style-type: none"> <li>This option would ensure the widest possible range of CAA decisions that could have a material impact on sector participants could be subject to review decisions – including decisions on individual exemptions and the numerous relatively minor rule-related decisions that would not be covered under <b>Option 1</b> or <b>Option 2</b>.</li> <li>Eligibility for review could be re-assessed after implementation to ensure the scope of reviewable decisions remains fit-for-purpose and is set appropriately to maximise the benefit of the function.</li> </ul>
	<ul style="list-style-type: none"> <li>There is a risk that some decisions made by CAA that may be (or may be seen to be) significant would not be captured under this option – namely decisions on:               <ul style="list-style-type: none"> <li>individual exemptions</li> <li>the more numerous lower-level decisions.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>While decisions on individual exemptions would be covered (unlike <b>Option 1</b>) there is still a risk that some decisions made by CAA that may be (or may be seen to be) significant would not be captured under this option – namely decisions on the more numerous lower-level decisions.</li> </ul>	<ul style="list-style-type: none"> <li>Reviews of the numerous but relatively low-level CAA decisions could place demands on the review function that, to some extent, could compromise its capacity to deliver timely reviews of decisions that have a more significant impact on applicants.</li> </ul>
<b>Equity   Fairness</b>	<ul style="list-style-type: none"> <li>The option would focus resources to deal with largely significant decisions in a timely manner.</li> </ul>	<ul style="list-style-type: none"> <li>Would provide a more complete coverage of decisions which potentially have a significant impact on aviation participants than <b>Option 1</b>.</li> </ul>	<ul style="list-style-type: none"> <li>Would maximise sector participants' rights in the sense that a broad range of CAA decisions would potentially be subject to review.</li> </ul>
	<ul style="list-style-type: none"> <li>It may limit some sector participants' rights, as some decisions made by CAA that are, or are seen to be, significant by sector participants would not be included within scope.</li> </ul>	<ul style="list-style-type: none"> <li>As with <b>Option 1</b>, although to a lesser extent, as decisions on individual exemptions would be included within scope.</li> </ul>	<ul style="list-style-type: none"> <li>Applications for reviews of decisions on the broader range of decisions, including the numerous more minor decisions, could mean that resources would be stretched more thinly and be less available to progress reviews of more impactful decisions in a timely manner.</li> </ul>
<b>Overall comment</b>	Further assessment required, contingent on stakeholder feedback.		

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## Questions for feedback

- Do you have any comments on the three indicative options for setting the scope of reviewable decisions outlined in this paper and the rationale provided for them?
- Do you favour any of these indicative options? Are there any amendments to these options you think are necessary, or other options you think would be more appropriate for setting the scope of the function?
- What do you expect the level of demand for independent reviews would be under these indicative options or under an alternative approach (or approaches)?
- What do you think would be the impact of these different approach(es) for you or your organisation?
- Is there any other information you think should be factored into the assessment of the options for setting the scope of the independent review function?
- 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](mailto:civilaviationact@transport.govt.nz)

## Annex 1 Aviation documents



Figure 2 Aviation documents determine participation in the civil aviation system

As at 30 June 2023, there were 35,095 individual aviation document holders. The vast majority of these were pilot licence holders (30,061 individual licences), while other categories included engineer, flight instructor and air traffic control licences.

There were also 890 organisations that held aviation documents, such as airline operating certificates, certificates of aircraft registration and aerodrome certificates.<sup>14</sup>

<sup>14</sup> Source: Civil Aviation Authority of New Zealand 2022–2023, Annual Report (2023)

