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From: Duncan Ferrier [REDACTED]
Sent: Wednesday, 15 May 2019 10:01 AM
To: Civil Aviation Bill
Subject: Medical certification issue
Attachments: SKMBT_50011120214340.pdf

I am writing in response to your invitation to provide submissions on the exposure draft of the Civil Aviation Bill. I have one point that I feel ought to be drawn to the Ministry's attention, relating to medical certification and the "flexibility" process in particular.

At present the relevant provision of the draft bill, clause 5(4) of the Second Schedule, requires an Accredited Medical Conclusion ("AMC") that:

"...indicates that in special circumstances either of the following is such that the exercise of the privileges to which a medical certificate relates is not likely to jeopardise aviation safety."

In other words, a "positive" AMC is a pre-requisite for certification under clause 5(4). In the event that a "negative" AMC results, the Director cannot issue a medical certificate.

That has a consequence which may be unintended. The Bill only gives rights of appeal in respect of decisions "by the Director". An AMC is not a decision of the Director. That being the case, an AMC itself cannot be the subject of an appeal. The decision by the Director following an AMC is technically able to be appealed (clause 22). However, because of the absence of what might be described as a "positive AMC", the decision not to issue a medical certificate is the only decision open to the ME. In essence, there is no meaningful right of appeal in relation to a decision by an ME following a "negative" AMC.

I attach a copy of the decision in *Kile v Director of Civil Aviation*. In this judgment, the Court considers the implications of the current wording of the legislation as it affects rights of appeal against decisions following an AMC (paragraphs 118-126). This is, of course, a decision, which relates to the existing legislation. However, beyond a change in the wording of clause 5(4) removing the word "medical", I have not been able to identify any relevant changes in the Bill. I do not believe that the removal of the word "medical" changes the position outlined above in any meaningful way, because a positive AMC remains a pre-condition of certification using flexibility.

Please feel free to contact me if you would like to discuss the issue raised above.

Kind regards,

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