

DRAFT FOR CONSULTATION

Civil Aviation Bill

Government Bill

Some provisions included in this consultation draft contain references to the **Ministry of Transport commentary document**. That document is provided for the purposes of consultation on the policy, and is not determinative as to the meaning of the provisions under which those references are situated.

Hon Phil Twyford

Civil Aviation Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Civil Aviation Act **X**.

2 Commencement

This Act comes into force on **X**.

Part 1
Preliminary provisions

Purposes

3 Main purpose

The main purpose of this Act is to facilitate the operation of a safe and secure civil aviation system.

Please see Ministry of Transport commentary document: *Purpose statement*

4 Additional purposes

This Act has the following additional purposes:

- (a) to contribute to achieving an accessible, safe, sustainable, resilient, and productive transport system:
- (b) to facilitate the development of civil aviation:
- (c) to ensure that New Zealand's obligations under international civil aviation conventions, agreements, and understandings are implemented:
- (d) to preserve New Zealand's national security and national interests:
- (e) to protect the interests of people and the environment that are affected by civil aviation.

Please see Ministry of Transport commentary document: *Purpose statement*

Interpretation provisions

5 Interpretation

In this Act, unless the context otherwise requires,—
accident has the meaning given to it in **section 6**

aerodrome—

- (a) means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, surface movement, or servicing of aircraft; and
- (b) includes any buildings, installations, and equipment on or adjacent to any area used in connection with the aerodrome or its administration

aerodrome control service means an air traffic control service provided for the control of aerodrome traffic

aerodrome flight information service means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome

aerodrome traffic means—

- (a) all traffic in the manoeuvring area of an aerodrome; and
- (b) all aircraft flying in the vicinity of an aerodrome

aerodrome traffic circuit means the pattern flown by aircraft operating in the vicinity of an aerodrome

aeronautical product means anything that comprises or is intended to comprise any part of an aircraft or that is or is intended to be installed in or fitted or supplied to an aircraft, including fuel and other similar consumable items necessary for the operation of the aircraft

air service means an air transport service, whether regular or casual

air traffic means all aircraft in flight or operating on any manoeuvring area of an aerodrome

air traffic control service means a service provided for the purposes of—

- (a) preventing collisions—
 - (i) between aircraft; and
 - (ii) between aircraft and obstructions on any manoeuvring area; and
- (b) expediting and maintaining a safe and an efficient flow of air traffic

air traffic service includes—

- (a) any aerodrome control service;
- (b) any area control service;
- (c) any approach control service;
- (d) any flight information service;
- (e) any aerodrome flight information service;
- (f) any alerting service

aircraft means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth

aircraft flying in the vicinity of an aerodrome means any aircraft that is in, entering, or leaving an aerodrome traffic circuit

Airways means Airways Corporation of New Zealand Limited, or any subsidiary of, or successor to, that company

alerting service means an air traffic service provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required

ANZA means Australia New Zealand Aviation

ANZA mutual recognition agreements means the agreements or arrangements specified in regulations made under **section 329(1)(k)**

AOC means air operator's certificate

approach control service means an air traffic control service for arriving or departing controlled flights

area control service means an air traffic control service provided for controlled flights in controlled airspace

Australia means the Commonwealth of Australia and, when used in a geographical sense, includes any external territory of Australia

Australian AOC with ANZA privileges has the same meaning as in section 3 of the Civil Aviation Act 1988 (Aust), and Australian Air Operator's Certificate with ANZA privileges has a corresponding meaning

Australian temporary stop notice has the same meaning as in section 3 of the Civil Aviation Act 1988 (Aust)

authorised aviation security service provider means AvSec and any other person referred to in **section 124** who provides aviation security services in accordance with **section 126**

authorised person, in relation to a security designated aerodrome or security designated navigation installation, means an aviation security officer or a person authorised by the Director or the operator of the aerodrome or installation

aviation document means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical product, or aviation-related service

aviation examiner has the same meaning as in **clause 1 of Schedule 2**

aviation participant—

- (a) means a person who—
 - (i) operates, maintains, services, or does any other act in respect of an aircraft, aerodrome, or aeronautical product; or
 - (ii) provides an aviation-related service; and
- (b) includes (without limitation)—
 - (i) aircraft pilots:

- (ii) flight crew members:
- (iii) air traffic service personnel:
- (iv) aviation security personnel:
- (v) aviation examiners and medical examiners:
- (vi) aerodrome operators:
- (vii) aircraft engineers; and
- (c) includes a person referred to in **section 33(1)**; and
- (d) includes the holder of an Australian AOC with ANZA privileges

aviation-related service—

- (a) means any equipment, facility, or service operated in support of or in conjunction with the civil aviation system, including—
 - (i) air services:
 - (ii) air traffic services:
 - (iii) aviation security services:
 - (iv) aviation meteorological services:
 - (v) aviation communication services:
 - (vi) navigation installation providers:
 - (vii) aviation training organisations:
 - (viii) aircraft design, manufacture, and maintenance organisations:
 - (ix) the provision of aeronautical products:
 - (x) aeronautical procedures:
- (b) excludes any service of TAIC

aviation security dog means a dog or other animal that is being used, or is intended for use, by an aviation security officer

aviation security officer means—

- (a) a person for the time being employed as such by the CAA in AvSec:
- (b) subject to **section 130(2)**, a person designated as an aviation security officer under **section 130(1)**:
- (c) a member of the Armed Forces when **section 157** applies

aviation security services means the activities referred to in **section 128(1)(a) to (g)** (whether performed by AvSec or any other person)

AvSec means the Aviation Security Service provided under **section 23(1)(c)**

CAA means the Civil Aviation Authority of New Zealand continued by **section 20**

CASA means—

- (a) the Civil Aviation Safety Authority established by the Civil Aviation Act 1988 (Aust); and
- (b) any successor of that authority

chief executive means the chief executive of the Ministry

Civil Aviation Registry means the Registry maintained under **section 34**

controlled airspace means an airspace of defined dimensions within which an air traffic control service is provided to controlled flights

controlled flight means any flight that is provided with or required by the rules to make use of an air traffic control service

Convention means the Convention on International Civil Aviation done at Chicago on 7 December 1944, and includes the Annexes to the Convention, which contain the International Standards and Recommended Practices adopted or amended by the Council of the International Civil Aviation Organization in accordance with Articles 54, 37, and 90 of the Convention

dangerous goods means articles or substances that are capable of posing risk to health, safety, property, or the environment and—

- (a) are listed in, or classified in accordance with, the ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air; or
- (b) have properties that would result in the articles or substances being classified as dangerous goods under the ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air

Director means the person who is for the time being the Director of Civil Aviation under **section 28**

flight information service means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights

health professional means a person who is, or is deemed to be, registered with an authority established or continued by section 114 of the Health Practitioners Competence Assurance Act 2003 as a practitioner of a particular health profession

holder, in relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document

ICAO means the International Civil Aviation Organization established under the Convention; and includes any successor to the Organization

incident means any occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation

Inspector-General of Intelligence and Security means the person holding office under section 157 of the Intelligence and Security Act 2017

international airport means any airport designated as an airport of entry and departure for international air traffic where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out

judicial officer means a District Court Judge, a Justice, a Community Magistrate, or a court Registrar (other than a constable)

manoeuvring area—

- (a) means that part of an aerodrome to be used for the take-off and landing of aircraft and for the surface movement of aircraft associated with take-off and landing; but
- (b) does not include areas set aside for loading, unloading, or maintenance of aircraft

medical certificate has the same meaning as in **clause 1 of Schedule 2**

medical examiner has the same meaning as in **clause 1 of Schedule 2**

medical practitioner means—

- (a) a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine; or
- (b) a person in a jurisdiction other than New Zealand who is entitled, licensed, or registered to practise medicine in that jurisdiction

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act or the relevant Part or provision of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

navigation installation—

- (a) means any building, facility, work, apparatus, equipment, or place, (whether or not part of an aerodrome) that is intended to assist in the control of air traffic or as an aid to air navigation; and
- (b) includes any land adjacent to, and used in connection with, that building, facility, work, apparatus, equipment, or place

New Zealand AOC with ANZA privileges has the meaning set out in **section 82**

New Zealand Register of Aircraft means the register of that name that is maintained under **section 32**

New Zealand registered aircraft means any aircraft that is for the time being registered under **section 33**

New Zealand temporary stop notice means a notice issued under **section 78(1)**

officer has the meaning given to it in **section 7**

operate, in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft

operator, in relation to an aircraft, means a person who causes or permits the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft

operator, in relation to a security designated aerodrome, means an airport authority or person who holds an aviation document for operating an aerodrome

owner, in relation to any aircraft, includes any person lawfully entitled to the possession of the aircraft for 28 days or longer

pilot-in-command, in relation to an aircraft,—

- (a) means the pilot on board an aircraft responsible for the operation and safety of the aircraft; and
- (b) in the absence of a pilot on board an aircraft, means the person who the rules specify as responsible for the operation and safety of the aircraft in accordance with the rules; and
- (c) in all other circumstances,—
 - (i) means an individual nominated by the operator to be responsible for the operation and safety of the aircraft; and
 - (ii) if no individual is nominated by the operator, means the operator

prescribed means prescribed by or under this Act

regulations means regulations made under this Act

rules means rules made by the Minister or Governor-General, and emergency rules made by the Director, under **Part 3**

security area means an area that the Director has declared to be a security area under **section 114**

security designated aerodrome means an aerodrome for the time being designated as a Tier 1 or Tier 2 security designated aerodrome under **section 113(1)(a)**

security designated navigation installation means a navigation installation for the time being designated as a security designated navigation installation under **section 113(1)(b)**

security enhanced area means an area that the Director has declared to be a security enhanced area under **section 114(2)**

service charter means a service charter prepared and made available to the public under **section 25**

specified examination means has the meaning given to it in **Schedule 2**

sterile area means the area at an aerodrome, between the passenger inspection and screening station and the aircraft, into which access is strictly controlled

TAIC means the Transport Accident Investigation Commission established under the Transport Accident Investigation Commission Act 1990

unruly passenger offence—

- (a) means an offence against **subpart 13 of Part 4**; and
- (b) includes an offence to which **section 310** applies.

In relation to the definition of aviation security officer, please see Ministry of Transport commentary document: *Enabling New Zealand Defence Force personnel to act as Aviation Security Officers*

6 Meaning of accident

- (1) In this Act, unless the context otherwise requires, **accident** means an occurrence associated with the operation of an aircraft that,—
 - (a) in the case of an aircraft intended to be flown with any person on board, takes place between—
 - (i) the time that any person boards the aircraft with the intention of flight; and
 - (ii) the time that—
 - (A) all persons on board have disembarked; and
 - (B) the engine or any propellers or rotors have come to rest; and
 - (b) in the case of an aircraft intended to be flown without any person on board, takes place between—
 - (i) the time that the aircraft is ready to move with the purpose of flight; and
 - (ii) the time that—
 - (A) the aircraft comes to rest at the end of the flight; and
 - (B) the primary propulsion system is shut down.
- (2) The occurrence must be one in which—
 - (a) a person is fatally or seriously injured as a result of—
 - (i) being in the aircraft; or
 - (ii) direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or
 - (iii) direct exposure to jet blast; or

- (b) the aircraft sustains damage or structural failure that—
 - (i) adversely affects the structural strength, performance, or flight characteristics of the aircraft; and
 - (ii) would normally require major repair or replacement of the affected component; or
- (c) the aircraft is missing or is completely inaccessible.
- (3) **Subsection (2)(a)** does not include an injury that is self-inflicted or inflicted by another person, or an injury to a stowaway hiding outside the areas normally available to passengers and crew.
- (4) **Subsection (2)(b)** does not include engine failure or damage that is limited to the engine, its cowlings, or accessories, or damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin.

Please see Ministry of Transport commentary document: *Amendments relating to unmanned aircraft (drones)—Definition of accident to include drones*

7 Meaning of officer

In this Act, unless the context otherwise requires, **officer**, in relation to a body corporate,—

- (a) means—
 - (i) if the body corporate is a company, any person occupying the position of a director of the company by whatever name called;
 - (ii) if the body corporate is other than a company, any person occupying a position in the body that is comparable with that of a director of a company; and
- (b) includes any other person occupying a position in relation to the activities of the body corporate that allows the person to exercise significant influence over the management of the activities of the body corporate (for example, a chief executive); but
- (c) does not include a Minister of the Crown acting in that capacity; and
- (d) to avoid doubt, does not include a person who merely advises or makes recommendations to a person referred to in **paragraph (a) or (b)**.

8 Meaning of scheduled international air service

- (1) In this Act, unless the context otherwise requires, **scheduled international air service**,—
 - (a) means a series of flights that meet the requirements of **subsection (2)**; and
 - (b) in relation to a New Zealand international airline, includes a seventh freedom service.
- (2) The flights must be—

- (a) performed by aircraft between New Zealand and 1 or more points in any other country or territory; and
 - (b) operated for the transport of passengers, cargo, or mail; and
 - (c) so regular or frequent as to constitute a systematic service, irrespective of whether the flights are operated in accordance with a published timetable; and
 - (d) operated in such a manner that each flight is open to use by members of the public.
- (3) In this section, **seventh freedom service** means a series of flights between 1 or more points in 1 country or territory other than New Zealand and 1 or more points in another country or territory other than New Zealand, if—
- (a) the airline is designated by New Zealand as a seventh freedom service under the air services agreement (or similar arrangement) between New Zealand and each country or territory in which the service is being performed; and
 - (b) the service is performed according to the traffic rights allocated to the airline under those agreements (or arrangements); and
 - (c) the service is a scheduled service.

Compare: 1990 No 98 s 87A

Application of Act

9 Application of Act

- (1) Except as provided in **section 290 and subpart 13 of Part 10**, this Act and all regulations and rules apply to the following:
- (a) every person, aircraft, aerodrome, aeronautical product, and aviation-related service, in New Zealand;
 - (b) every New Zealand registered aircraft whether within or outside New Zealand;
 - (c) every holder of an aviation document while outside New Zealand and exercising or purporting to exercise privileges accorded by that document;
 - (d) every foreign registered aircraft operating in New Zealand.
- (2) Despite **subsection (1)**, the Minister, acting on the recommendation of CAA or the Director, as the case may require, may, by agreement with the appropriate foreign aeronautical authority,—
- (a) transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibility for a New Zealand registered aircraft operated by that foreign operator that the CAA or the Director has under this Act or the regulations or rules:

- (b) vest in the CAA or the Director, as the case may require, all or part of the responsibility for foreign registered aircraft operated by a New Zealand operator that arises under this Act or the regulations or rules:
 - (c) grant exemptions from this Act, and from the regulations and rules, relevant to any exercise of the Minister's powers under this subsection.
- (3) Every New Zealand registered aircraft must, while being operated over the high seas, be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.
 - (4) Except where an act or omission is required in order to comply with the laws of any foreign State, every holder of an aviation document who, while outside New Zealand and exercising or purporting to exercise the privileges accorded by that document, commits an act or omission that would constitute an offence if it were committed in New Zealand, is deemed to have committed an offence under this Act and may be proceeded against in New Zealand as if the act or omission had occurred within New Zealand.
 - (5) Nothing in this section may be interpreted as requiring a person or aircraft to breach or be operated in breach of a law of a foreign State that applies to or in respect of the person or aircraft.
 - (6) Nothing in this Act may be interpreted as limiting the privileges or immunities of—
 - (a) any foreign military aircraft; or
 - (b) the officers and crew of any foreign military aircraft.

Compare: 1990 No 98 s 4

Transitional, savings, and related provisions

10 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms.

Act binds the Crown

11 Act binds the Crown

- (1) This Act binds the Crown.
- (2) Except as otherwise expressly provided in this Act or any other Act, or in the regulations or rules concerned, nothing in this Act or in the regulations or rules applies to the New Zealand Defence Force.

Overview

12 Overview

- (1) This Part (**Part 1**) deals with preliminary matters, including specifying the purposes of this Act and defining terms. Key terms are **accident**, **aircraft**, **avi-**

ation participant, pilot-in-command, and scheduled international air service.

- (2) **Part 2**—
 - (a) sets out the general obligations of aviation participants:
 - (b) sets out duties relating to pilots-in-command:
 - (c) continues the CAA and provides for its composition, governance, objective, and functions:
 - (d) provides for the Director of Civil Aviation and the Director's functions and powers:
 - (e) sets out the role of Airways:
 - (f) provides for the Register of Aircraft, the Civil Aviation Registry, and information services.
- (3) **Part 3** provides for the making of civil aviation rules by the Minister. Much of the detail of the working of the civil aviation system is provided in rules.
- (4) **Part 4** provides for—
 - (a) processes for an aviation participant to obtain an aviation document if the rules provide that an aviation document is required for that person's participation in the civil aviation system (*see* **subpart 1**):
 - (b) the recognition in New Zealand of certain Australian air operator certificates, and the granting by the Director of authority to New Zealand air operators to conduct air operations to, from, or within Australia (*see* **subpart 2**):
 - (c) certain key powers of the Director in relation to aviation document holders and aviation documents (*see* **subpart 3**).
- (5) **Part 5**—
 - (a) provides duties to notify accidents and incident (*see* **subpart 1**):
 - (b) establishes a regime for drug and alcohol management plans and testing (*see* **subpart 2**).
- (6) **Part 6** relates to aviation security, and provides for—
 - (a) the designation of aerodromes and navigation installations as security designated aerodromes and navigation installations:
 - (b) the conducting of security checks by the Director of persons who are required by the rules to have a security check to perform their roles in the civil aviation system:
 - (c) the authorisation of those who provide aviation security services at aerodromes and navigation installations:
 - (d) the powers of aviation security officers and the Police in relation to aviation security at aerodromes and navigation installations:

-
- (e) the consequences, for persons travelling on aircraft, and other persons present at aerodromes or navigation installations, of failure to comply with aviation security requirements.
- (7) **Part 7** provides for international air service licensing, including—
- (a) provisions relating to the grant, duration, and renewal of, and variation of terms and conditions relating to, licenses for international air services:
 - (b) requirements on licensees:
 - (c) suspension and revocation of licences.
- (8) **Part 8** contains provisions relating to—
- (a) airport authorities (*see* **subpart 1**):
 - (b) aerodromes, facilities, and joint venture airports (*see* **subpart 2**):
 - (c) the sale of alcohol to eligible passengers arriving at, or departing from, international airports in New Zealand (*see* **subpart 3**).
- (9) **Part 9**—
- (a) provides for international carriage of passengers and goods by air consistent with, and in accordance with, relevant international conventions (*see* **subpart 2**), including liability provisions and provisions relating to time for bringing proceedings:
 - (b) provides for domestic carriage of passengers and goods by air (*see* **subpart 3**), including liability and limitation provisions:
 - (c) provides jurisdiction to New Zealand courts and the Disputes Tribunal in relation to liability claims against a carrier or any other person (*see* **subpart 14**).
- (10) **Part 10** provides for matters relating to investigations, interventions, compliance, and enforcement, including—
- (a) protections in relation to certain reports (*see* **subpart 2**):
 - (b) inspection, monitoring, and enforcement powers of the Director (*see* **subpart 1**):
 - (c) provisions dealing with the consequences where a court disqualifies a person from obtaining or holding an aviation document (*see* **subpart 4**):
 - (d) powers of the Minister to intervene on grounds of national security in relation to participation in the civil aviation system (*see* **subpart 6**):
 - (e) infringement offences (*see* **subpart 9**):
 - (f) unruly passenger offences (*see* **subpart 13**).
- (11) **Part 11** provides various regulation-making powers and miscellaneous provisions, including—
- (a) powers to make regulations, airworthiness directives, and transport instruments:

- (b) international air carriage competition:
 - (c) the application of the Cape Town Convention and Aircraft Protocol in New Zealand:
 - (d) provisions conferring rights of appeal:
 - (e) provisions about the delegation of powers and functions of the Minister and the Director.
- (12) This section is only a guide to the provisions of this Act.