## Annex 2 The scope of reviews in other jurisdictions

Table 5 The scope of reviews in other jurisdictions

Jurisdiction	Scope	Powers of reviewer	Review frequency	Cost to applicant
<b>Australia</b> (Federal) – Administrative Appeals Tribunal (AAT)	<p>The AAT may on application review a decision if a law states that the decision can be reviewed by the AAT.</p> <p>Civil Aviation legislation provides for AAT review of a wide range of decisions by the Civil Aviation Safety Authority and other authorised decision-makers involving, broadly:</p> <ul style="list-style-type: none"> <li>the grant or issue of a certificate, permission, permit or licence, or the cancellation, suspension or variation of a certificate, permission, permit or licence</li> <li>the imposition or variation of a condition, or the cancellation, suspension or variation of an authorisation</li> <li>reinstatement of an authorisation that has been suspended or cancelled</li> <li>refusal to grant approvals provided for in regulations.</li> </ul>	<p>The Tribunal may exercise all the powers and discretions conferred on the decision-maker and must make a decision in writing:</p> <ol style="list-style-type: none"> <li>affirming the decision under review;</li> <li>varying the decision under review; or</li> <li>setting aside the decision under review and:               <ol style="list-style-type: none"> <li>making a decision in substitution for the decision so set aside; or</li> <li>remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.</li> </ol> </li> </ol>	<p>Between 2019 – 2023, there have been some 20 published AAT decisions on civil aviation review applications.</p> <p>The decisions have related to a cross-section of medical certification matters, licensing matters, jurisdictional questions and procedural considerations.</p>	<p>Standard application fee: AU\$1,082</p>
<b>Canada</b> Transportation Appeal Tribunal of Canada (TATC)	<p>The TATC is a cross-modal, quasi-judicial body.</p> <p>In relation to civil aviation, reviewable decisions encompass:</p> <ul style="list-style-type: none"> <li>refusal to issue or amend a Canadian aviation document</li> <li>suspension or cancellation of a Canadian aviation document</li> <li>refusal to remove a notation of a suspension or a penalty after two years</li> <li>assessment of monetary penalty (in place of summary proceedings for certain alleged regulatory contraventions).</li> </ul>	<p>Reviews are based on merit, on the record of the proceedings. Decisions of the TATC are binding.</p> <p>The reviewer may determine the matter by confirming the decision under review or substituting their own determination.</p>	<p>Between 2019 – 2023, some 100 TATC aviation hearings were held, at between 8 and 31 hearings per year.</p> <p>The largest proportion of appeals related to reviews of monetary penalty assessments, with smaller numbers relating to procedural, and jurisdictional and aviation document related matters.</p>	<p>No fee for lodging a review request.</p> <p>The Tribunal may award costs and may require the reimbursement of expenses incurred, if the reasons for a decision that resulted in a review hearing are frivolous or vexatious, or the party that files a hearing request fails to appear without good reason or is granted an adjournment without giving adequate notice to the Tribunal.</p>
<b>United Kingdom</b> CAA internal review	<p>Individuals may seek an internal review of a UK CAA refusal to issue, or a proposal to vary, provisionally suspend, suspend or revoke licences or authorisations issued in relation to:</p> <ul style="list-style-type: none"> <li>flight crew licensing</li> <li>aircraft maintenance engineers</li> <li>air traffic controllers</li> <li>rating and endorsements for instructors and examiners</li> <li>medical fitness decisions</li> <li>aeromedical examiners</li> </ul>	<p>If the internal review finds that the UK CAA did not follow the correct process in reaching a decision a full merits review will be undertaken where appropriate. If the further merits review finds that an incorrect decision has been made, the UK CAA will:</p> <ul style="list-style-type: none"> <li>accept responsibility</li> <li>explain what went wrong and why</li> <li>put things right by making any necessary changes.</li> </ul> <p>This process is only available to individuals.</p>	<p>Since the start of this process in May 2022, 16 cases have been subjected to an internal review.</p> <ul style="list-style-type: none"> <li>1 case was referred to the external IRP (see row below) which found in the CAA's favour.</li> <li>5 cases were rejected for an internal review as not in scope of the review process.</li> </ul>	<p>Not applicable.</p>

## ANNEX 2 THE SCOPE OF REVIEWS IN OTHER JURISDICTIONS

Jurisdiction	Scope	Powers of reviewer	Review frequency	Cost to applicant
	<p>A review is the first step in a two-stage review process which may culminate in the Independent Review Panel (IRP) process described in the row below.</p> <p>At stage one, an appropriate manager not involved with the initial decision will review the CAA's initial decision and determine whether the relevant process has been followed in reaching the decision. If the manager determines that the process has not been followed, a review of the merits of the decision will be undertaken.</p> <p>If dissatisfied with the outcome, a person may request an independent review by the Department for Transport.</p>			
<p><b>United Kingdom</b> Independent review panel (IRP)</p>	<p>Established in 2022 on an administrative basis, the IRP is overseen by the Department for Transport, and is independent of the UK CAA. Decisions that are in scope for an internal review can be reviewed by the IRP, following the outcome of the internal review. The panel only assesses whether a good decision-making process has been followed regarding civil aviation regulatory decisions, rather than assessing the substance of decisions.</p> <p>The IRP is the second step in the two-stage review process, with the first step being the CAA internal review described in the row above.</p> <p>If an individual remains dissatisfied with the outcome of the IRP, they may be able to seek a Regulation 6 review of the CAA's decision (see below).</p>	<p>The panel does not have the power to overturn a UK CAA decision, but can recommend that the UK CAA revisit the case, if it finds there have been process failings. The UK CAA then decides how it wishes to respond.</p>	<p>See above.</p>	<p>Not applicable.</p>
<p><b>United Kingdom</b> Regulation 6 review (Civil Aviation Authority Regulations 1991)</p>	<p>This applies where a UK CAA official has advised of a refusal to issue or a proposal to vary, suspend or revoke:</p> <ul style="list-style-type: none"> <li>• an aerodrome licence</li> <li>• an air operator's certificate</li> <li>• an air traffic controller's licence</li> <li>• an approval for a person to provide an air traffic control service</li> <li>• a certificate of airworthiness or a permit to fly</li> <li>• an approval of equipment for use on board an aircraft or in the provision of an air traffic control service</li> <li>• a maintenance engineer's licence</li> <li>• a pilot's licence</li> <li>• any other type of licence, certificate, authorisation or approval issued by the UK CAA.</li> </ul> <p>A request for a review must be made within 14 days of the communication of the relevant CAA decision. The reviews are carried out by UK CAA Non-Executive Board Members, who are appointed by the Secretary of State. Panel members must not have had any previous involvement in the case.</p> <p>Where a person requests an internal review / IRP in addition to a Regulation 6 review, the Regulation 6 review will usually follow the outcome of the IRP process.</p>	<p>The Regulation 6 review panel has the power to make a regulatory decision on behalf of the UK CAA. It can thus review both the processes that were followed, as well as any substantial judgments made in a case. The panel has the power to substitute a different decision for the decision originally made by a UK CAA official.</p> <p>Provisional suspension cases are not permitted to be reviewed through the Regulation 6 process.</p>	<p>Over 2022 to 2023, 14 Regulation 6 reviews were requested. Of those, 2 proceeded to a final review determination. The remaining requests were either withdrawn, or otherwise resolved.</p>	<p>Not applicable.</p>

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Independent reviews of the  
Director of Civil Aviation's  
decisions

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**Regulations to set the scope of  
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