Part 2

Civil aviation system

Subpart 1—Aviation participants

General requirements relating to aviation participants

13 General requirements for aviation participants

- (1) An aviation participant must comply with—
- (a) this Act; and
 - (b) the relevant regulations and rules; and
 - (c) the conditions attached to any aviation document held by the aviation participant.
- (2) An aviation participant who does anything for which an aviation document is required must ensure that the aviation participant holds—
- (a) all the necessary qualifications; and
 - (b) the appropriate aviation documents; and
 - (c) other necessary documents.
- (3) An aviation participant must ensure that the activities or functions for which an aviation document has been issued are carried out by the aviation participant, and all persons for whom the aviation participant is responsible, safely and in accordance with the relevant prescribed safety and security standards and practices.
- (4) An aviation participant who holds an aviation document that authorises the provision of a service within the civil aviation system—
- (a) must, if required by the rules, establish and follow a management system that will ensure compliance with the relevant prescribed safety and security standards and the conditions attached to the aviation document; and
 - (b) must provide training and supervision to all employees of the aviation participant who are doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety and security

standards and the conditions attached to the aviation document and to promote safety and security; and

- (c) must provide sufficient resources to ensure compliance with the relevant prescribed safety and security standards and the conditions attached to the aviation document.

Compare: 1990 No 98 s 12

Provisions relating to pilots-in-command

14 Duties of pilot-in-command

- (1) A pilot-in-command is responsible for—
 - (a) the safe operation of the aircraft; and
 - (b) the safety and well-being of all passengers and crew; and
 - (c) the safety of the cargo carried.
- (2) The pilot-in-command has final authority to control the aircraft while in command and for the maintenance of discipline by all persons on board the aircraft.
- (3) The pilot-in-command is responsible for compliance with all relevant requirements of this Act and the regulations and rules.
- (4) **Subsection (3)** is subject to **sections 15 and 16**.

Please see Ministry of Transport commentary document: *Amendments relating to unmanned aircraft (drones)—Amendments to pilot-in-command provisions*

Compare: 1990 No 98 s 13

15 Duties of pilot-in-command in emergencies arising in flight

- (1) In an emergency arising in flight, the pilot-in-command may breach the provisions of this Act or of the regulations or rules only if the pilot-in-command is satisfied that—
 - (a) the emergency involves a danger to life or property; and
 - (b) the extent of the breach goes only as far as is necessary to deal with the emergency; and
 - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) the degree of danger involved in complying with the provision is clearly greater than the degree of danger involved in deviating from it.
- (2) If the pilot-in-command breaches the provisions of this Act or of the regulations or rules in accordance with the provisions of this section, the pilot-in-command must—
 - (a) immediately notify the relevant air traffic control service of the breach; and
 - (b) as soon as practicable, notify the Director of the breach and the circumstances that necessitated it; and

- (c) if requested by the Director, provide to the Director a written report in respect of the breach.

Compare: 1990 No 98 s 13A(1), (2), (6)

16 Duties of pilot-in-command and operator in emergencies not arising in flight

- (1) In an emergency not arising in flight the pilot-in-command of the aircraft or the operator of the aircraft may breach the provisions of this Act or of the regulations or rules only if—
 - (a) the emergency involves a danger to life or property that necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property; and
 - (b) the extent of the breach goes only as far as is necessary to deal with the emergency; and
 - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) the degree of danger involved in deviating from the prescribed requirement is clearly less than the degree of risk in failing to attend to the emergency.
- (2) Nothing in this section permits—
 - (a) the operation of an aircraft that is not registered in New Zealand or elsewhere; or
 - (b) the breach of any prescribed requirement as to the airworthiness of an aircraft; or
 - (c) the operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.
- (3) If the pilot-in-command or the operator breaches the provisions of this Act or of the regulations or rules in accordance with the provisions of this section, the pilot-in-command or the operator (as the case may be) must—
 - (a) immediately notify the relevant air traffic control service of the breach; and
 - (b) as soon as practicable, notify the Director of the breach and the circumstances that necessitated it; and
 - (c) if requested by the Director, provide to the Director a written report in respect of the breach.

Compare: 1990 No 98 s 13A(3)–(6)

17 Failure to notify emergency breach of Act or regulations or rules

- (1) A pilot-in-command commits an offence who, without reasonable excuse, fails to comply with **section 15(2) or 16(3)** (which relates to the notification of

breaches of this Act or the regulations or rules that are committed during an emergency).

- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$5,000.

Compare: 1990 No 98 s 52A

18 Identification of pilot-in-command

- (1) If a pilot-in-command of an aircraft is alleged to have committed an offence under this Act or the regulations, the Director or a constable may—

- (a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and
- (b) require that person to give all information in that person's possession or reasonably obtainable by that person that may lead to the identification of the pilot-in-command.

- (2) The Director or a constable may require the information under **subsection (1)(b)** orally or in writing.

- (3) The operator or holder of the certificate of registration (as the case may be) must give the required information to the Director or a constable—

- (a) on demand; or
- (b) within 10 working days, if—
- (i) the information is not in that person's possession; or
- (ii) that person is unable to give the required information on demand.

- (4) **Subsection (1)** does not apply if the operator or holder of the certificate of registration has been arrested or detained in relation to the suspected offence.

Compare: 1990 No 98 s 26A

19 Failure to provide identifying information

- (1) An operator of an aircraft or holder of a certificate of registration commits an offence who, without reasonable excuse, fails to comply with **section 18** (which relates to the identification of the pilot-in-command of an aircraft).

- (2) An operator or holder of a certificate of registration who commits an offence against **subsection (1)** is liable on conviction,—

- (a) in the case of an individual, to a fine not exceeding \$10,000;
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Compare: 1990 No 98 s 52C

Subpart 2—Regulatory roles

CAA

20 Civil Aviation Authority of New Zealand continued

- (1) There continues to be an authority known as the Civil Aviation Authority of New Zealand.
- (2) The CAA is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (3) The Crown Entities Act 2004 applies to the CAA except to the extent that this Act expressly provides otherwise.

Compare: 1990 No 98 s 72A(1)–(1B), (10)

21 Board of CAA

- (1) The Minister must appoint 5 persons as members of the board.
- (2) Without limiting section 29 of the Crown Entities Act 2004, the Minister may appoint a person as a member if the Minister considers the person will represent the public interest in civil aviation.
- (3) Before appointing 2 of the members, the Minister must request, from the organisation or organisations that the Minister considers represent those who have a substantial interest in the civil aviation industry in New Zealand, the names of persons the organisation or organisations consider proper candidates for appointment to the board.
- (4) A person may hold office as a member of the board concurrently with any other office, except any office or appointment under the Transport Accident Investigation Commission Act 1990.
- (5) Neither the Director nor any other employee of the CAA may be a member of the board.

Compare: 1990 No 98 s 72A(4)–(8)

22 Objective of CAA

The main objective of the CAA is to undertake its functions to facilitate the operation of a safe and secure civil aviation system.

Please see Ministry of Transport commentary document: *Purpose statement*

23 Functions of CAA

- (1) The CAA has the following functions:
 - (a) to promote civil aviation safety and security in New Zealand;
 - (b) to promote civil aviation safety and security beyond New Zealand in accordance with New Zealand's international obligations;
 - (c) to provide a service to be called the AvSec, having the functions and duties specified in **section 128**:

- (d) to investigate and review in its capacity as the responsible safety and security authority (subject to the limitations set out in section 14(3) of the Transport Accident Investigation Commission Act 1990) those civil aviation accidents and incidents that it appears to the CAA to be desirable to do so in the interests of civil aviation safety and security:
 - (e) to notify TAIC in accordance with **section 104** of accidents and incidents notified to the CAA:
 - (f) to maintain and preserve records and documents relating to activities within the civil aviation system, and in particular to maintain the New Zealand Register of Aircraft and the Civil Aviation Registry:
 - (g) to ensure the collection, publication, and provision of charts and aeronautical information, and to enter into arrangements with any other person or organisation to collect, publish, and distribute the charts and information:
 - (h) to provide to the Minister the information and advice that the Minister may from time to time require:
 - (i) to co-operate with, or to provide advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the CAA are satisfied that the performance of the functions and duties of the CAA will not be compromised:
 - (j) to provide information and advice with respect to civil aviation, and to foster appropriate information education programmes with respect to civil aviation, that promote its objective:
 - (k) to enter into technical or operational arrangements, or both, with civil aviation authorities of other countries:
 - (l) to carry out any other civil aviation functions and duties that are conferred on it by or under this Act or any other Act:
 - (m) to perform any additional function that the Minister directs under section 112 of the Crown Entities Act 2004.
- (2) The CAA must, if directed to do so by the Minister under **section 199A** of the Maritime Transport Act 1994, do any or all of the following:
- (a) operate and maintain the search and rescue co-ordination centre established under **section 199(1)(a)** of the Maritime Transport Act 1994:
 - (b) co-ordinate, or participate in the co-ordination of, any search and rescue operation specified in **section 199(1)(a)** of the Maritime Transport Act 1994:
 - (c) perform, or participate in the performance of, any search and rescue operation specified in **section 199(1)(a)** of the Maritime Transport Act 1994:

- (d) exercise any or all of the powers of the Minister under **section 199(1)(b) and (c) and 199(2)** of the Maritime Transport Act 1994.
- (3) The CAA must maintain separate accounts in respect of AvSec.
Compare: 1990 No 98 s 72B

24 CAA to consider delegating or contracting out of functions and powers

Subject to this Act, the CAA must, in the course of performing its functions and powers, consider whether it could most efficiently and effectively perform those functions and powers by means of its own operations or by delegating or contracting out those operations to appropriate persons selected after an appropriate competitive process.

Compare: 1990 No 98 s 72E

25 Service charter

- (1) The CAA must at all times have and make available to the public a service charter including (but not limited to)—
 - (a) a statement by the CAA of the standards of service that the public can expect to apply to the carrying out of functions of the CAA and the Director under this Act and the regulations or rules; and
 - (b) details of the procedures to be followed under the service charter by a person who alleges that the standards were not met; and
 - (c) details of the remedies that are available under the service charter to the person affected where it is established by that person to the satisfaction of the CAA that the standards were not met; and
 - (d) provision for the appointment by the CAA of an appropriate independent person to assist in the resolution of disputes arising in respect of alleged failures to meet the standards of service specified in the service charter.
- (2) The service charter may make provision for a person to be appointed as a deputy to the person appointed under the provision referred to in **subsection (1)(d)**, and for the functions, duties, and powers of the deputy.
- (3) The CAA, the Director, any employee or agent of the CAA, and any agent of the Director have a public duty to observe the provisions of the service charter.
- (4) If the CAA fails to comply with **subsection (1)**, the Minister must prepare the service charter and make it available to the public.
- (5) The CAA (if the CAA has prepared it) or the Minister (if the Minister has prepared it) may, in writing, amend the service charter, and must make the amendments available to the public.
- (6) Nothing in the service charter limits or restricts any right to make any complaint or to bring any proceedings under any Act or rule of law.

Compare: 1990 No 98 s 72G

26 Use of words Civil Aviation Authority or CAA

- (1) No person other than the CAA may, either alone or with another person, be incorporated or registered under another enactment, trade or carry on business, or perform the functions for which it was formed—
 - (a) under a name that contains the words “Civil Aviation Authority” or “CAA”; or
 - (b) under a name that so resembles the words “Civil Aviation Authority” or “CAA” as to be likely to mislead.
- (2) Nothing in **subsection (1)** applies to any person who is appropriately authorised by CAA.

Compare: 1990 No 98 s 72H

27 Use of words Aviation Security Service or AvSec

- (1) No person other than AvSec may, either alone or with another person, be incorporated or registered under another enactment, trade or carry on business, or perform the functions for which it was formed—
 - (a) under a name that contains the words “Aviation Security Service” or “AvSec”; or
 - (b) under a name that so resembles the words “Aviation Security Service” or “AvSec” as to be likely to mislead.
- (2) Nothing in **subsection (1)** applies to any person who is appropriately authorised by AvSec.

Compare: 1990 No 98 s 72N

*Director of Civil Aviation***28 Director of Civil Aviation**

- (1) The CAA must from time to time appoint a chief executive of the CAA, to be known as the Director of Civil Aviation.
- (2) The Director has and may exercise—
 - (a) the functions and powers that may be conferred or imposed on the Director by this Act, or the regulations or rules; and
 - (b) the functions and powers that may be delegated to the Director by the CAA under section 73 of the Crown Entities Act 2004; and
- (3) Without limiting **subsection (2)**, the Director must—
 - (a) exercise control over entry into the civil aviation system through the granting of aviation documents under this Act; and
 - (b) take the action that may be appropriate in the public interest to enforce the provisions of this Act and of the regulations and rules, including the carrying out or requiring of inspections, monitoring, and testing; and

- (c) monitor adherence, within the civil aviation system, to any regulatory requirements relating to—
 - (i) safety and security, including (but not limited to) personal security:
 - (ii) access and mobility:
 - (iii) public health:
 - (iv) environmental sustainability:
 - (v) any other matter; and
- (d) ensure regular reviews of the civil aviation system to promote the improvement and development of its safety and security; and
- (4) The Director may enter into arrangements with CASA for the purpose of giving effect to the ANZA mutual recognition agreements.
- (5) In performing or exercising any of the following functions or powers in respect of any particular case, the Director must act independently and is not responsible to the Minister or the CAA for the performance or exercise of those functions or powers:
 - (a) the granting of aviation documents:
 - (b) the issue, suspension, or revocation of medical certificates:
 - (c) the suspension of aviation documents:
 - (d) the revocation of aviation documents:
 - (e) the granting of exemptions:
 - (f) the enforcement of the provisions of this Act or any other Act, or of the rules or regulations made under this or any other Act.

Compare: 1990 No 98 s 72I(1)–(3), (4)

29 Acting Director of Civil Aviation

- (1) In the case of absence from duty of the Director (from whatever cause arising) or if there is a vacancy in the position of Director (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the Director or pertaining to the position may be exercised and performed by—
 - (a) any other employee for the time being directed by the CAA to exercise and perform them; or
 - (b) any other person for the time being appointed by the CAA to exercise and perform them.
- (2) **Subsection (1)** applies whether the direction has been given by the CAA or the appointment has been made by the CAA before the absence or vacancy occurs or while the absence or vacancy continues.

- (3) No direction or appointment under this section, and no acts done by any employee or other person acting pursuant to a direction or appointment, may in any proceedings be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.
- (4) No person employed within AvSec may be given any direction or appointment by the CAA under this section without the prior written approval of the Minister.

Compare: 1990 No 98 s 72J

30 Powers of Director in relation to examinations, etc

For the purposes of granting or renewing aviation documents under this Act, the Director may set, conduct, and administer examinations and tests, conduct flight testing, and carry out any other functions in relation to those examinations, tests, and flight testing that may be necessary.

Compare: 1990 No 98 s 72K

Airways

31 Airways to be sole provider of certain airways services

- (1) Subject to the Civil Defence Emergency Management Act 2002, Airways is the only person entitled to provide the following aviation services in New Zealand:
 - (a) area control services:
 - (b) approach control services:
 - (c) flight information services.
- (2) Nothing in this section applies to aerodrome control services or aerodrome flight information services.

Compare: 1990 No 98 s 99

Subpart 3—Registries and information services

32 New Zealand Register of Aircraft

The CAA must—

- (a) maintain the New Zealand Register of Aircraft in accordance with prescribed requirements (if any); and
- (b) enter in the register the details, as may be prescribed, of every aircraft registered under **section 33(2) and (3)(a)**.

Compare: 1990 No 98 s 73

33 Requirement to register aircraft

- (1) This section applies to a person lawfully entitled to the possession of an aircraft for a period of 28 days or longer that flies to, from, within, or over New Zealand territory.
- (2) Except as otherwise provided in this Act or rules, the person must apply to register that aircraft and hold a valid certificate of registration for that aircraft issued by any of the authorities mentioned in **subsection (3)**.
- (3) The authorities are as follows:
 - (a) the Director:
 - (b) the appropriate aeronautical authorities of a contracting State of ICAO:
 - (c) the appropriate aeronautical authorities of another State that is a party to an agreement with the Government of New Zealand or the CAA that provides for the acceptance of each other's registrations.
- (4) No aircraft may be registered in, or remain registered in, New Zealand if it is registered in any other country.
- (5) The Director may decline an application to register any aircraft in accordance with the rules.
- (6) A person may, under **section 362**, appeal against a decision under this section to the District Court.

Compare: 1990 No 98 s 6

34 Civil Aviation Registry

- (1) The CAA must maintain the Civil Aviation Registry in accordance with prescribed requirements (if any).
- (2) Copies or appropriate evidence of the following must be recorded and maintained at the Registry:
 - (a) every current aviation document:
 - (b) every Australian AOC with ANZA privileges:
 - (c) the New Zealand Register of Aircraft:
 - (d) any material incorporated into a rule by reference under **section 65**:
 - (e) every accident and incident notification given under **section 103**:
 - (f) every airworthiness directive issued by the Director under **section 347**:
 - (g) every delegation, authorisation, and exemption granted in writing under this Act:
 - (h) the address for service of every current applicant for an aviation document and of every current aviation document holder:
 - (i) all information published under **section 35**:
 - (j) the current service charter.

- (3) Documents kept at the Registry must be made available by the CAA, in accordance with the provisions of the Official Information Act 1982, for inspection by the public free of charge.
- (4) **Subsection (3)** is subject to the Privacy Act 1993.
Compare: 1990 No 98 s 74

35 Information services

- (1) The CAA must ensure provision of an information service that comprises the collection and dissemination of—
 - (a) aeronautical information; and
 - (b) instructions relating to the safety, regularity, and efficiency of air navigation.
- (2) The CAA must ensure that the information and instructions are readily available to any person upon payment of a reasonable charge fixed by the CAA.
Compare: 1990 No 98 s 75

Subpart 4—General offences and liability provisions

36 Operating aircraft in careless manner

- (1) A person commits an offence who operates any aircraft in a careless manner.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$7,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$35,000.
- (3) The provisions of this section are in addition to and do not limit the regulations or rules.
Compare: 1990 No 98 s 43A

37 Dangerous activity involving aircraft, aeronautical product, or aviation-related service

- (1) A person commits an offence who—
 - (a) operates, maintains, or services an aircraft, aerodrome, or aeronautical product, or provides an aviation-related service, in a manner that causes unnecessary danger to any other person or to any property; or
 - (b) does any other act in respect of an aircraft, aerodrome, aeronautical product, or aviation-related service in a manner that causes unnecessary danger to any other person or to any property; or
 - (c) causes or permits an aircraft, aerodrome, or aeronautical product to be operated, maintained, or serviced, or an aviation-related service to be provided, in a manner that causes unnecessary danger to any other person or to any property

- (d) causes or permits any other act to be done in respect of an aircraft, aerodrome, aeronautical product, or aviation-related service in a manner that causes unnecessary danger to any other person or to any property.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both:
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) The provisions of this section are in addition to and do not limit the regulations or rules.

Compare: 1990 No 98 s 44

38 Communicating false information affecting safety

- (1) A person commits an offence who—
 - (a) by any means provides to another person information relating to—
 - (i) the safety of an aircraft, aerodrome, aeronautical product, aviation-related service, or any other facility or product used in or connected with aviation; or
 - (ii) the safety of any person associated with any thing referred to in **subparagraph (i)**; and
 - (b) knows the information to be false or is reckless as to whether it is false.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both:
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Compare: 1990 No 98 s 56(1), (2)

39 Nuisance and trespass

- (1) No action lies in respect of nuisance, or in respect of trespass, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, as long as the provisions of this Act and of the rules are complied with.
- (2) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in the rules, as long as the provisions of the rules are complied with.

Compare: 1990 No 98 s 97(1), (2)

40 Responsibility for damage

- (1) This section applies if material damage or loss is caused to property on land or water by—
 - (a) an aircraft in flight, taking off, landing, or alighting; or
 - (b) any person or article in, or falling from, an aircraft referred to in **paragraph (a)**.
- (2) Damages are recoverable from the owner of the aircraft for the damage or loss, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by the person's fault.
- (3) Civil proceedings under **section 327** may be commenced for recovery of damages under **subsection (2)**.
- (4) **Subsection (2)** does not apply where the damage or loss was caused by or contributed to by the fault of the person by whom the damage or loss was suffered.
- (5) If damage or loss is contributed to by the fault of the person by whom the damage or loss was suffered, provisions of the Contributory Negligence Act 1947 as to apportionment apply.
- (6) If an aircraft has been hired out to any other person by the owner of the aircraft, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section and **sections 41 and 42** apply as though every reference to the owner were a reference to the person to whom the aircraft has been hired out.
- (7) For the purposes of this section, **fault** means negligence, breach of statutory duty, or other act or omission that gives rise to a liability in tort or would, apart from the Contributory Negligence Act 1947, give rise to the defence of contributory negligence.

Compare: 1990 No 98 s 97(3), (5), (7), (8)

41 Circumstances in which owner entitled to be indemnified for responsibility for damage

- (1) This section applies if damage or loss is caused in the manner described in **section 40** and—
 - (a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of **section 40**; and
 - (b) some person other than the owner is liable to pay damages in respect of the damage or loss.
- (2) The owner is entitled to be indemnified by the other person referred to in **subsection (1)(b)** against any claim under **section 40** in respect of the damage or loss.

Compare: 1990 No 98 s 97(4)

42 Responsibility for damage by descent by parachute

- (1) This section applies if damage or loss is caused by a person descending from an aircraft by parachute.
- (2) Damages are not recoverable under **section 41** from the owner of the aircraft in respect of the damage or loss.
- (3) **Section 41** applies with the necessary modifications, as if the person descending were the owner of the aircraft.
- (4) This section does not apply in respect of damage or loss caused by a person descending from an aircraft by parachute where the descent is required to avoid injury or death.

Compare: 1990 No 98 s 97(6)

**Part 3
Rules****Subpart 1—Rules made by Minister or Governor-General***Power of Minister to make rules***43 Power of Minister to make rules**

- (1) The Minister may make rules for all or any of the following purposes:
 - (a) to give effect to the main purpose or any of the additional purposes of this Act:
 - (b) any matter related or reasonably incidental to any of the following:
 - (i) the CAA's objective under **section 22** and its functions under **section 23**:
 - (ii) the Director's functions and powers under **sections 28 and 342**:
 - (c) any other matter contemplated by any provision of this Act.
- (2) The power of the Minister to make rules under this section is not limited by any other power of the Minister to make rules under this Part.

Compare: 1990 No 98 s 28(1)

44 Rules relating to designation, classification, and certification

- (1) The Minister may make rules relating to the designation, classification, and certification of all or any of the following:
 - (a) aircraft:
 - (b) aerodromes:
 - (c) aeronautical products:
 - (d) aviation-related services:

- (e) aviation participants.
- (2) The Minister may make rules for either or both of the following purposes:
 - (a) to provide for the privileges of an air operator certificate to include conducting air operations in Australia:
 - (b) to allow for the mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements.

Compare: 1990 No 98 s 30(a)

45 Rules relating to standards, specifications, restrictions, and licensing requirements

- (1) The Minister may make rules relating to the setting of standards, specifications, restrictions, and licensing requirements for all or any of those persons or things specified in **section 44**, including but not limited to the following:
 - (a) the specification of the privileges, limitations, and ratings associated with licences or other forms of approval:
 - (b) the setting of standards for training systems and techniques, including recurrent training requirements:
 - (c) the setting of medical standards for personnel:
 - (d) the requirement for proof of access to appropriate weather services:
 - (e) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft and aeronautical products:
 - (f) the requirements for notification of insurance coverage for air services:
 - (g) the provision of information to the CAA or the Director by applicants for or holders of aviation documents:
 - (h) the requirements relating to the classification of aviation examiners and medical examiners and any related standards and restrictions on the exercise of their functions and powers:
 - (i) the requirements for the grant of delegations by the Director under **clause 27 of Schedule 2**:
 - (j) the requirements for the purposes of determining suitably qualified medical examiners and establishing the criteria for standard medical assessments under **clause 27 of Schedule 2**:
 - (k) the requirements and criteria for determining medical experts acceptable to the Director for the purposes of reaching an accredited medical conclusion.
- (2) The Minister may make rules contemplated by or necessary for giving full effect to **subpart 2 of Part 4**.
- (3) The Minister may make rules—

- (a) prescribing the content or format, or both, of aviation documents, applications, and forms for other matters:
- (b) requiring the use of forms of aviation documents, applications, or forms for other matters where the content or format or both, of those forms is prescribed or approved by the CAA or the Director.

Compare: 1990 No 98 s 30(b)

46 Rules relating to requirement for aviation document

- (1) Without limiting **sections 44 or 45**, the Minister may make rules providing that an aviation document is required by or in respect of all or any of the following:
 - (a) New Zealand registered aircraft:
 - (b) aerodromes:
 - (c) aeronautical products:
 - (d) aviation participants.
- (2) The requirements, standards, and application procedure for each aviation document, and the maximum period for which each document may be issued, must be prescribed by rules.

Compare: 1990 No 98 s 7(1), (2)

47 Rules relating to safety and security

In the interests of safety or security within the civil aviation system the Minister may make all or any of the following rules:

- (a) rules providing for the use of aerodromes and other aviation-related facilities, including but not limited to the following:
 - (i) the provision of identification procedures for persons, aircraft, and any other aviation-related things:
 - (ii) the prevention of interference with aerodromes and other aviation-related facilities:
- (b) general operating rules, air traffic rules, and flight rules, including but not limited to the following:
 - (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft:
 - (ii) the prevention of aircraft endangering persons or property:
- (c) rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following:
 - (i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air:

- (ii) the construction, use, or operation of anything likely to be hazardous to aviation safety.

Compare: 1990 No 98 s 29

48 Rules relating to airspace

The Minister may make rules providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace, including airspace used by aircraft used by the New Zealand Defence Force or a visiting force,—

- (a) in the interests of safety or security within the civil aviation system; or
- (b) in the interests of national security; or
- (c) for any other reason in the public interest.

Compare: 1990 No 98 s 29A

49 Rules for noise abatement purposes

The Minister may make rules prescribing flight rules, flight paths, altitude restrictions, and operating procedures for the purposes of noise abatement in the vicinity of aerodromes.

Compare: 1990 No 98 s 29B

50 Rules relating to national security

In the interests of national security the Minister may make rules prescribing when an application for an aviation document or for renewal of an aviation document, is an application to which national security considerations apply, which may be—

- (a) on the basis of the type or activity for which the document is sought or particular circumstances relating to that activity;
- (b) on the basis of circumstances relating to an applicant or to any person who will conduct the activity for which the document is sought;
- (c) on any other differential basis.

Please see Ministry of Transport commentary document: National security considerations within the civil aviation system

51 Rules relating to other matters

The Minister may make rules for all or any of the following purposes:

- (a) the definitions, abbreviations, and units of measurement to apply within the civil aviation system;
- (b) prescribing the design and colours of the New Zealand Civil Air Ensign, and where and by whom it may be flown;
- (c) providing for aviation meteorological services, search and rescue services, and civil aviation security programmes and services:

- (d) providing for the conditions of operation of foreign aircraft and international flights to, from, or within New Zealand:
- (e) improving access and mobility:
- (f) protecting and promoting public health:
- (g) ensuring environmental sustainability.

Compare: 1990 No 98 ss 28(1)(ab), (ca)–(cd), 30(ca), (d), (e)

52 Minister must not delegate power to make rules

Despite section 28 of the State Sector Act 1988, the Minister must not delegate the Minister's power to make rules under this Act.

Compare: 1990 No 98 s 28(9)

53 Procedure for making rules

- (1) Before making a rule, the Minister must, as the Minister in each case considers appropriate,—
 - (a) publish a notice of the Minister's intention to make the rule; and
 - (b) consult representative groups within the aviation industry or elsewhere, government departments, and Crown agencies, and any other persons.
- (2) Before making a rule, the Minister must—
 - (a) be satisfied that the rule is not inconsistent with—
 - (i) the standards of ICAO relating to aviation safety and security, to the extent adopted by New Zealand:
 - (ii) New Zealand's international obligations relating to aviation safety and security.
 - (b) have regard to, and give the weight that the Minister considers appropriate in each case to the criteria specified in **section 64(2)**
- (3) A rule must be notified in the *Gazette* and be made available by the CAA for purchase by members of the public at a reasonable price, and the notification must specify a place where the rule is available for inspection free of charge and for purchase.
- (4) Despite **subsection (3)**, if for reasons of security it is inappropriate to notify a rule under that subsection, the Minister must notify any persons that the Minister considers appropriate or necessary in the circumstances and service of notification may be effected in any other manner that the Minister considers appropriate or necessary in the circumstances, and the rule applies only to each person so notified (with effect from service of the rule on the person).

Compare: 1990 No 98 s 34

54 Requirements relating to content of rules made by Minister

Every rule made by the Minister must—

- (a) be signed or otherwise authenticated by the Minister; and
- (b) contain a statement specifying the objective of the rule and the extent of any consultation under **section 53**; and
- (c) set out fully the requirements of the rule, except where certain information is, under **section 65**, incorporated in the rule by reference.

Compare: 1990 No 98 s 32(1)

Powers of Governor-General to make rules

55 Governor-General may make rules

- (1) Despite anything in this Part, the Governor-General may, by Order in Council, on the recommendation of the Minister, make, amend, or revoke a rule for any of the purposes for which the Minister may make, amend, or revoke a rule under this Part.
- (2) Before making a recommendation under **subsection (1)**, the Minister must—
 - (a) be satisfied that the rule is not inconsistent with—
 - (i) the standards of ICAO relating to aviation safety and security, to the extent adopted by New Zealand;
 - (ii) New Zealand's international obligations relating to aviation safety and security.
 - (b) have regard to, and give the weight that the Minister considers appropriate in each case to the criteria specified in **section 64(2)**
- (3) **Sections 53(3) and (4) and 54(1)(b) and (c)** apply to a rule made by Order in Council under **subsection (1)**.
- (4) A rule or an amendment to a rule made by Order in Council under **subsection (1)** must be published as part of the rules as if the Minister had made the rule or the amendment to the rule.
- (5) The Minister may amend or revoke a rule or an amendment to a rule made by Order in Council under **subsection (1)** as if the Minister had made the rule or the amendment to the rule under this Part.
- (6) An Order in Council made under **subsection (1)** is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1990 No 98 s 34A

Provisions concerning rules made by Minister or Governor-General

56 Provisions concerning rules made by Minister or Governor-General

- (1) This section and **sections 57 and 58** apply in respect of any rule made by the Minister or the Governor-General under this Part.

- (2) A rule may apply generally or with respect to different classes of aircraft, aerodromes, aeronautical products, or aviation-related services, or with respect to the same class of aircraft, aerodrome, aeronautical product, or aviation-related service in different circumstances.
- (3) A rule may apply generally throughout New Zealand or within any specified part or parts of New Zealand.
- (4) The commencement of a rule may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.
- (5) A rule may, on any terms and conditions that are specified in the rule,—
 - (a) require or provide for a matter to be determined, undertaken, or approved by the CAA, the Director, or any other person; or
 - (b) empower the CAA, the Director, or any other person to impose requirements or conditions as to the performance of any activity, including (but not limited to) any procedures to be followed.
- (6) To avoid doubt, the terms and conditions specified in a rule may provide for—
 - (a) consultation to be undertaken before the exercise of any of the powers given to the CAA, the Director, or any other person by the rule; or
 - (b) public notice to be given of the exercise of any powers; or
 - (c) any other matter.

Compare: 1990 No 98 s 28(2)–(5A)

57 Status of rule made by Minister or Governor-General

- (1) A rule is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (2) So far as the bylaws of any local authority are inconsistent with or repugnant to any rule in force in the same locality, the bylaws must be construed subject to the rules.

Compare: 1990 No 98 s 28(7), (8)

58 Offences for breaches of rules made by Minister or Governor-General

- (1) No breach of a rule constitutes an offence against this Act unless that offence is prescribed in the regulations.
- (2) This section is subject to the following sections:
 - (a) **section 105(4)** (which provides for a fine payable on conviction for failing to notify the CAA regarding accident involving an aircraft with no person on board);
 - (b) **section 317(2)** (which provides a fine payable on conviction for non-compliance with commands given by pilot-in-command);

- (c) **section 319(2)** (which provides a fine payable on conviction for operating a portable electronic device on board an aircraft in breach of rules);
- (d) **section 322(2)** (which provides a fine payable on conviction for carrying, or causing to be carried, dangerous goods on an aircraft in breach of rules).

Compare: 1990 No 98 s 28(6)

Exemption power of Director

59 Exemption power of Director

- (1) The Director may, if the Director considers it appropriate and upon any conditions that the Director considers appropriate, exempt any person, aviation participant, aircraft, aeronautical product, aerodrome, or aviation-related service from any specified requirement in any rule made under **section 43, 44, 45, 48, 49, or 51**.
- (2) Before granting an exemption under **subsection (1)**, the Director must be satisfied in the circumstances of each case—
 - (a) that—
 - (i) the requirement has been substantially complied with and that further compliance is unnecessary; or
 - (ii) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
 - (iii) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or
 - (iv) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and
 - (b) that the risk to safety or security will not be significantly increased by the granting of the exemption.
- (3) The number and nature of exemptions granted under **subsection (1)** must be notified as soon as practicable in the *Gazette*.
- (4) Nothing in this section applies in any case where any rule specifically provides that no exemptions are to be granted.

Compare: 1990 No 98 s 37

Subpart 2—Emergency rules made by Director

Power of Director to make emergency rules

60 Power of Director to make emergency rules

- (1) Subject to **subsection (2)**, the Director may, in accordance with **section 63**, make any emergency rules that may be necessary to alleviate or minimise any

risk of the death of or a serious injury to any person, or of damage to any property.

- (2) The Director must not make emergency rules unless it is impracticable in the circumstances of the particular case for the Minister to make rules to effectively alleviate or minimise the risk concerned.
- (3) The Minister may revoke any emergency rule made under **subsection (1)**, and the revocation must be notified as if it were an emergency rule.

Compare: 1990 No 98 s 31(1)–(3)

Provisions concerning emergency rules made by Director

61 Status of emergency rule

An emergency rule is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1990 No 98 s 31(4)

62 Procedures relating to rules made by Director

Every emergency rule must—

- (a) be signed or otherwise authenticated by the Director; and
- (b) contain a statement specifying the objective of the rule and the extent of the consultation under **section 63** that took place before the making of the rule; and
- (c) set out fully the requirements of the rule, except where certain information is, under **section 65**, incorporated in the rule by reference.

Compare: 1990 No 98 s 32(2)

63 Procedure for making emergency rules

- (1) Before making an emergency rule, the Director must consult with any persons, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies that the Director in each case considers appropriate.
- (2) Before making an emergency rule, the Director must—
 - (a) be satisfied that the rule is not inconsistent with—
 - (i) the standards of ICAO relating to aviation safety and security, to the extent adopted by New Zealand;
 - (ii) New Zealand's international obligations relating to aviation safety and security.
 - (b) have regard to, and give the weight that the Director considers appropriate in each case to the criteria specified in **section 64(2)**

- (3) Subject to **subsection (5)**, every emergency rule must be notified in the *Gazette* and be made available by the Director for purchase by members of the public at a reasonable price, and the notification must specify a place where the rule is available for inspection free of charge and for purchase.
- (4) An emergency rule comes into force immediately on being notified in the *Gazette*, or, where notified by service on any person under **subsection (4)**, immediately on service of notification upon that person and in respect of that person only.
- (5) If for reasons of safety or security it is impracticable or inappropriate to notify an emergency rule under **subsection (3)**, the Director must notify any persons that the Director considers appropriate or necessary in the circumstances and service of that notification may be effected by facsimile, telephone, or any other manner that the Director considers appropriate or necessary in the circumstances.
- (6) An emergency rule may be in force for a period not exceeding 90 days, and may be renewed by the Director once only for a further period not exceeding 30 days.
- (7) The Minister may, at any time while an emergency rule is in force in accordance with **subsection (6)**, by notice in the *Gazette*, extend the duration of the rule in accordance with **subsection (8)** for a further period not exceeding 180 days from the date of the notification.
- (8) Before extending the duration of an emergency rule under **subsection (7)**, the Minister must consult with any persons, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies that the Minister thinks appropriate.
- (9) So far as an emergency rule is inconsistent or repugnant to a rule made by the Minister or Governor-General under **subpart 1**, the emergency rule prevails.

Compare: 1990 No 98 s 35

Subpart 3—General provisions

64 Matters Minister and Director to have regard to before making of rules or emergency rules

The criteria referred to in **sections 53(2)(b), 55(2)(b), and 63(2)(b)** are—

- (a) the main and additional purposes:
- (b) the recommended practices of ICAO relating to aviation safety and security, to the extent adopted by New Zealand:
- (c) the level of risk existing to aviation safety in each proposed activity or service:
- (d) the nature of the particular activity or service for which the rule is being established:

- (e) the level of risk existing to aviation safety and security in New Zealand in general:
- (f) the need to maintain and improve aviation safety and security, including (but not limited to) personal security:
- (g) the costs of implementing measures for which the rule is being proposed:
- (h) the international circumstances in respect of—
 - (i) aviation safety and security; and
 - (ii) mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements:
- (i) any other matters that the Minister or, as the case may be, the Director considers appropriate in the circumstances.

Compare: 1990 No 98 s 33

65 Incorporation of material by reference in rules

- (1) The following, whether in written or electronic form, may be incorporated by reference in a rule:
 - (a) any standards, requirements, or recommended practices of international aviation organisations:
 - (b) any standards, requirements, or rules—
 - (i) prescribed under law by any other contracting State of ICAO:
 - (ii) of the Standards Council, or a body or organisation outside New Zealand that has functions corresponding to the functions of the Standards Council:
 - (iii) of any aviation sport or aviation recreation organisation:
 - (c) any other material or document that, in the opinion of the Minister or the Director, is too large or impractical to be printed as part of the rule.
- (2) Material may be incorporated by reference in a rule—
 - (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the rule.
- (3) A copy of any material incorporated by reference in rules, including any amendment to, or replacement of, the material, must be—
 - (a) certified as a correct copy of the material by the Minister or the Director (as the case may be); and
 - (b) retained by the Director.
- (4) Any material incorporated in a rule by reference under **subsection (1)** is to be treated for all purposes as forming part of the rule; and, unless otherwise provided in the rules, every amendment to any material incorporated by reference under **subsection (1)** that is made by the person or organisation originating

the material is, subject to **subsections (5) and (6)**, to be treated as being a part of the rule.

- (5) The Director must give notice in the *Gazette* stating—
 - (a) that the material is incorporated in the rule and the date on which the rule was made; and
 - (b) that the material is available for inspection during working hours, free of charge; and
 - (c) the place where the material can be inspected; and
 - (d) that copies of the material can be purchased; and
 - (e) the place where the material can be purchased; and
 - (f) if copies of the material are available in other ways, the details of where or how the material can be accessed or obtained.
- (6) Part 2 of the Legislation Act 2012 does not apply to material incorporated by reference in a rule or to an amendment to, or a replacement of, that material.
- (7) Nothing in section 41 of the Legislation Act 2012 requires material that is incorporated by reference in a rule to be presented to the House of Representatives.
- (8) **Subsections (1) to (7)** do not affect the application of sections 29 to 32 of the Standards and Accreditation Act 2015.
- (9) *See* also **subparts 2 and 3 of Part 11** for the application of this section to airworthiness directives and transport instruments.

Compare: 1990 No 98 s 36

Part 4

Aviation documents and medical certification

Subpart 1—Requirements for aviation documents

66 Application for aviation document

- (1) An application for the grant or renewal of an aviation document must be made to the Director and be in accordance with the requirements of the rules.
- (2) The applicant must include in the application the applicant's address for service in New Zealand and any other contact details required by the Director.
- (3) The holder of an aviation document must promptly notify the Director of any changes to the address for service, the contact details required by the Director under **subsection (2)** or any other relevant new contact details.
- (4) The Director must ensure that a record of all information provided under this section is maintained at the Civil Aviation Registry.

- (5) Service of any notice under this Act on a holder of, or an applicant for, an aviation document is effective service if served on the address last provided by that holder or applicant under this section.

Compare: 1990 No 98 s 8

67 Application requiring national security assessment

If an application for an aviation document falls within a category of applications specified in the rules as requiring a national security assessment the Director must refer the application to the Minister for consideration in accordance with **section 279** before granting the application.

Please see Ministry of Transport commentary document: *National security considerations within the civil aviation system*

68 Grant or renewal of aviation document

- (1) After considering any application for the granting or renewal of an aviation document, the Director must, as soon as practicable, grant the application if the Director is satisfied that—
- (a) all things in respect of which the document is sought meet the relevant prescribed requirements; and
 - (b) the applicant and any person who will have or is likely to have control over the exercise of the privileges under the document—
 - (i) either holds the relevant prescribed qualifications and experience or holds the foreign qualifications that are acceptable to the Director under **subsection (2)**; and
 - (ii) is a fit and proper person to have such control or to hold the document; and
 - (iii) meets all other relevant prescribed requirements; and
 - (c) in the case of a New Zealand AOC with ANZA privileges,—
 - (i) the requirements in **section 82(2)** are met; and
 - (ii) the applicant meets or will meet the conditions in **section 82(4)**; and
 - (d) it is not contrary to the interests of aviation safety and security for the document to be granted or renewed.
- (2) Despite **subsection (1)**, if the Director has referred the application to the Minister under **section 67**, the Director must not make a decision on the application until the earliest of the following to occur:
- (a) a notice is issued by the Minister under **section 279(1)(a) or (b)** in relation to the application; or
 - (b) the Minister notifies the Director that the Minister will not issue a notice under **section 279(1)(a) or (b)** in relation to the application; or

- (c) 6 months has elapsed from the date on which the Director referred the application to the Minister under **section 67**.
- (3) If the Minister directs under **section 279(1)(b)** that conditions must be applied to the aviation document, the Director must apply those conditions to the aviation document if granted under **subsection (1)**.

Compare: 1990 No 98 s 9(1)

69 Director may take into account foreign qualifications and certifications

For the purpose of granting or renewing an aviation document, the Director may, subject to any provisions in the rules, accept any foreign qualifications or recognise any foreign certifications that the Director considers appropriate in each case.

Compare: 1990 No 98 s 9(2)

70 Condition of aviation document that holder continues to satisfy fit and proper person test

It is a condition of every current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document must continue to satisfy the fit and proper person test specified in **section 68(1)(b)(ii)**.

Compare: 1990 No 98 s 9(3)

71 Duration and conditions of aviation document

- (1) Subject to the rules, an aviation document may be issued by the Director for such specified period and subject to the conditions that the Director considers appropriate in each particular case.
- (2) A person in respect of whom any decision is made under this section may appeal against that decision to the District Court under **section 362**.

Compare: 1990 No 98 s 7(3), (4)

72 Right of appeal

- (1) If the Director declines to grant an application under **section 68**, the applicant may appeal against that decision to the District Court under **section 362**.
- (2) This section is subject to **section 279(5)**.

Compare: 1990 No 98 s 9(4)

73 Fit and proper person test

- (1) For the purpose of determining whether a person is a fit and proper person for any purpose under this Act, the Director must, having regard to the degree and nature of the person's proposed involvement in the New Zealand civil aviation system, have regard to, and give the weight that the Director considers appropriate to, the following matters:

- (a) the person's history of compliance with transport safety and transport security requirements, whether inside or outside New Zealand;
 - (b) the person's related experience (if any) within the transport industry;
 - (c) the person's knowledge of the applicable civil aviation system regulatory requirements;
 - (d) any history of physical or mental health or serious behavioural problems of the person;
 - (e) the person's use of drugs or alcohol;
 - (f) any conviction of the person for any transport safety offence, whether or not—
 - (i) the conviction was in a New Zealand court; or
 - (ii) the offence was committed before the commencement of this Act;
 - (g) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with this Act or any enactment made under this Act;
 - (h) in the case where a New Zealand AOC with ANZA privileges applies, the person's compliance with the conditions specified in **section 82(4)**.
- (2) The Director is not confined to consideration of the matters specified in **subsection (1)** and may take into account any other matters and evidence that may be relevant.
- (3) The Director may, for the purpose of determining whether a person is a fit and proper person for any purpose under this Act,—
- (a) seek and receive any information (including medical reports) that the Director thinks fit; and
 - (b) consider information obtained from any source.
- (4) Nothing in the Privacy Act 1993 prevents a person or agency from disclosing personal information to the Director pursuant to a request made by the Director under **subsection (3)**.
- (5) **Subsection (1)** applies to a body corporate with the following modifications:
- (a) **subsection (1)(a), (b), (c), (e), (f), and (g)** must be read as if those paragraphs refer to the body corporate and its officers;
 - (b) **subsection (1)(d)** must be read as if it refers only to the officers of the body corporate.

Please see Ministry of Transport commentary document: *Improving the process to determine whether someone is 'fit and proper' to participate in the aviation system*

Compare: 1990 No 98 s 10(1)–(4)

74 Disclosure of information that is or may be prejudicial to person

- (1) If, under **section 73(1)**, the Director proposes to take into account any information that is or may be prejudicial to a person, the Director must, subject to

subsection (2), disclose that information to that person and, in accordance with **section 75**, give that person a reasonable opportunity to refute or comment on it.

- (2) The Director may determine not to disclose the information if—
 - (a) in the case of non-disclosure to an individual of information about that individual, the Director could withhold the information under section 27, 28, or 29 of the Privacy Act 1993 had the information been requested by that individual under that Act; or
 - (b) in any other case, the Director could withhold the information under section 6, 7, or 9 of the Official Information Act 1982 had the information been requested under that Act.
- (3) If, under **subsection (2)(a)**, the Director determines not to disclose any information,—
 - (a) the Director must—
 - (i) inform the individual of the non-disclosure; and
 - (ii) inform the individual that the individual may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and
 - (b) the provisions of the Privacy Act 1993 apply to that non-disclosure as if, following a request under that Act for the information that is withheld, the information had been withheld under that Act.
- (4) If, under **subsection (2)(b)**, the Director determines not to disclose any information,—
 - (a) the Director must—
 - (i) inform the person of the non-disclosure; and
 - (ii) inform the person that the person may seek a review by an Ombudsman of that non-disclosure under the Official Information Act 1982; and
 - (b) the provisions of the Official Information Act 1982 apply to that non-disclosure as if, following a request under that Act for the information that is withheld, the information had been withheld under that Act.

Compare: 1990 No 98 s 10(5)–(7)

75 Rights of persons affected by proposed adverse decisions

- (1) In this section, unless the context otherwise requires,—

adverse decision means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act

affected document holder, in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the aviation document

person directly affected, in relation to any adverse decision, means the person who would be entitled under **section 362** to appeal against that adverse decision

person on the basis of whose character the adverse decision arises, in relation to any adverse decision made or proposed to be made on the grounds referred to in **section 73**, means the person whom the Director assesses as not being a fit and proper person.

- (2) If the Director proposes to make an adverse decision under this Act in respect of any person, the Director, by notice in writing, must—
 - (a) notify the person directly affected of the proposed decision; and
 - (b) subject to **subsection (4)**, inform that person of the grounds for the proposed decision; and
 - (c) specify a date by which submissions may be made to the Director in respect of the proposed decision, which must not be less than 21 days after the date on which the notice is given; and
 - (d) where appropriate, specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given; and
 - (e) notify the person of the person's right of appeal under **section 362**, if the Director proceeds with the proposed decision; and
 - (f) specify any other matters that in any particular case may be required by any provision of this or any other Act.
- (3) If the Director gives a notice under **subsection (2)**, the Director—
 - (a) must also supply a copy of the notice to—
 - (i) any person on the basis of whose character the adverse decision arises, if that person is not the person directly affected by the proposed decision; and
 - (ii) any affected document holder, if the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and
 - (b) may supply a copy of the notice to any other affected document holder.
- (4) A notice or copy of a notice given under this section must not include or be accompanied by any information referred to in **section 74(1)**, except to the extent that—
 - (a) the notice or copy is supplied to the person to whom the information relates; or
 - (b) that person consents to the supply of that information to any other person.
- (5) If any notice or copy of a notice is given to any person under this section, that person must ensure that all information that the person wishes to have consid-

ered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under **subsection (2)(c)**, or within any further period that the Director may allow.

- (6) The Director may request any further information from the person to whom the notice is given under this section, and may specify a reasonable time within which the information may be supplied.
- (7) The Director—
 - (a) must consider any submissions made in accordance with **subsection (5)** and made within the time period described or allowed under that subsection; and
 - (b) must consider any information provided in accordance with a request made under **subsection (6)** that is provided within the time specified by the Director under that subsection; and
 - (c) if, and only if, the Director is satisfied that there are extenuating circumstances, may consider any information provided in accordance with **subsection (5)** or a request made under **subsection (6)** that is provided after the expiry of any period referred to in those subsections.
- (8) After considering the matters referred to in **subsections (5) to (7)**, the Director must—
 - (a) finally determine whether to make the proposed adverse decision; and
 - (b) as soon as practicable after making the determination, notify in writing the person directly affected, and any other person of a kind referred to in **subsection (3)(a)**, of—
 - (i) the Director’s decision and the grounds for the decision; and
 - (ii) the date on which the decision will take effect; and
 - (iii) in the case of an adverse decision, the consequences of that decision and any applicable right of appeal (being a right of appeal specified in **section 72(1), 89(5), or 90(5)**).

Compare: 1990 No 98 s 11

Subpart 2—Australia New Zealand Aviation mutual recognition

76 Additional purpose of subpart

- (1) The purpose of this subpart (in addition to those set out in **sections 3 and 4**) is to implement the Australia New Zealand Aviation (**ANZA**) mutual recognition agreements.
- (2) This section does not limit **section 3 or 4**.

Compare: 1990 No 98 s 11A

Australian Air Operator's Certificates with Australia New Zealand Aviation privileges

77 Holder of Australian Air Operator's Certificate with ANZA privileges entitled to conduct air operations in New Zealand

- (1) The holder of an Australian AOC with ANZA privileges may conduct air operations to, from, or within New Zealand if the holder provides the Director with—
 - (a) a copy of the Australian AOC with ANZA privileges; and
 - (b) written notice of the following:
 - (i) the details of all conditions imposed by CASA in relation to the Australian AOC with ANZA privileges; and
 - (ii) the holder's Australian address for service and other contact details as specified by the Director; and
 - (iii) the holder's New Zealand address for service and other contact details as specified by the Director; and
 - (iv) any other prescribed information; and
 - (c) the holder's consent in writing to the making of inquiries to, and the exchange of information with, CASA regarding that holder's civil aviation activities.
- (2) A holder of an Australian AOC with ANZA privileges must ensure that the Director is advised of every alteration to the Australian AOC with ANZA privileges or to the information provided by the holder to the Director within 7 days of the date on which the alteration is made.

Compare: 1990 No 98 s 11B

78 New Zealand temporary stop notice

- (1) The Director may give the holder of an Australian AOC with ANZA privileges a written temporary stop notice that requires the holder to cease conducting all or any air operations in New Zealand for the period (which must not be more than 7 days) specified in the notice.
- (2) The Director may issue a New Zealand temporary stop notice only if the Director considers that, as a result of the holder conducting all or any air operations in New Zealand, there is a serious risk to civil aviation safety in New Zealand.
- (3) Immediately on receiving a New Zealand temporary stop notice, the holder must cease conducting the air operations specified in the notice in New Zealand for the period specified in the notice.
- (4) The Director may not delegate the power to issue or revoke a New Zealand temporary stop notice.

- (5) The Director may amend or revoke a New Zealand temporary stop notice before the period specified in that notice has expired.
- (6) The Director must revoke a New Zealand temporary stop notice if the CAA receives notification from CASA of the Director of CASA's response to the New Zealand temporary stop notice.

Compare: 1990 No 98 s 11C

79 Contents of New Zealand temporary stop notice

- (1) A New Zealand temporary stop notice must specify—
 - (a) the reasons why the Director considers that there is a serious risk to civil aviation safety in New Zealand; and
 - (b) the period for which the holder of the Australian AOC with ANZA privileges must cease conducting air operations in New Zealand.
- (2) Failure to comply with **subsection (1)** does not invalidate the New Zealand temporary stop notice.

Compare: 1990 No 98 s 11D

80 Director to notify CASA about New Zealand temporary stop notice

As soon as practicable after giving a New Zealand temporary stop notice to the holder of an Australian AOC with ANZA privileges, the Director must give CASA a copy of the notice and any other information that CASA may require.

Compare: 1990 No 98 s 11E

New Zealand Air Operator's Certificates with Australia New Zealand Aviation privileges

81 Requirements for New Zealand AOCs with ANZA privileges

- (1) Whenever the Director makes a decision under this Act in relation to a New Zealand AOC with ANZA privileges, the Director must take into account all relevant Australian and New Zealand regulatory requirements in relation to New Zealand AOCs with ANZA privileges.
- (2) In making a decision under this Act in relation to a New Zealand AOC with ANZA privileges, the Director—
 - (a) must, if appropriate, consult CASA; and
 - (b) may take into account any of the following items that the Director receives from CASA:
 - (i) advice;
 - (ii) guidelines;
 - (iii) recommendations;
 - (iv) other relevant information.

Compare: 1990 No 98 s 11F

82 Grant of New Zealand AOC with ANZA privileges

- (1) The Director may, in accordance with this Act and the rules, grant to an air operator in New Zealand an authorisation (called a New Zealand AOC with ANZA privileges) that will authorise the air operator to conduct air operations to, from, or within Australia.
- (2) Before the Director may grant a New Zealand AOC with ANZA privileges, the Director must—
 - (a) be satisfied that the air operator will be conducting air operations to, from, or within New Zealand; and
 - (b) receive from the licensing authority written confirmation that, if the New Zealand AOC with ANZA privileges is issued to the air operator, the licensing authority considers that the air operator will be eligible to conduct air operations in Australia under the air services arrangements in place between Australia and New Zealand; and
 - (c) be satisfied that the air operator has complied with, or is capable of complying with, all the relevant requirements of the Civil Aviation Act 1988 (Aust) and regulations and civil aviation orders made under that Act that relate to safety; and
 - (d) consult with CASA.
- (3) A New Zealand AOC with ANZA privileges may be granted by amending an appropriate existing aviation document or by granting an appropriate new aviation document.
- (4) A New Zealand AOC with ANZA privileges is subject to the conditions that the holder—
 - (a) must conduct air operations to, from, or within New Zealand; and
 - (b) must not hold an Australian AOC with ANZA privileges authorising the holder to conduct air operations that are covered by the New Zealand AOC with ANZA privileges; and
 - (c) must comply with all the requirements of the Civil Aviation Act 1988 (Aust) and regulations and civil aviation orders made under that Act that apply to the holder; and
 - (d) must undertake the supervision of its management systems from or within New Zealand; and
 - (e) must ensure that the training and supervision of its employees is principally undertaken from or within New Zealand; and
 - (f) must ensure that the majority of resources associated with the exercise of the privileges of the AOC are situated within New Zealand; and
 - (g) must ensure that the people who control the exercise of the privileges of the AOC spend the majority of their time in New Zealand.

- (5) A New Zealand AOC with ANZA privileges may be issued on any other conditions that the Director thinks appropriate.
- (6) In **subsection (2), licensing authority** has the same meaning as in **Part 7**.
Compare: 1990 No 98 s 11G

83 Action by Director when CASA gives Australian temporary stop notice to holder of New Zealand AOC with ANZA privileges

- (1) After the Director receives notification from CASA that CASA has given the holder of a New Zealand AOC with ANZA privileges an Australian temporary stop notice, the Director must—
 - (a) immediately consider the circumstances that gave rise to the giving of the notice; and
 - (b) decide, as soon as practicable and in accordance with the ANZA mutual recognition agreements, whether the Director should—
 - (i) suspend in whole or in part the New Zealand AOC with ANZA privileges under **section 88 or 89**; or
 - (ii) revoke in whole or in part the New Zealand AOC with ANZA privileges under **section 90**; or
 - (iii) impose conditions on the New Zealand AOC with ANZA privileges under **section 88, 89, or 90**; or
 - (iv) take any other action in relation to that New Zealand AOC holder.
- (2) The Director must notify CASA of the Director's decision and of any action taken.

Compare: 1990 No 98 s 11H

84 Change of country of certification

- (1) This section applies if the Director has reasonable grounds to believe that—
 - (a) it would be in the interests of Australian and New Zealand civil aviation safety for the holder of a New Zealand AOC with ANZA privileges to conduct air operations in the Australian civil aviation system; and
 - (b) the holder is no longer able to comply with all the conditions specified in **section 82(4)**.
- (2) If this section applies, the Director must—
 - (a) consult with CASA; and
 - (b) notify the holder—
 - (i) that the Director has reasonable grounds to believe that the holder is no longer able to comply with all the conditions specified in **section 82(4)**; and
 - (ii) of the grounds for the Director's belief; and

- (c) allow the holder at least 90 days from the date of the Director's notification under **paragraph (b)** to refute and comment on the Director's belief.
- (3) If, after the process referred to in **subsection (2)** has been properly completed, the Director is satisfied that, in the interests of Australian and New Zealand civil aviation safety, the holder should no longer exercise ANZA privileges, the Director may—
 - (a) amend the New Zealand AOC with ANZA privileges:
 - (b) withdraw the privileges attaching to the AOC.
- (4) A person in respect of whom a decision is taken under **subsection (3)** may appeal against that decision to the District Court under **section 362**.

Compare: 1990 No 98 s 11I

85 Delegation of Australian powers relating to Australian AOCs with ANZA privileges to employees of CAA

An employee of the CAA may, subject to any directions from the Director of CASA, perform any function or exercise any power delegated to that employee under the Civil Aviation Act 1988 (Aust) for the purpose of enabling that employee to perform the function or exercise the power in New Zealand in respect of Australian AOCs with ANZA privileges.

Compare: 1990 No 98 s 11J

86 Failure to cease conducting air operations in New Zealand

- (1) A person commits an offence who fails to comply with **section 78**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Compare: 1990 No 98 s 46E

Subpart 3—Powers of Director in relation to aviation documents

87 Director may investigate holder of aviation document

- (1) The Director may, in writing, require any holder of an aviation document to undergo an investigation conducted by the Director—
 - (a) if the Director believes that it is necessary in the interests of civil aviation safety and security; and
 - (b) if the Director—
 - (i) believes that the holder has failed to comply with any conditions of an aviation document or with the requirements of **section 13**;
 - or

- (ii) considers that the privileges conferred or the duties imposed by the document have been, or are being, carried out by the holder in a careless or incompetent manner.
- (2) If the Director requires a holder to undergo an investigation, the Director must—
 - (a) inform the holder, in writing, of the date on which the investigation will begin; and
 - (b) conclude the investigation as soon as practicable; and
 - (c) inform the holder, in writing, of the results of the investigation, including—
 - (i) any recommendations arising out of the investigation; and
 - (ii) the grounds for those recommendations.

Compare: 1990 No 98 s 15A

88 Director may suspend, or impose conditions on, aviation document

- (1) The Director may suspend, in whole or in part, an aviation document issued under this Act or impose conditions on an aviation document, if the Director considers the action is necessary in the interests of safety and security and if the Director—
 - (a) considers the action is necessary to ensure compliance with this Act or any enactment made under this Act; or
 - (b) is satisfied that the holder has failed to comply with any conditions of an aviation document or with the requirements of **section 13**; or
 - (c) is satisfied that the holder has contravened or failed to comply with **section 98(1) or 285(1)**; or
 - (d) considers that the privileges conferred on or the duties imposed by the document have been, or are being, carried out by the holder in a careless or incompetent manner; or
 - (e) in the case of a holder of a New Zealand AOC with ANZA privileges, has received from the Director of CASA a copy of an Australian temporary stop notice given to the holder.
- (2) Without limiting **subsection (1)**, the Director may suspend an aviation document relating to the use of any aircraft, aeronautical product, or the provision of any service, or impose conditions on the aviation document, if the Director considers that there is reasonable doubt as to the airworthiness of the aircraft or the quality or safety of the aeronautical product or service to which the document relates.
- (3) The suspension of an aviation document and any conditions imposed remain in force until the Director determines what action, if any, referred to in **section 89** is to be taken.

- (4) However, any suspension or conditions expire 10 working days after the date on which the suspension or conditions are imposed unless, before the expiry of that 10-working-day period, the Director extends the suspension or conditions for a further specified period.

Compare: 1990 No 98 s 17(1)–(3)

89 Further provisions in relation to suspension of, or imposition of conditions on, aviation document

- (1) This section applies if **section 88** applies.
- (2) The Director may do 1 or more of the following:
- (a) impose conditions for a specified period:
 - (b) withdraw any conditions (other than a condition imposed under **section 279(1)(b)**):
 - (c) suspend an aviation document for a specified period:
 - (d) revoke, in whole or in part, an aviation document under **section 90**:
 - (e) impose permanent conditions under **section 90**.
- (3) If notice of a proposed revocation of an aviation document, or notice of the proposed imposition of permanent conditions on an aviation document, is given in accordance with **section 75**, either at the same time as the suspension of the document under this section is imposed or while the suspension is in force, the document to which the notice relates remains suspended until the Director finally decides whether to revoke the document or to impose permanent conditions on the aviation document under **section 90**.
- (4) A person whose aviation document has been suspended or made subject to conditions must, if the document was issued in paper or any other non-electronic form, immediately produce that document to the Director for appropriate endorsement.
- (5) A person in respect of whom a decision is made under this section may appeal against that decision to the District Court under **section 362**.

Compare: 1990 No 98 s 17(4)–(7)

90 Director may revoke, or impose permanent conditions on, aviation document

- (1) The Director may revoke, in whole or in part, or impose permanent conditions on an aviation document if the Director considers it necessary in the interests of aviation safety and security after an inspection, monitoring, or an investigation carried out under this Act.
- (2) Without limiting **subsection (1)**, the Director may revoke or impose permanent conditions on an aviation document if—
- (a) the Director of CASA has advised the Director that CASA has given the holder of the document an Australian temporary stop notice; and

- (b) the Director considers that the revocation or imposition of permanent conditions is necessary in the interests of aviation safety and security.
- (3) If the Director proposes to act under this section, the Director must give notice in accordance with **section 75**, which applies as if the proposed action were a proposed adverse decision under this Act.
- (4) A person whose aviation document (issued in paper or any other non-electronic form) is revoked or made subject to permanent conditions under this section must,—
 - (a) if the document is made subject to permanent conditions or revoked in part, immediately produce the document to the Director for appropriate endorsement:
 - (b) if the whole document is revoked, immediately surrender the document to the Director.
- (5) A person in respect of whom any decision is made under this section may appeal against that decision to the District Court under **section 362**.

Compare: 1990 No 98 s 18

91 Criteria for action taken under section 88, 89, or 90

- (1) This section applies for the purpose of—
 - (a) determining whether an aviation document should be suspended or made subject to conditions under **section 88 or 89**; or
 - (b) determining whether an aviation document should be revoked or made subject to conditions under **section 90**.
- (2) If this section applies, the Director may have regard to, and give the weight that the Director considers appropriate to, the following matters:
 - (a) the person's history of compliance with transport safety regulatory requirements:
 - (b) any conviction of the person for any transport safety offence, whether or not—
 - (i) the conviction was in a New Zealand court; or
 - (ii) the offence was committed before the commencement of this Act:
 - (c) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with this Act or any enactment made under this Act.
- (3) The Director is not confined to consideration of the matters specified in **subsection (2)** and may take into account any other matters and evidence that may be relevant.
- (4) The Director may—
 - (a) seek and receive any information that the Director thinks fit; or

- (b) consider information obtained from any source.
- (5) Nothing in the Privacy Act 1993 prevents a person or agency from disclosing personal information to the Director pursuant to a request made by the Director under **subsection (4)**.

Compare: 1990 No 98 s 19(1)–(4)

92 Obligations of Director in relation to disclosure or non-disclosure of information obtained under section 88, 89, or 90

- (1) If the Director proposes to take into account under **section 88, 89, or 90** any information that is or may be prejudicial to a person, the Director must disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.
- (2) The disclosure under **subsection (1)**, must be as soon as practicable, but, in the case of the suspension of an aviation document or the imposition of conditions under **section 88 or 89**, be no later than 5 working days after suspending the aviation document or imposing the conditions.
- (3) Nothing in **subsection (1), (2), or (4)** requires the Director to disclose—
 - (a) any information that, if disclosed, would endanger the safety of any person; or
 - (b) any information or the fact of non-disclosure of that information, before suspending an aviation document or imposing conditions on an aviation document under **section 88 or 89**.
- (4) If, in reliance on **subsection (3)**, the Director determines not to disclose any information, the Director must inform the person of the fact of non-disclosure and,—
 - (a) in the case of non-disclosure to an individual of information about that individual, inform the individual that—
 - (i) the individual may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and
 - (ii) the provisions of that Act apply to the non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under that Act; and
 - (b) in any other case, inform the person that—
 - (i) the person may seek a review by an Ombudsman of the non-disclosure under the Official Information Act 1982; and
 - (ii) the provisions of that Act apply to the non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under that Act.

Compare: 1990 No 98 s 19(5)–(7)

93 Director may amend or revoke aviation document in other cases

- (1) The Director may, if so requested in writing by the holder of any aviation document,—
 - (a) amend that document in the manner requested; or
 - (b) revoke that document.
- (2) The Director may do any of the following:
 - (a) amend any aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder;
 - (b) revoke any aviation document if none of the privileges or duties for which the document has been granted are being carried out, or are able to be carried out, by the holder;
 - (c) amend any aviation document to correct any typographical error or obvious mistake in the document.
- (3) Before taking any action under **subsection (2)**, the Director must notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.
- (4) The power to amend an aviation document under this section includes—
 - (a) power to revoke the document and issue a new document in its place; and
 - (b) power to impose reasonable conditions.
- (5) When the holder of an aviation document (issued in paper or any other non-electronic form) is notified that specified action is proposed under this section, the holder must immediately produce the document to the Director.

Compare: 1990 No 98 s 20

Subpart 4—Offences relating to aviation documents**94 Endangerment caused by holder of aviation document**

- (1) The holder of an aviation document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act or omission, if the act or omission causes unnecessary danger to any other person or to any property.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both;
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

- (3) The provisions of this section are in addition to and do not limit the regulations or rules.

Compare: 1990 No 98 s 43

95 Acting without necessary aviation document

- (1) A person commits an offence who—
- (a) operates, maintains, or services an aircraft, aerodrome, or aeronautical product, or provides an aviation-related service, or does any other act in respect of an aircraft, aerodrome, aeronautical product, or aviation-related service; and
 - (b) either—
 - (i) is required to hold a current aviation document for that activity and does not hold it; or
 - (ii) not being a person referred to in **subparagraph (i)**, knows that a current aviation document is required to be held in respect of the aircraft, aerodrome, product, or service before the act in **paragraph (a)** may lawfully be done and knows that the appropriate aviation document is not held.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both;
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) In a prosecution of a person referred to in **subsection (1)(b)(i)** it is not necessary to prove that the person intended to commit the offence.

Compare: 1990 No 98 s 46

96 Court may disqualify person from holding aviation document or impose conditions on aviation document

- (1) In addition to any penalty the court may impose under **section 36, 3794, or 260**, the court may, on convicting any person of an offence against either of those sections,—
- (a) disqualify the person convicted from holding or obtaining an aviation document or a particular aviation document for any period not exceeding 12 months that the court thinks fit; or
 - (b) impose on any aviation document held by or issued to the person convicted, for any period not exceeding 12 months that the court thinks fit, any restrictions or conditions or both that the court, having regard to the circumstances of the offence, thinks fit.

- (2) Nothing in **subsection (1)** affects or prevents the exercise by the Director of the Director's powers under **section 68**.

Compare: 1990 No 98 s 45

97 Applying for aviation document while disqualified

- (1) A person commits an offence who applies for or obtains an aviation document while disqualified by an order of the court from obtaining such a document.
- (2) Any aviation document in respect of which an offence is committed under **subsection (1)** is of no effect.
- (3) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or to a fine not exceeding \$2,000, or both;
- (b) in the case of a body corporate, to a fine not exceeding \$20,000.
- (4) If a person is convicted of an offence under **subsection (1)**, the court may order the person to be disqualified from holding or obtaining an aviation document for any period not exceeding 12 months that the court thinks fit.

Compare: 1990 No 98 s 48

98 Failing to disclose information relevant to granting or holding of aviation document

- (1) A person commits an offence who,—
- (a) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the CAA or the Director information known to that person which is relevant to the CAA's or the Director's exercise of powers under this Act or an enactment made under this Act; or
- (b) being the holder of an aviation document, fails, without reasonable excuse, to provide to the CAA or the Director information known to that person which is relevant to the condition specified in **section 70**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000, or both;
- (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Compare: 1990 No 98 s 49(1)(b) and (c), and (2)

99 Failure to provide information to Director relating to Australian AOCs with ANZA privileges

- (1) A person commits an offence who conducts an air operation in New Zealand while in breach of **section 77(1) or (2)**.

- (2) A person who commits an offence against **subsection (1)** is liable on conviction—
- (a) in the case of an individual, to a fine not exceeding \$5,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$25,000.

Compare: 1990 No 98 s 46D

Subpart 5—Medical certification

Provisions relating to medical certification

100 Medical certification

The provisions of **Schedule 2** have effect.

Offences relating to medical certification

101 Acting without required medical certificate

- (1) A person who exercises the privileges of any aviation document or operates an aircraft solo commits an offence if that person—
- (a) does not hold an appropriate current medical certificate issued under **Schedule 2** or a medical certificate recognised by the Director under the rules; or
 - (b) knows or has reasonable grounds to suspect that the person can no longer exercise safely the privileges to which the person's medical certificate relates; or
 - (c) fails to comply with any conditions, restrictions, or endorsements specified by the Director under **clause 15(a) of Schedule 2**.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both.

Compare: 1990 No 98 s 46A

102 Fraudulent, misleading, or false statements to obtain medical certificate

- (1) A person commits an offence who—
- (a) makes or causes to be made any fraudulent statement, or knowingly or recklessly makes or causes to be made a false or misleading statement,—
 - (i) for the purpose of obtaining a medical certificate under **Schedule 2**; or
 - (ii) during an investigation under **clause 10 or 11** or a review under **clauses 19 to 21** or an assessment under **clause 4 of Schedule 2**.
 - (b) makes or causes to be made any fraudulent entry, or knowingly or recklessly makes or causes to be made a false or misleading entry, in any log-

book, record, form, or report that is required to be kept, made, or used to show compliance with any conditions, restrictions, or endorsements placed on any medical certificate under **Schedule 2**; or

- (c) makes or causes to be made any reproduction or alteration for fraudulent purposes of any medical certificate issued under **Schedule 2**.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both.

Please see Ministry of Transport commentary document: *Offences and penalties—Recklessly providing false information in obtaining a medical certificate*

Compare: 1990 No 98 s 46B

Part 5

Requirements for particular aviation participants

Subpart 1—Duties to notify accidents and incidents

103 Duty to notify accidents and incidents to CAA

- (1) The pilot-in-command of an aircraft that is involved in an accident must notify the accident to the CAA as soon as practicable.
- (2) The requirement to notify an accident under **subsection (1)** is subject to any exception specified in the rules in relation to a type or class of aircraft.
- (3) Every aviation participant who is involved in an incident must notify the incident to the CAA if required by, and in accordance with, any requirements specified in the rules.
- (4) If, due to injuries or death, the pilot-in-command is unable to give the necessary notification under **subsection (1)**, the operator must provide the necessary notification.
- (5) The co-ordinator of any search and rescue operation for any aircraft must notify the CAA of the operation as soon as practicable.
- (6) The CAA may, on being notified under **subsection (1), (3), (4), or (5)**, request any additional information, in any form that the CAA considers appropriate in each specific case.
- (7) The pilot-in-command, operator, or person of whom the request is made (as the case may be) under **subsection (6)** must provide the additional information immediately.
- (8) *See—*
 - (a) **section 264** (which relates to restrictions on admissibility of accident and incident notifications); and
 - (b) **section 373** (which relates to confidentiality of information); and

- (c) **subpart 2 of Part 10** (which provides protections in relation to accident and incident notifications under this subpart).

Compare: 1990 No 98 s 26

104 Duty of CAA to notify accidents and incidents to TAIC

- (1) As soon as practicable after any accident or incident is notified to the CAA under **section 103**, the CAA must notify TAIC that the CAA has been notified of the accident or incident if it is—
- (a) an accident involving aircraft; or
 - (b) a serious incident in accordance with the provisions of the Convention.
- (2) If the CAA has been notified of a search and rescue operation under **section 103(5)**, the CAA must immediately notify TAIC.

Compare: 1990 No 98 s 27

105 Failure to notify accident or incident

- (1) A pilot-in-command or other aviation participant commits an offence who, without reasonable excuse, fails to comply with **section 103(1), (3), or (4)** (which relate to the notification of an accident or incident).
- (2) A pilot-in-command or other aviation participant who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Compare: 1990 No 98 s 52B

Subpart 2—Drug and alcohol management plans and testing

106 Interpretation

In this Part, unless the context otherwise requires,—

bodily sample means any of the following:

- (a) biological fluid;
- (b) biological tissue (whether living or not);
- (c) breath

DAMP means a drug and alcohol management plan developed and approved in accordance with **section 107**

DAMP operator means a person who—

- (a) conducts an operation that involves 1 or more safety-sensitive activities; and
- (b) is required by the rules to hold an aviation document for that operation; and
- (c) is in a class of persons specified in the rules as a DAMP operator

Director testing means drug or alcohol testing carried out under **section 109**

drug or alcohol test means—

- (a) a test of a person's bodily sample to determine the presence, but not the level, of alcohol or a testable drug (or both) in the sample; or
- (b) a test of a person's bodily sample to determine the presence and the level of alcohol or a testable drug (or both) in the sample

negative result, in relation to a drug or alcohol test, means that the test reveals—

- (a) that alcohol or a testable drug (or both) is not present in the bodily sample; or
- (b) if the DAMP specifies a level of alcohol or a testable drug in relation to a test, that alcohol or a testable drug (or both) is not present in the body at the specified level

random testing means drug or alcohol testing of a safety-sensitive worker by a DAMP operator under **section 108**, where the worker—

- (a) is selected for testing in a way that is non-discriminatory; and
- (b) is not given advance notification of the testing

response plan means that part of a DAMP that is concerned with actions taken by the DAMP operator in relation to a safety-sensitive worker who refuses to consent to a drug or alcohol test or whose test returns a result other than a negative result, and includes reasonable arrangements and processes developed by the DAMP operator for—

- (a) prohibiting the worker from performing a safety-sensitive activity; and
- (b) permitting the worker to resume performing safety-sensitive activities, if the worker can do so safely

safety-sensitive activity—

- (a) means an activity that—
 - (i) could significantly affect the health or safety of any person on board an aircraft, including the person performing the activity; or
 - (ii) if not performed safely could cause or contribute to an accident or incident involving an aircraft
- (b) includes an activity prescribed by the rules

safety-sensitive worker—

- (a) means an individual employed or engaged by a DAMP operator in a role that involves the individual performing a safety-sensitive activity; and
- (b) includes the DAMP operator, if the DAMP operator is an individual

testable drug, in relation to a DAMP, means a drug specified under **section 107(2)(b)(i)** in the DAMP.

Please see Ministry of Transport commentary document: *Drug and alcohol regulation*

107 DAMP operator must develop DAMP

- (1) A DAMP operator must develop a DAMP for the purpose of managing risks arising from drug or alcohol use by safety-sensitive workers of the DAMP operator when performing safety-sensitive activities in relation to the operator's operation.
- (2) A DAMP operator must ensure that a DAMP—
 - (a) applies to all safety-sensitive activities; and
 - (b) provides for random testing of safety-sensitive workers, including by—
 - (i) specifying the drugs to be tested for under the DAMP; and
 - (ii) setting out procedures and other matters (including any permissible levels of alcohol or a testable drug) in relation to the testing; and
 - (c) includes a response plan; and
 - (d) complies with any further prescribed requirements, including requirements for—
 - (i) the content of the DAMP; and
 - (ii) procedures for developing the DAMP; and
 - (iii) record-keeping.
- (3) For the purpose of **subsection (2)(b)(i)**, a DAMP operator—
 - (a) must specify any drug that is specified by or under rules as required to be included as a testable drug in the DAMP; and
 - (b) may specify any other drug that could impair a safety-sensitive worker's performance of a safety-sensitive activity.
- (4) The DAMP must be approved by the Director in accordance with any process specified in the rules.

108 Random testing by DAMP operator

- (1) A DAMP operator must ensure that random testing of safety-sensitive workers is carried out.
- (2) Random testing may be carried out only if the worker consents to be tested.
- (3) The DAMP operator must ensure that a person who carries out random testing is competent to carry out the testing, including by having any necessary experience or qualifications.
- (4) The person who carries out the testing must—
 - (a) request the worker's consent before testing the worker; and

- (b) explain to the worker the consequences of refusing consent; and
- (c) carry out tests in accordance with the DAMP and any requirements in the rules.

109 Director testing

- (1) The Director may carry out drug or alcohol testing of 1 or more safety-sensitive workers of a DAMP operator.
- (2) Director testing—
 - (a) to the extent reasonably practicable in the circumstances must be carried out without giving advance notification to the DAMP operator or to the workers selected for testing; and
 - (b) may be carried out at any reasonable time and in any reasonable circumstances the Director considers appropriate; and
 - (c) may be carried out only if the worker consents to be tested; and
 - (d) must be carried out by a person authorised by the Director under **subsection (3)**.
- (3) The Director may authorise persons to carry out Director testing who the Director is satisfied—
 - (a) are suitably qualified and experienced; and
 - (b) meet any other prescribed requirements.
- (4) When carrying out Director testing, an authorised person must—
 - (a) carry a document that states—
 - (i) the authorised person's name and contact details; and
 - (ii) an explanation of the statutory power to carry out the test; and
 - (iii) any other matter prescribed by the rules; and
 - (b) show the document to the worker on first approaching the worker and at any later time on request; and
 - (c) take reasonable steps to establish the worker's identity before testing the worker; and
 - (d) ask for the worker's consent before testing the worker; and
 - (e) give the worker a written statement that contains the information and other matters set out in **subsection (4)**; and
 - (f) carry out a test or tests only in relation to—
 - (i) alcohol and the testable drugs specified in the DAMP; and
 - (ii) the permissible levels (if any) for alcohol or testable drugs specified in the DAMP.
- (5) The statement required under **subsection (3)(e)** must contain the following:
 - (a) the matters set out in the document referred to in **subsection (3)(a)**:

- (b) the purpose of the test:
 - (c) a general description of how the test will be carried out, including how the bodily sample will be taken and how it will be analysed:
 - (d) an explanation of the consequences of refusing to consent or of the worker's test returning a result other than a negative result:
 - (e) advice that the worker will be informed of the result of the test (and approximately when this will happen).
- (6) As soon as practicable after the Director becomes aware of the result of a test, the Director must give the test result to the worker tested and the DAMP operator.
- (7) A failure by the Director to comply with **subsection (2)(a)** does not invalidate a test.
- (8) **Sections 368 to 371** do not apply to the authorising of persons under **subsection (3)**.
- (9) In this section, **authorised person** means a person authorised under **subsection (3)**.

110 What happens if worker refuses consent or test result is not negative

- (1) A safety-sensitive worker who has been selected for random testing or Director testing may refuse to consent to the testing.
- (2) If a worker refuses to consent to random testing or is tested and returns a result other than a negative result, or if the Director notifies the DAMP operator under **subsection (3)**, the DAMP operator must—
- (a) prohibit the worker from performing safety-sensitive activities until the worker is able to safely perform those activities; and
 - (b) implement the response plan.
- (3) If a worker refuses to consent to Director testing or is tested and returns a result other than a negative result, the Director must notify the worker's DAMP operator of that fact as soon as practicable.
- (4) If a worker refuses to consent to random testing or is tested and returns a result other than a negative result, the DAMP operator must, in accordance with any requirements of the rules, notify the Director of that fact as soon as practicable.

111 Tampering

- (1) This section applies if a person who is carrying out a random test or Director testing has reasonable grounds to believe that a person being tested has—
- (a) consumed, administered, or supplied any substance with intent to dilute, contaminate, or otherwise alter any sample:
 - (b) otherwise tampered with the testing.

- (2) This subpart and the relevant DAMP applies as if the test had returned a result other than a negative result.

112 Test results only to be used in certain prosecutions

Test results obtained by a DAMP operator from carrying out random testing or by the carrying out of Director testing under **section 109** are not admissible in any criminal proceedings other than the prosecution of an offence under—

- (a) this Act;
- (b) the Health and Safety at Work Act 2015.

Part 6 Aviation security

Subpart 1—Designations and security checks

113 Security designated aerodromes and navigation installations

- (1) The Minister may, by notice in the *Gazette*, having regard to the main and additional purposes of this Act,—
- (a) designate an aerodrome as either—
 - (i) a Tier 1 security designated aerodrome; or
 - (ii) a Tier 2 security designated aerodrome;
 - (b) designate a navigation installation as a security designated navigation installation.
- (2) A designation under **subsection (1)** may at any time be revoked, in whole or in part, or amended by the Minister by notice in the *Gazette*.
- (3) The New Zealand Police and the authorised aviation security service provider or providers at a security designated aerodrome or security designated navigation installation are jointly responsible for—
- (a) the prevention of the commission of crimes against the Aviation Crimes Act 1972 at that aerodrome or installation; and
 - (b) the protection of persons and property from dangers arising from the commission or attempted commission of such crimes.

Please see Ministry of Transport commentary document: *New security designation framework for aerodromes*

Compare: 1990 No 98 ss 76, 82

114 Security areas and security enhanced areas

- (1) The Director may declare, by a sign or signs affixed at the perimeter of the area, that an area within any security designated aerodrome or security designated navigation installation is a security area.

- (2) The Director may declare, by appropriate notification, that an area within a security area is a security enhanced area.

Compare: 1990 No 98 s 84(1), (1A)

115 Entry into security or security enhanced area

- (1) Except as provided in this section, only the following persons may enter or remain in any security area or security enhanced area:
- (a) a constable on official duties or an aviation security officer on official duties;
 - (b) a person who is—
 - (i) authorised by the Director or a person acting under the authority of the operator of the aerodrome or navigation installation; and
 - (ii) bearing, in accordance with any requirements specified in the rules, evidence of the person's identity.
 - (c) a person or class of persons approved by the Director for the purpose of this section.
- (2) The evidence of identity required by **subsection (1)(b)(ii)** must be the evidence of identity required by the rules or approved by the Director under the rules.
- (3) Despite **subsection (1)**,—
- (a) a passenger embarking or disembarking directly through a gateway or thoroughfare in an aerodrome approved for that purpose by the aerodrome manager may pass through a security area or security enhanced area forming part of the gateway or thoroughfare without the evidence of identity referred to in **subsection (1)(b)(ii)**;
 - (b) a person allowed under the rules may pass through a security area or security enhanced area without the evidence of identity referred to in **subsection (1)(b)(ii)**.

Please see Ministry of Transport commentary document: *Providing for alternative airport configurations and implications for security screening*

Compare: 1990 No 98 s 84(2), (7), (8)

116 Providing evidence of identity and authority

- (1) A person in a security area or security enhanced area must, on the request of an authorised person,—
- (a) state the person's name, address, date of birth, the purpose of the person's presence in the security area or security enhanced area, and the person's authority to enter it; and
 - (b) provide satisfactory evidence of the correctness of the person's stated name and authority to enter the area.

- (2) An authorised person may order a person to leave a security area or security enhanced area if the person fails or refuses to provide an authorised person with satisfactory evidence of the correctness of the person's stated name and authority to enter the area when requested under **subsection (1)**.
- (3) An authorised person, and any person whom the authorised person calls to assist the authorised person, may use such force as may be reasonably necessary to remove from any security area or security enhanced area any person who fails or refuses immediately to leave the security area or security enhanced area after having been ordered by an authorised person to do so under **subsection (2)**.
- (4) Any person who refuses to comply with **subsection (1) or (2)** and, after having been warned that the person commits an offence under **section 158**, persists in its commission, may be detained by an aviation security officer and in that case must as soon as practicable be delivered to a constable.

Please see Ministry of Transport commentary document: *Airport identity cards*

Compare: 1990 No 98 s 84(3)–(6)

117 Authorised person may seize evidence of identity

- (1) This section applies if a person produces the evidence of identity referred to in **section 115(1)(b)(ii)** to an authorised person, and an authorised person is satisfied that—
 - (a) the evidence of identity is being used in breach of this Act or any enactment made under this Act; or
 - (b) the approval of the evidence of identity has been withdrawn or has expired.
- (2) The authorised person may seize the evidence of identity and—
 - (a) return it to the Director or otherwise notify the Director in accordance with the rules; or
 - (b) if not issued by the Director, return it to the person or agency that issued it or otherwise notify that person or agency in accordance with any requirements of the rules.

Please see Ministry of Transport commentary document: *Airport identity cards*

Security checks of persons

118 Director may carry out security checks

- (1) The Director may carry out a security check of a person who falls within a category of persons specified in the rules as requiring a security check if—
 - (a) the security check is for the purpose of determining whether the person poses a threat to aviation security; and
 - (b) the person consents.

- (2) If a person refuses consent to a security check under **subsection (1)**, the person must not be granted any authorisation under the rules if the rules require a favourable security check determination.
- (3) The Director may grant a favourable security check determination if the Director decides that the person has undergone an alternative security check that is acceptable to the Director.
- (4) For the purpose of determining whether a person poses a threat to aviation security, the Director may—
 - (a) seek and receive any information that the Director considers relevant, including (but not limited to) a recommendation made by the New Zealand Security Intelligence Service under section 11 of the Intelligence and Security Act 2017; and
 - (b) give weight to any component of the information as the Director considers appropriate in the circumstances.
- (5) Nothing in the Privacy Act 1993 prevents disclosure of personal information by a person or agency to the Director pursuant to a request made by the Director under **subsection (4)**.
- (6) If the Director determines that a person does not pose a threat to aviation security, the Director must advise the person of the favourable security check determination.

Compare: 1990 No 98 s 77F(1)–(5)

119 Reconsideration of security check determination

- (1) The Director may reconsider any previous security check determination that the Director has made under **section 118** if—
 - (a) new information is made available; or
 - (b) the Director has reason to believe that the person may pose a threat to aviation security.
- (2) If the Director proposes to reconsider any previous security check determination, the Director must—
 - (a) advise the person to whom the security check determination relates that the Director is reconsidering that determination; and
 - (b) complete the reconsideration of that determination within 20 working days of advising the person under **paragraph (a)**; and
 - (c) if the reconsideration results in an adverse security check determination or a proposed adverse security check determination, initiate the review process set out in **section 120**; and
 - (d) if a favourable security check determination is required for any previous authorisation granted to the person under the rules, withdraw that authorisation for—

- (i) the period of the reconsideration; and
 - (ii) any subsequent review period under **section 120**; and
- (e) if a favourable security check determination is required for any previous authorisation granted to the person by any other entity, require that entity to withdraw the authorisation for—
 - (i) the period of the reconsideration; and
 - (ii) any subsequent review period under **section 120**.
- (3) **Section 118(4) and (5)** applies to the reconsideration of a security check determination under this section.
- (4) Nothing in this section limits the power of the Director to grant an exemption under **section 59**.

Compare: 1990 No 98 s 77F(6)–(8)

120 Review procedures for adverse security check determinations

- (1) If the Director makes an adverse security check determination with respect to a New Zealand person based on a recommendation made by the New Zealand Security Intelligence Service under section 11 of the Intelligence and Security Act 2017, the Director must advise the New Zealand person that the person may in accordance with section 171 of the Intelligence and Security Act 2017 make a complaint regarding the recommendation to the Inspector-General of Intelligence and Security.
- (2) If the Director proposes to make an adverse security check determination with respect to a person based on information other than a recommendation made by the New Zealand Security Intelligence Service, the Director must—
 - (a) advise the person of the proposed determination and the reasons for the proposed determination; and
 - (b) give the person written notice that, within 20 working days of the date of the notice, the person may—
 - (i) seek legal advice or assistance with respect to the proposed determination;
 - (ii) respond to, comment on, or make submissions on the proposed determination;
 - (iii) provide new information relevant to the proposed determination; and
 - (c) give the person notice of the date on which the proposed determination will, unless the Director decides otherwise, be made (which must be a date that is as soon as practicable after the expiry of the 20-working-day period referred to in **paragraph (b)**); and

- (d) consider any response, comment, submission, or new information that the person provides along with the information on which the proposed determination was made; and
 - (e) make a final determination and inform the person and any other affected party of,—
 - (i) in the case of the person, the final determination and the reasons for the final determination; and
 - (ii) in the case of any other affected party, the final determination but not the reasons for the final determination.
- (3) If the Director proposes to make an adverse security check determination based on a recommendation made by the New Zealand Security Intelligence Service and on information other than that recommendation, the Director must—
- (a) follow the procedure set out in **subsection (2)** with respect to the information other than the recommendation and advise the person that the proposed determination is based on—
 - (i) a recommendation made by the New Zealand Security Intelligence Service; and
 - (ii) information other than the recommendation; and
 - (b) then follow the procedure set out in **subsection (1)** with respect to the recommendation if—
 - (i) the Director is satisfied that the information other than the recommendation is no longer sufficient to support an adverse security check determination; and
 - (ii) the person is a New Zealand person.
- (4) If the Director makes a final adverse security check determination, the Director must—
- (a) revoke any authorisation granted to the person by the Director under the rules, if a favourable security check determination is required under the rules for the authorisation; and
 - (b) require any other entity to revoke any authorisation granted to the person, if a favourable security check determination is required under the rules for the authorisation.
- (5) For the purposes of this section, **New Zealand person** has the meaning given to it in section 4 of the Intelligence and Security Act 2017.

Compare: 1990 No 98 s 77G

121 Offence to carry out activity while authorisation withdrawn or after authorisation revoked

- (1) Every person commits an offence who carries out an activity that requires an authorisation—

- (a) during a period when that authorisation has been withdrawn under **section 119(2)(d) or (e)**; or
 - (b) if that authorisation has been revoked under **section 120(4)**.
- (2) Every person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$5,000.

Compare: 1990 No 98 s 77H

122 Offence to fail to comply with Director's requirement to withdraw or revoke authorisation

- (1) Every person commits an offence who fails, without reasonable excuse, to comply with the Director's requirement to—
- (a) withdraw an authorisation under **section 119(2)(e)**; or
 - (b) revoke an authorisation under **section 119(4)(b)**.
- (2) Every person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$10,000.

Compare: 1990 No 98 s 77I

Subpart 2—Aviation security services and aviation security powers

123 Interpretation

- (1) In this subpart,—
- relevant item or substance** means—
- (a) dangerous goods;
 - (b) any item or substance specified in section 11(1) of the Aviation Crimes Act 1972;
 - (c) any item or substance not already included in **paragraph (a) or (b)** that may be specified in a direction under **section 144 or 146**

screening means the use of a device, technique, or other means to indicate the presence or possible presence of a relevant item or substance on a person or in or on a thing where that use does not require—

- (a) the touching of the person or thing; or
- (b) in relation to a person, any action described in **section 136(2)(a)**

thing includes, without limitation, an item, substance, or vehicle.

- (2) For the purposes of this subpart, a thing is not attended solely because it is temporarily under the control, or in the charge, of—
- (a) an airline operator or other person at an aerodrome for the purpose of transporting it within the aerodrome or loading it or any other similar purpose; or
 - (b) a government agency for the purpose of inspecting it or exercising any other regulatory function.

- (3) Nothing in the definition of screening limits the use of a device, technique, or other means to indicate the presence or possible presence of a relevant item or substance in or on a person or thing in the course of performing a search.

Please see Ministry of Transport commentary document: *Clarifying the Avsec search powers in the landside part of security designated aerodromes*

Provision of aviation security services

124 Aviation security service providers

Aviation security services may be provided by—

- (a) AvSec at any security designated aerodrome or security designated navigation installation; or
- (b) the operator of a security designated aerodrome or security designated navigation installation, at that aerodrome or navigation installation; or
- (c) an airline at an aerodrome at which the airline is operating.

Please see Ministry of Transport commentary document: *Addition of ‘airlines’ to the list of organisations permitted to provide aviation security services*

Compare: 1990 No 98 s 79(1)

125 Responsibility of Minister

The Minister must ensure that aviation security services are provided at all Tier 1 security designated aerodromes and at all security designated navigation installations.

Compare: 1990 No 98 s 77

126 Requirements for aviation document for provision of aviation security services

- (1) No person referred to in **section 124(b) or (c)**, and no person employed or engaged by the person, may provide aviation security services at an aerodrome or, as the case may be, a navigation installation, except pursuant to a current aviation document for the service issued under this Act.
- (2) The holder of every aviation document referred to in **subsection (1)**—
 - (a) has only those functions and duties (being all or any of the functions and duties of AvSec) that are prescribed in the regulations or rules; and
 - (b) must comply with the relevant prescribed requirements and standards.
- (3) To avoid doubt, neither AvSec nor any person employed to work in AvSec is required to have an aviation document for the provision of aviation security services.

Please see Ministry of Transport commentary document: *Avsec institutional arrangements*

Compare: 1990 No 98 ss 79(2), (3), 81(1)

127 Minister may specify only AvSec to provide security at an aerodrome or installation

- (1) Despite **section 124**, but subject to **subsection (3)**, the Minister may by notice in the *Gazette* specify that only AvSec may provide aviation security services at all or any security designated aerodromes or security designated navigation installations.
- (2) A notice given under **subsection (1)** may be amended or revoked by the Minister by notice in the *Gazette*.
- (3) If a person already holds an aviation document entitling that person to provide aviation security services at a security designated aerodrome or security designated navigation installation, the Minister must consult with that person and the Director before giving a notice under **subsection (1)** in respect of that aerodrome or navigation installation.
- (4) Despite anything in **section 124**, the Minister may at any time, in the event of an emergency or other crisis, appoint AvSec to provide aviation security services at any security designated aerodrome or security designated navigation installation, even though another authorised aviation service provider is providing aviation security services.
- (5) Any appointment made by the Minister under **subsection (4)** has effect for a period specified by the Minister, being not more than 10 days.

Please see Ministry of Transport commentary document: *Replacing consent requirements in section 79A with consult*

Compare: 1990 No 98 s 79A

128 Functions and duties of AvSec

- (1) The AvSec has the following functions and duties:
 - (a) to carry out—
 - (i) crew, passenger, and baggage screening and searching for all international aircraft passenger services:
 - (ii) the directions of the Minister or the Director under **section 144 or 146**:
 - (iii) aerodrome security patrols and patrols of security designated navigation installations:
 - (b) to review, inquire into, and keep itself informed on security techniques, systems, devices, practices, and procedures related to the protection of civil aviation and persons employed in or using it:
 - (c) to undertake, or encourage or supervise, such experimental or research work in respect of any aspect of aviation security as the Director may specify:
 - (d) for the purpose of better carrying out any of its functions under this Act, to co-operate with the Police, government departments, airport author-

ities, operators, and authorities administering the airport security services of other countries, and with any appropriate international organisation:

- (e) to provide security support services to the Police when requested by the Commissioner of Police, but only if—
 - (i) the Commissioner of Police is satisfied that the provision of those services to the New Zealand Police is necessary to enable the New Zealand Police to carry out its security duties; and
 - (ii) AvSec is satisfied that the provision of those services to the New Zealand Police will not compromise aviation security:
 - (f) to co-operate with, or to provide advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and AvSec are satisfied that the performance of the functions and duties of AvSec will not be compromised:
 - (g) to exercise and perform any other duties that may be imposed on it by or under this or any other enactment.
- (2) Nothing in **subsection (1)** limits the powers, functions, duties, or responsibilities of the Police under this Act or any other enactment, or the generality of **section 125**.

Compare: 1990 No 98 s 80

129 Requirements for AvSec to meet prescribed requirements for provision of aviation security services

The Director may—

- (a) require AvSec to comply with all or any requirements prescribed in the rules that apply to the holder of an aviation document for the provision of aviation security services; and
- (b) exercise in relation to AvSec any power given to the Director in the rules that is exercisable in relation to the holder of an aviation document for the provision of aviation security services.

Please see Ministry of Transport commentary document: *Avsec institutional arrangements*

130 Person who holds current aviation document for aviation security service must designate aviation security officers

- (1) A person who holds a current aviation document for an aviation security service must designate persons employed by the person to be aviation security officers.
- (2) An officer designated under **subsection (1)** has, in relation to the aerodrome or navigation installation at which the person is employed, all the powers of an aviation security officer under this Part, except the powers to arrest and detain any person.

Compare: 1990 No 98 s 81

*Screening and searching powers at aerodromes and navigation installations***131 Screening powers of aviation security officers**

An aviation security officer may, at an aerodrome or navigation installation, for the purpose of detecting any relevant item or substance, screen—

- (a) a crew member, passenger, or thing in any area of an aerodrome or navigation installation that is—
 - (i) reasonably proximate to a sterile area; or
 - (ii) set aside for the purpose of passengers or crew to present their baggage for carriage on an aircraft or otherwise indicate their intention to travel on an aircraft:
- (b) a thing to be carried on an aircraft:
- (c) a person or thing—
 - (i) before the person or thing enters a sterile area:
 - (ii) present in a sterile area:
- (d) a person or thing—
 - (i) before the person or thing enters a security enhanced area:
 - (ii) present in a security enhanced area.

Compare: 1990 No 98 ss 80(a), 80A(1), 80B(1), 80C(1)

132 Searching powers of aviation security officers

- (1) For the purpose of detecting any relevant item or substance, an aviation security officer may, at an aerodrome or navigation installation, undertake reasonable searches of—
 - (a) a crew member or passenger in any place in an aerodrome or navigation installation:
 - (b) a thing to be carried on an aircraft:
 - (c) a person or thing—
 - (i) before the person or thing enters a sterile area:
 - (ii) present in a sterile area:
 - (d) a person or thing—
 - (i) before the person or thing enters a security enhanced area:
 - (ii) present in a security enhanced area:
 - (e) a vehicle:
 - (f) a thing that is unattended:
 - (g) an aircraft:
 - (h) the aerodrome or navigation installation.

- (2) A search under this section may be done at the request of an aerodrome operator, the Police, or on the initiative of an aviation security officer.

Compare: 1990 No 98 ss 80(a)(ii), (ab), 80B(1), 80C(1)

133 Requirements relating to consent to screening

- (1) The power in **section 131(a) to (c)** may be exercised without consent.
- (2) The power in **section 131(d)** may be exercised—
- (a) with respect to a person to be screened, only with the consent of the person:
 - (b) with respect to a thing to be screened that is attended, only with the consent of the person in possession of the thing.
- (3) Despite **subsection (2)**, a thing may be screened under **section 131(d)** without consent if it is unattended.
- (4) **Subsection (1)** applies regardless of whether the areas in relation to which the powers in **section 123(a) to (c)** apply are in a security enhanced area.

Please see Ministry of Transport commentary document: Clarifying that Avsec can search suspicious items of hold baggage without passenger consent

Compare: 1990 No 98 s 80D

134 Requirements relating to consent to searching

- (1) Except as provided in **subsections (2) and (3)**, the power in **section 132** may be exercised—
- (a) with respect to a person to be searched, only with the consent of the person:
 - (b) with respect to a thing to be searched that is attended, only with the consent of the person in charge of the thing.
- (2) A thing may be searched without consent if it is unattended.
- (3) The power in **section 132** may be exercised without consent if an aviation security officer has reasonable grounds to suspect that—
- (a) there is an imminent risk to aviation safety and security; and
 - (b) the risk requires an immediate response.

Please see Ministry of Transport commentary document: Clarifying that Avsec can search suspicious items of hold baggage without passenger consent

135 Further provision concerning application of requirements relating to consent

- (1) **Sections 133(1) and (3) and 134(2) and (3)** apply despite anything in section 12(1) of the Aviation Crimes Act 1972 relating to a requirement for consent.
- (2) Section 12(2) and (3) of the Aviation Crimes Act 1972 applies to any passenger who declines to allow the passenger or the passenger's baggage to be screened

or searched under this Act regardless of whether the consent of the passenger to the screening or searching is required under this Act.

136 Requirements and incidental powers relating to the manner of searching persons

- (1) With respect to a search of a person under **section 132**—
- (a) a person must, if directed to do so by an aviation security officer,—
 - (i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the person is wearing to enable the search to be carried out, except where the person has no other clothing, or only underclothing, under the outer clothing;
 - (ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories;
 - (iii) allow an aviation security officer to carry out a pat down search;
 - (b) if a search is made by means other than solely a mechanical or electrical or electronic or other similar device, the person must be searched by an aviation security officer who is a suitable searcher in relation to the person being searched.
- (2) For the purposes of this section, **pat down search**—
- (a) means a search of a clothed person in which the person conducting the search (the **searcher**) may do all or any of the following:
 - (i) run or pat the searcher's hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of the person being searched;
 - (ii) insert the searcher's hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched;
 - (iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely:
 - (A) open the person's mouth;
 - (B) display the palms of the person's hands;
 - (C) display the soles of the person's feet;
 - (D) lift or rub the person's hair; and
 - (b) includes the authority to search—
 - (i) any thing carried by, or in the possession of, the person; and
 - (ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and

- (iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.

Compare: 1990 No 98 s 80G

137 Power to require drivers to stop vehicles in security enhanced areas for screening or searching

- (1) An aviation security officer who is in uniform may signal or request the driver of a vehicle in a security enhanced area to stop the vehicle as soon as is practicable for the purpose of screening or searching the vehicle, and any thing or person in the vehicle under **section 131 or 132**.
- (2) The driver of a vehicle that is stopped by an aviation security officer must remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any thing or person in the vehicle.
- (3) Every person commits an offence and is liable on conviction to a fine not exceeding \$1,000, who, without lawful authority or reasonable excuse, fails to—
 - (a) stop a vehicle in a security enhanced area as soon as is practicable when required to do so by an aviation security officer; or
 - (b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any thing or person in the vehicle.
- (4) In proceedings for an offence against **subsection (3)**,—
 - (a) the prosecutor need not assert absence of lawful authority or reasonable excuse in the charging document; and
 - (b) the burden of proving that the defendant had lawful authority or a reasonable excuse lies on the defendant.

Compare: 1990 No 98 s 80H

138 Powers of aviation security officer in relation to person who is not screened or refuses consent to screening or searching before entry into, or in, sterile area or security enhanced area

- (1) This section applies if a person—
 - (a) attempts to enter into, or remain in, a sterile area if the person has not been screened under **section 131(c)**; or
 - (b) refuses to consent to searching under **section 134(1)** before entry into, or in, a sterile area; or
 - (c) refuses to consent to screening under **section 133(2)** or searching under **section 134(1)** before entry into, or in, a security enhanced area.
- (2) An aviation security officer may—
 - (a) if the person is outside the sterile area or, as the case may be, security enhanced area, deny that person entry into that area:

- (b) if the person is in the sterile area or, as the case may be, security enhanced area, require that person to—
 - (i) leave the area;
 - (ii) remove any thing in that person's possession from the area.
- (3) An aviation security officer may—
 - (a) prevent a person from entering a sterile area or, as the case may be, security enhanced area if the person is denied entry under **subsection (2)(a)**;
 - (b) remove a person from a sterile area or, as the case may be, security enhanced area if the person is required to leave under **subsection (2)(b)**.
- (4) An aviation security officer may detain a person who—
 - (a) attempts to enter when denied entry or refuses to leave when required to leave and persists in that refusal (or attempt) after being warned that the person commits an offence by not complying;
 - (b) refuses to be screened or searched if the aviation security officer has reasonable grounds to suspect that—
 - (i) an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be committed, whether by that person or by any other person; or
 - (ii) a search of the person refusing to consent is likely to disclose evidence that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed, whether by that person or any other person.
- (5) A person detained under **subsection (4)** must be delivered to a constable as soon as practicable.
- (6) An aviation security officer, or any person assisting an aviation security officer, may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to—
 - (a) prevent a person from entering a sterile area or security enhanced area under **subsection (3)(a)**;
 - (b) remove a person from a sterile area or security enhanced area under **subsection (3)(b)**;
 - (c) detain a person under **subsection (4)**.

Compare: 1990 No 98 s 80E

139 Powers of constable in relation to person who is not screened or refuses consent to screening or searching before entry into, or in, sterile area or security enhanced area

- (1) A constable may, without a warrant, search a person to whom **section 138** applies, and any thing in the person's possession, and may detain the person for the purposes of the search, and may take possession of any item or substance found in the course of the search that is specified in section 11(1) of the Aviation Crimes Act 1972, if the constable has reasonable grounds to suspect that—
 - (a) an offence against the Aviation Crimes Act 1972 has been, is being, or will be committed, whether by that person or by any other person; and
 - (b) a search of the person refusing to consent, or any thing in the person's possession, is likely to disclose evidence that an offence against the Aviation Crimes Act 1972 has been, is being, or will be, committed, whether by that person or any other person.
- (2) The refusal of a person to consent to the searching of the person, or any thing in the person's possession, does not of itself constitute reasonable grounds for suspecting that an offence against the Aviation Crimes Act 1972 has been, is being, or will be, committed.
- (3) A constable exercising the power of search under **subsection (1)** must, before the search is conducted, and on any subsequent request,—
 - (a) provide evidence of the constable's identity to the person to be searched; and
 - (b) inform the person to be searched that the search is authorised under this section; and
 - (c) if not in uniform, provide evidence, if asked, of the constable's identity to the person to be searched.
- (4) If a constable exercises the power of search under **subsection (1)**, the constable must, within 3 days after the day on which the constable exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

Compare: 1990 No 98 s 80F

Dealing with item or substance suspected when screening or searching

140 Item or substance suspected entering into, or in, sterile area

- (1) This section applies if—
 - (a) a relevant item or substance is suspected by an aviation security officer when screening under **section 131(b) or (c)** or searching under **section 132(1)(c)** or section 12 of the Aviation Crimes Act 1972 before entry into, or in, a sterile area; and

- (b) an aviation security officer has reasonable grounds to believe that, if the item or substance is a relevant item or substance, there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.
- (2) The aviation security officer may seize and detain the item or substance for the purpose of determining whether it is a relevant item or substance and whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.
- (3) If the aviation security officer determines that the item or substance may be lawfully carried into, or remain in, an aircraft or a sterile area, the aviation security officer must,—
 - (a) if practicable, return the item or substance to the person from whom it was seized; or
 - (b) if it is impracticable to return the item or substance to the person from whom it was seized, deliver the item or substance to the carrier of the aircraft that the person boarded or intended to board when the item or substance was seized.
- (4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may—
 - (a) detain the item or substance until it is dealt with in accordance with **paragraphs (b) to (d)**; or
 - (b) deliver the item or substance to the operator of an air service or delivery service; or
 - (c) dispose of or destroy the item or substance; or
 - (d) deliver the item or substance to a constable.
- (5) Despite **subsections (3) and (4)**, if the aviation security officer has reasonable grounds to believe that an item or substance poses an imminent risk to safety and security, the aviation security officer may destroy or otherwise dispose of the item or substance.
- (6) If an aviation security officer delivers an item or substance to a constable under **subsection (4)(d)**, the aviation security officer must record the delivery and the relevant details of the seizure.

Compare: 1990 No 98 s 80B(3)–(7)

141 Item or substance suspected entering into, or in, security enhanced area

- (1) This section applies if—
 - (a) a relevant item or substance is suspected by an aviation security officer when screening under **section 131(d)** or searching under **section 132(1)(d)** or section 12 of the Aviation Crimes Act 1972 before entry into, or in, a security enhanced area; and

- (b) an aviation security officer has reasonable grounds to believe that, if the item or substance is a relevant item or substance, there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a security enhanced area.
- (2) The aviation security officer may seize and detain the item or substance for the purpose of determining whether it is a relevant item or substance and whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a security enhanced area.
- (3) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer must—
 - (a) detain the item or substance until it is delivered to a constable or, if the Director agrees, destroyed or otherwise disposed of; or
 - (b) deny entry into the security enhanced area to any person in possession of the item or substance; or
 - (c) direct the person in possession of the item or substance to leave the security enhanced area, with or without—
 - (i) the item or substance;
 - (ii) any vehicle used to transport the item or substance.
- (4) If the aviation security officer determines that the item or substance may be lawfully carried into or remain in the security enhanced area, the aviation security officer must, if practicable, return the item or substance to the person from whom the item or substance was seized.
- (5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item or substance poses an imminent risk to safety and security, the aviation security officer may destroy or otherwise dispose of the item or substance.
- (6) An aviation security officer must make a record of any item or substance seized under this section and the person from whom it was seized.

Compare: 1990 No 98 s 80C(3)–(6)

142 Item or substance specified in direction

- (1) This section applies if—
 - (a) a relevant item or substance is suspected by an aviation security officer when screening under **section 131(c) or (d)** before entry into, or in, a sterile area or security enhanced area or when searching under **section 132(1)(c) or (d)** before entry into, or in, a sterile area or security enhanced area; and
 - (b) the aviation security officer has reasonable grounds to believe that the item or substance—

- (i) is not a relevant item or substance within the meaning of **paragraph (a) or (b)** of the definition of relevant item or substance in **section 123**; but
 - (ii) is an item or substance specified in a direction referred to in **paragraph (c)** of that definition.
- (2) The aviation security officer may seize and detain the item or substance for the purpose of determining if—
 - (a) it is a relevant item or substance described in **subsection (1)(b)**; and
 - (b) it is present in a quantity, packaging, or other circumstance provided by or under this Act to be detected under this Part.
- (3) If the aviation security officer determines that the item or substance is a relevant item or substance described in **subsection (2)(a) and (b)** the aviation security officer may require the person from whom it was seized to relinquish the item or substance.
- (4) If the person fails or refuses to comply with a requirement imposed under **subsection (3), section 138(2)** applies as if the person were a person described in **section 138(1)**.

143 Items or substances suspected under section 132(1)(a), (b), or (e) to (h)

- (1) This section applies if—
 - (a) a relevant item or substance is suspected by an aviation security officer when searching under **section 132(1)(a), (b), or (e) to (h)**; and
 - (b) an aviation security officer has reasonable grounds to believe that, if the item or substance is a relevant item or substance, it may pose an imminent risk to aviation safety and security.
- (2) The aviation security officer may seize and detain the item or substance for the purpose of determining whether it is a relevant item or substance and whether or not it poses an imminent risk to aviation safety and security.
- (3) If the aviation security officer determines that the item or substance poses an imminent risk to aviation safety and security, the aviation security officer may—
 - (a) deliver the item or substance to a constable; or
 - (b) destroy or otherwise dispose of the item or substance.
- (4) If the aviation security officer determines that the item or substance does not pose an imminent risk to aviation safety and security, the aviation security officer must—
 - (a) if practicable, return the item or substance to the person from whom it was seized; or
 - (b) if it is impracticable to return the item or substance to the person from whom it was seized—

- (i) deliver the item or substance to the aerodrome operator; or
 - (ii) deliver the item or substance to the operator of an air service or delivery service; or
 - (iii) deliver the item or substance to a constable.
- (5) An aviation security officer must make a record of any item or substance seized under this section and the person from whom it was seized.

Directions relating to screening and searching

144 Power of Minister to require screening, searching, and seizing

- (1) The Minister may exercise the power in this section if the Minister considers that it is—
- (a) necessary to improve or enhance aviation security; or
 - (b) necessary to enable New Zealand to be part of a concerted international response to a threat to aviation security; or
 - (c) otherwise necessary to support the main or additional purposes of this Act.
- (2) The Minister may, by notice in the *Gazette*, direct an authorised aviation security service provider, that all or any of the powers conferred on aviation security officers under this Part be used by its aviation security officers to detect any item or substance specified in the direction.
- (3) The direction may—
- (a) direct that the powers be exercised in respect of any class of passenger service, aircraft, aerodrome, navigation installation, or thing, or on any other differential basis specified in the direction;
 - (b) authorise the Director to direct that aviation security officers not carry out the direction in relation to a particular flight or in other particular circumstances if the Director considers that screening and searching is not necessary in that case or in those circumstances.
- (4) If the direction specifies an item or substance that is not within the meaning of **paragraph (a) or (b)** of the definition of relevant item or substance in **section 123**, the direction may specify the quantity, packaging, or other circumstance for the purpose of **section 142**.
- (5) **Sections 140 to 143**, as the case may be, applies if any item or substance specified in the direction is suspected.
- (6) An authorised aviation security service provider directed under this section must ensure the direction is complied with.

Please see Ministry of Transport commentary document: *Notices of Direction made under section 77A*

Compare: 1990 No 98 s 77A(1), (1A)

145 Further provisions in relation to direction by Minister

- (1) Before giving a direction under **section 144**, the Minister must consult—
 - (a) the Director; and
 - (b) as the Minister in each case considers appropriate and practical, representative groups in the aviation industry.
- (2) A direction made under **section 144** takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the Minister—
 - (a) considers on reasonable grounds that urgent action is required; and
 - (b) has consulted the Director before that date; and
 - (c) has notified all affected parties (other than persons boarding an aircraft) before that date.
- (3) If a direction takes effect on a date before the notice is published in the *Gazette*, the direction expires 28 days after that date.
- (4) A direction that takes effect on a date on or after the notice is published in the *Gazette* is a disallowable instrument but not a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (5) The Minister may rescind a direction made under **section 144**.
- (6) Subject to **subsection (3)**, a direction remains in effect until it is rescinded.

Please see Ministry of Transport commentary document: *Notices of Direction made under section 77A*

Compare: 1990 No 98 s 77A(2)–(8)

146 Power of Director to require screening, searching, and seizing

- (1) The Director may exercise the power in this section if the Director has reasonable grounds to believe that a security risk exists.
- (2) The Director may, by notice in the *Gazette*, direct an authorised aviation security service provider, that all or any of the powers conferred on aviation security officers under this Part be used by its aviation security officers to detect any item or substance specified in the direction.
- (3) The direction may—
 - (a) direct that the powers be exercised in respect of any class of passenger service, aircraft, aerodrome, navigation installation, or thing, or on any other differential basis specified in the direction;
 - (b) authorise the Director to direct that aviation security officers not carry out the direction in relation to a particular flight or in other particular circumstances if the Director considers that screening and searching is not necessary in that case or in those circumstances.

- (4) If the direction specifies an item or substance that is not within the meaning of **paragraph (a) or (b)** of the definition of relevant item or substance in **section 123**, the direction may specify the quantity, packaging, or other circumstance for the purpose of **section 142**.
- (5) **Sections 140 to 143**, as the case may be, applies if any item or substance specified in the direction is suspected.
- (6) An authorised aviation security service provider directed under this section must ensure the direction is complied with.
Compare: 1990 No 98 s 77B(1), (1A)

147 Further provisions in relation to direction by Director

- (1) Before giving a direction under **section 146**, the Director must, to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate and practical, representative groups in the aviation industry, government departments, and Crown agencies.
- (2) A direction made under **section 146** takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette*, if the Director—
 - (a) considers on reasonable grounds that urgent action is required; and
 - (b) has notified all affected parties (other than persons boarding an aircraft) before that date.
- (3) If a direction takes effect on a date before the notice is published in the *Gazette*, the direction expires 28 days after that date.
- (4) A direction that takes effect on a date on or after the notice is published in the *Gazette* is a disallowable instrument but not a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.
- (5) The Director may rescind a direction made under **section 146**.
- (6) Subject to **subsection (3)**, a direction remains in effect until it is rescinded.
Compare: 1990 No 98 s 77B(2)–(7)

148 Certain *Gazette* notices must not include security sensitive information

- (1) A notice to be published in the *Gazette* under **section 144 or 146** in relation to security enhanced areas must not include security sensitive information.
- (2) For the purposes of this section, **security sensitive information** means information that would prejudice the national security interests of New Zealand if disclosed.
Compare: 1990 No 98 s 77BA

*Other rights and powers of aviation security officers***149 Right of access for aviation security officers**

- (1) An aviation security officer while on duty may at any time enter any security designated aerodrome or a security designated navigation installation, or any aircraft, building, or place in any part of a security designated aerodrome or security designated navigation installation, for the purpose of exercising and carrying out the officer's powers, functions, and duties under this Act.
- (2) Unless the aviation security officer is accompanied by a constable, the power of entry conferred by **subsection (1)** is limited to peaceful and non-forceable entry.
- (3) Despite **subsection (1)**, if the Police have taken command of any situation at an aerodrome or navigation installation, the rights of aviation security officers to enter any part of the aerodrome or navigation installation or any aircraft, building, or place are subject to any limitations that the senior constable present at the aerodrome or navigation installation specifies.
- (4) Where an aircraft or vehicle is not being used for commercial purposes, **subsection (1)** does not apply unless the aviation security officer has reasonable grounds to believe that there is in that vehicle or aircraft a person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.

Compare: 1990 No 98 s 83

150 Use of aids and devices for screening and searching

Section 12(6) and (7) of the Aviation Crimes Act 1972 applies to screening or searching carried out under **section 131 or 132**.

151 Use of dogs

Without limiting **section 150**, an aviation security officer may use an aviation security dog to—

- (a) conduct screening and searching under this Part:
- (b) assist with any patrol of a security designated aerodrome or security designated navigation installation:
- (c) assist the aviation security officer to exercise or perform any other functions and duties under this Act.

152 Power of aviation security officer to seize and detain dangerous goods detected by government agency or carrier

- (1) This section applies if—
 - (a) an item or substance is identified by an employee of a government agency or carrier of an aircraft; and

- (b) the item or substance was carried on an aircraft that has landed at a security designated aerodrome in New Zealand from any place within or outside New Zealand; and
 - (c) the person referred to in **paragraph (a)** has reason to believe that the item or substance is dangerous goods and may not lawfully be carried on an aircraft.
- (2) The person referred to in **subsection (1)** may seize and detain the item or substance and may give it to, or draw it to the attention of, an aviation security officer.
 - (3) An aviation security officer may seize and detain the item or substance for the purpose of determining whether the item or substance is dangerous goods and whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.
 - (4) If the aviation security officer determines that the item or substance is dangerous goods and may not lawfully be carried on an aircraft the aviation security officer may—
 - (a) deliver the item or substance to a constable; or
 - (b) retain the item or substance if required for investigative or evidential purposes; or
 - (c) return the item or substance to the agency or carrier that identified it or, if practicable, to its owner or the person entitled to possession of it.
 - (5) If the aviation security officer determines that the item or substance is not dangerous goods, the aviation security officer may return the item or substance to the agency or carrier that identified it or, if practicable, to its owner or the person entitled to possession of it.

Please see Ministry of Transport commentary document: *Clarifying Avsec's powers to deal with dangerous goods*

Aviation Crimes Act 1972

153 Relationship of this Part to Aviation Crimes Act 1972

Except as provided in this Part,—

- (a) nothing in this Part limits or affects the Aviation Crimes Act 1972; and
- (b) nothing in the Aviation Crimes Act 1972 limits or affects this Part.

Powers of arrest

154 Power of arrest for crimes against Aviation Crimes Act 1972 or Arms Act 1983

- (1) Every aviation security officer is justified in arresting without warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation if the officer has reasonable grounds to believe

that an offence has been or is being committed by that person against any of the following enactments:

- (a) sections 3, 4, 5, 5A, and 11 of the Aviation Crimes Act 1972:
 - (b) section 45 of the Arms Act 1983 (which relates to unlawful carriage of firearms, ammunition, or explosives).
- (2) An aviation security officer may—
- (a) search a person arrested under **subsection (1)**:
 - (b) seize any item or substance that may be evidence of an offence against an enactment specified in **subsection (1)**, if the officer has reasonable grounds to believe that—
 - (i) the person has an item or substance hidden or in clear view on or about the person's body that is evidence of an offence against an enactment specified in **subsection (1)**; and
 - (ii) the item or substance poses a threat to the safety of the officer or any other person; and
 - (iii) immediate action is necessary to address the threat.
- (3) An aviation security officer may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to—
- (a) arrest a person under **subsection (1)**:
 - (b) search a person under **subsection (2)**:
 - (c) seize an item or substance under **subsection (2)**.
- (4) To avoid doubt, an aviation security officer may search a person under this section whether or not an aviation security officer has previously searched the person under another section of this Act or under the Aviation Crimes Act 1972.
- (5) An aviation security officer who undertakes a search under this section must, within 3 working days of the search, give the Director a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by **subsection (2)(b)**.
- (6) Any person called upon to do so by an aviation security officer is justified in assisting the officer in good faith to arrest any person.
- (7) An aviation security officer must as soon as may be practicable deliver any person the officer arrests, and any item or substance the officer seizes, to a constable.
- (8) An aviation security officer may seize an item or substance in the possession of a person that the aviation security officer arrests if the aviation security officer has reasonable grounds to believe that the item or substance is evidence of an offence against an enactment specified in **subsection (1)**.

Compare: 1990 No 98 s 85

155 Arrest of persons delivered to Police

- (1) A constable must accept delivery of a person whom an aviation security officer seeks to deliver to the constable under this Part if the constable has reasonable grounds to suspect that person of having done or omitted to do anything if that act or omission is an offence against **section 158** or any enactment specified in **section 154(1)**.
- (2) A constable who accepts delivery of a person under **subsection (1)** may immediately arrest that person.
- (3) An aviation security officer who detains any person in accordance with the provisions of **section 116(4)** and delivers the person to a constable, and any person who at the aviation security officer's request and in good faith assists an aviation security officer in doing so, is justified in so detaining and delivering that person and in using any force that may be reasonably necessary to do so.

Compare: 1990 No 98 s 86

*Powers of Police under this Act***156 Powers of Police**

Every constable has and may exercise all or any of the powers conferred on an aviation security officer under this Act or the regulations or rules.

Compare: 1990 No 98 s 87

*Powers of members of Armed Forces when providing aviation security services***157 Powers of members of Armed Forces when providing aviation security services**

- (1) This section applies to a member of the Armed Forces, when that member has been authorised under section 9 of the Defence Act 1990 to provide aviation security services.
- (2) When providing aviation security services, the member of the Armed Forces has and may exercise all or any of the powers conferred on an aviation security officer under this Act or the regulations or rules.

Please see Ministry of Transport commentary document: *Enabling New Zealand Defence Force personnel to act as Aviation Security Officers*

Subpart 3—Security offences**158 Refusal to give particulars or to leave security area or security enhanced area**

- (1) A person commits an offence who, on being found in a security area or security enhanced area,—

- (a) refuses to state the person's name, address, date of birth, the purpose of the person's presence in, and their authority to enter the security area or security enhanced area after—
 - (i) having been informed that the person is in a security area or security enhanced area; and
 - (ii) having been requested by an authorised person to state those particulars; or
 - (b) refuses to leave the security area or security enhanced area immediately after having been ordered by an authorised person to do so.
- (2) A person who commits an offence under **subsection (1)** in relation to a—
- (a) security area is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000, or both;
 - (b) security enhanced area is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000, or both.

Compare: 1990 No 98 s 54

159 Being present in security area or security enhanced area without being screened or when not authorised

- (1) A person commits an offence if—
- (a) the person—
 - (i) is present in a security area or security enhanced area; and
 - (ii) is required under **subpart 2** or the rules to be screened or searched before entering that area, or that part of the area where the person is present; and
 - (iii) has not been screened or searched as required; or
 - (b) the person is present in a security area or security enhanced area in breach of **section 115**.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to a fine not exceeding \$2,500.
- (3) The offence in this section is an infringement offence with an infringement fee of \$1,000.

Please see Ministry of Transport commentary document: *Infringement offence for being found in a security area without being screened, or without authorisation*

160 Personation or obstruction of aviation security officer

- (1) A person commits an offence who, not being an aviation security officer,—
- (a) by words, conduct, demeanour, or the assumption of the dress, name, designation, or description of an aviation security officer, holds oneself out as being an aviation security officer; or

- (b) wilfully obstructs, or incites or encourages any person to obstruct an aviation security officer in the execution of the officer's duty.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000, or both.

Compare: 1990 No 98 s 55

161 Threatening or assaulting aviation security officer

- (1) A person commits an offence if the person threatens or assaults an aviation security officer acting in the execution of the officer's duty.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$15,000, or both.

Please see Ministry of Transport commentary document: *Assaulting an Aviation Security Officer and killing, injuring, or obstructing an Avsec dog*

162 Obstruction or interference with aviation security dog

- (1) A person commits an offence who—
- (a) intentionally interferes with an aviation security dog; or
- (b) does any act with the intention of impairing the effectiveness of an aviation security dog.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$5,000, or both.

Please see Ministry of Transport commentary document: *Assaulting an Aviation Security Officer and killing, injuring, or obstructing an Avsec dog*

163 Killing or injuring aviation security dog

- (1) A person commits an offence who, without lawful authority or reasonable excuse, intentionally kills, maims, wounds, or otherwise injures an aviation security dog.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 24 months or to a fine not exceeding \$15,000, or both.

Please see Ministry of Transport commentary document: *Assaulting an Aviation Security Officer and killing, injuring, or obstructing an Avsec dog*

164 Security check offences

- (1) A person commits an offence who, in relation to a security check of that person under **section 118**,—
- (a) provides information that the person knows is false or misleading in a material particular; or

- (b) fails to disclose, without reasonable excuse, information that the person knows to be materially relevant.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both.

Compare: 1990 No 98 s 56A

Part 7 International air services

Interpretation

Subpart 1—International air services licensing

165 Interpretation in this Part

In this Part, unless the context otherwise requires,—

capacity, in relation to a scheduled international air service, means—

- (a) with respect to the transport of passengers, the number of seats provided per week on each route followed (expressed as a number of aircraft or seats or in terms of aircraft equivalents); and
- (b) with respect to the transport of cargo, the amount of cargo space provided per week on each route followed (expressed as a number of cargo aircraft or in terms of cargo aircraft equivalents or weight of cargo in tonnes)

class 1 non-scheduled commercial international flight means a non-scheduled commercial international flight (or a series of flights) where the flight routing or frequency requires or would require the operator to hold a certificate under the rules

class 2 non-scheduled commercial international flight means a non-scheduled commercial international flight (or a series of flights) where the flight routing or frequency does not require or would not require the operator to hold a certificate under the rules

foreign international airline means an air transport enterprise of a country or territory other than New Zealand that—

- (a) is offering or operating a scheduled international air service; or
- (b) intends to offer or operate a scheduled international air service

licensee means the holder for the time being of a licence issued under this Part

licensing authority, in relation to scheduled international air service licences, means the Minister or the chief executive, as determined under **section 168**

New Zealand international airline means an air transport enterprise that—

- (a) is designated, or seeking to be designated, as an airline that is entitled to offer air transport services as a New Zealand airline under an air services agreement (or similar arrangement) between New Zealand and any other country or territory; or
- (b) has its principal place of business in New Zealand and is operating, or seeking to operate, a scheduled international air service under the single aviation market arrangements set out in the air services agreement in force between New Zealand and Australia

non-scheduled commercial international flight means a flight (or a series of flights) that—

- (a) is offered otherwise than under an international air services licence; and
- (b) is engaged in the carriage of passengers, cargo, or mail for remuneration or hire

restricted scheduled international air service means a scheduled international air service that is subject to any restriction—

- (a) in relation to capacity or route of flights; and
- (b) that is stipulated in an air services agreement (or similar arrangement) between New Zealand and any other country or territory in which the service is being, or is intended to be, performed

unrestricted scheduled international air service means a scheduled international air service where the capacity or route of flights is not subject to any restriction in an air services agreement (or similar arrangement) between New Zealand and any other country or territory.

Please see **Ministry of Transport commentary document: *Improving the international airline licensing regime***

Compare: 1990 No 98 s 87A

Licence-related provisions

166 Licence for scheduled international air service

- (1) A person who wishes to carry on in New Zealand any scheduled international air service must apply, in accordance with this Act, for a scheduled international air service licence.
- (2) Any scheduled international air service in New Zealand must be conducted—
 - (a) in accordance with this Act and any enactment made under this Act; and
 - (b) in conformity with the terms of the appropriate licence.

Compare: 1990 No 98 s 87B

167 Application for licence

An application for a licence under this Part must—

- (a) be made to the Ministry; and
- (b) be in the form (if any) that the chief executive requires; and
- (c) include the information and documents—
 - (i) as may be required under this Act; and
 - (ii) as specified by the chief executive; and
- (d) include the prescribed fee and charges (if any).

Compare: 1990 No 98 s 87C

168 Licensing authority

- (1) The licensing authority for the grant of scheduled international air service licences is—
 - (a) the Minister, if—
 - (i) the applicant is a New Zealand international airline, and the application relates to a restricted scheduled international air service; or
 - (ii) the applicant is a foreign international airline of a country or territory with which New Zealand does not have an air services agreement (or similar arrangement); or
 - (b) the chief executive, in all other cases.
- (2) The licensing authority is responsible for—
 - (a) determining applications for scheduled international air service licences, taking into account the matters specified in **section 170**; and
 - (b) exercising jurisdiction in respect of scheduled international air service licences in accordance with this Part.

Compare: 1990 No 98 ss 87D, 87L

169 Notice of application for restricted scheduled international air service

If an application relating to a restricted scheduled international air service licence is made by a New Zealand international airline in accordance with **section 167**, the chief executive must—

- (a) give notice on the Ministry's Internet site of the receipt of the application; and
- (b) specify in the notice a time, not less than 21 days from the date of the notice, within which the chief executive will receive written representations from any person relating to the application.

Compare: 1990 No 98 s 87E

170 Consideration of application for scheduled international air service licence

- (1) In considering and determining any application for a scheduled international air service licence the licensing authority must take into account the following matters:

- (a) the main and additional purposes of this Act:
 - (b) any relevant international agreement, convention, or arrangement to which New Zealand is a party:
 - (c) in relation to an application for a restricted scheduled international air service licence made by a New Zealand international airline, any written representations received by the chief executive in relation to the application in accordance with **section 169(b)**.
- (2) If the granting of a licence would be contrary to any agreement, convention, or arrangement referred to in **subsection (1)(a)**, the licensing authority must refuse to grant the licence.

Compare: 1990 No 98 ss 87F, 87M

171 Grant of licence

- (1) The licensing authority, after considering the application in accordance with **section 170**, may—
- (a) refuse it; or
 - (b) grant it (either in whole or in part)—
 - (i) unconditionally; or
 - (ii) subject to conditions that the licensing authority thinks relevant.
- (2) The scheduled international air service licence may be in a form that the licensing authority thinks fit.
- (3) Without limiting **subsection (1)**, the licensing authority, in granting an scheduled international air service licence, may specify—
- (a) the countries or territories, or points within those countries or territories, that may be served and the route or routes that may be followed:
 - (b) the maximum capacity that may be provided:
 - (c) a date before which the service must be commenced.
- (4) If the licensing authority grants a licence, the Ministry must give notice in the *Gazette* that the licence has been granted.

Compare: 1990 No 98 ss 87G, 87N

172 Duration of licence

- (1) A licence granted under **section 171**—
- (a) takes effect from the date stated in the licence; and
 - (b) may be granted,—
 - (i) for a term that the licensing authority considers appropriate in the particular case; and
 - (ii) for an indefinite term, if the licensing authority thinks fit.

- (2) A licence, subject to **subsection (3)**, continues beyond the date of expiry of the licence, if—
 - (a) an application is made under **section 173** for the renewal of the licence; and
 - (b) the application is not disposed of before the date of expiry of the licence.
- (3) If **subsection (2)** applies, the scheduled international air service licence expires when the application is disposed of.

Compare: 1990 No 98 ss 87H, 87O

173 Renewal of licence

- (1) The licensing authority may renew a licence granted under **section 171**.
- (2) An application for the renewal of a licence granted under **section 171** must—
 - (a) be lodged with the Ministry not less than 1 month before the date on which the licence expires; or
 - (b) be lodged with the Ministry not less than 3 months before the date on which the licence expires, if the licence includes a restricted international air service for a New Zealand international airline.
- (3) If the licence includes a restricted international air service for a New Zealand international airline, the chief executive must—
 - (a) give public notice of the receipt of an application for renewal of a licence; and
 - (b) specify in the notice a time, not less than 21 days from the date of the notice, within which the chief executive will receive written representations from any person relating to the application.
- (4) In considering and determining an application for renewal of a licence, the licensing authority must take into account the matters specified in **section 170**.
- (5) A licence renewed under this section—
 - (a) takes effect from the date of the expiry of the licence for which the renewal is granted; and
 - (b) may be granted—
 - (i) for a term that the licensing authority considers appropriate in the particular case; and
 - (ii) for an indefinite term, if the chief executive thinks fit.

Compare: 1990 No 98 ss 87I, 87P

174 Variation of terms and conditions of licence

- (1) The licensing authority may do any of the things specified in **subsection (2)** in relation to a scheduled international air service licence granted under **section 171**—

- (a) if the scheduled international air service licence is in force; and
- (b) on—
 - (i) the licensing authority’s own volition; or
 - (ii) the application of the licensee.
- (2) The licensing authority may, if in the licensing authority’s opinion it is necessary or desirable in the public interest to do so, do 1 or more of the following things:
 - (a) amend any of the terms and conditions of the licence:
 - (b) revoke any of the terms and conditions of the licence:
 - (c) add any new terms or conditions to the licence.
- (3) If the licensing authority intends to exercise the power under **subsection (1)(b)(i)**, the licensing authority must give the licensee not less than 21 days’ notice in writing of that intention.
- (4) If the proposed variation relates to, or involves restricted rights, the licensing authority must—
 - (a) give public notice of the licensing authority’s intention to consider exercising a power under this section, if any proposed variation involves—
 - (i) a change or addition to the route or routes to be operated; or
 - (ii) an increase in the capacity of the service to be provided; and
 - (b) specify in the notice a time, not less than 21 days from the date of the notice, within which the chief executive will receive written representations from any person regarding the proposed variation.
- (5) In considering and determining any application referred to in **subsection (4)**, the licensing authority must take into account the matters specified in **section 170**.
- (6) If the licensing authority varies the terms or conditions of a licence that relates to, or includes, restricted rights the licensing authority must give notice in the *Gazette* of the fact of, and the terms and conditions of, that variation.

Compare: 1990 No 98 ss 87J, 87Q

175 Holder of licence may operate non-scheduled international flights without authorisation under section 179

The holder of a licence under this Part is entitled to carry on, to or from the countries or territories that may be served under the licence, without limitation as to capacity, as specified non-scheduled commercial international flights, without authorisation under **section 179**.

Compare: 1990 No 98 s 87Z

*Requirements on licensees***176 Proof of insurance against liability**

- (1) The licensing authority may ask an applicant or a licensee (as the case may be) to provide proof of insurance against liability that may arise out of, or in connection with, the operation of the service in respect of—
 - (a) the death of, or bodily injury to, any person; and
 - (b) loss of, or damage to, any property.
- (2) The licensing authority may exercise the power in this section at 1 or more of the following times—
 - (a) before granting a licence; or
 - (b) before renewing a licence; or
 - (c) at any other time while the licence is in force.
- (3) If the licensing authority exercises the power under this section, the applicant or licensee must provide the proof of insurance to the licensing authority's satisfaction within any reasonable time that is specified by the licensing authority.

Compare: 1990 No 98 s 87ZA

177 Returns to be made

- (1) The chief executive may, by notice in writing to a person, require the person to make—
 - (a) financial and statistical returns and statements as at specific dates, or in relation to specified periods, or on the occurrence of specified events, including on an ongoing basis; or
 - (b) financial and statistical returns and statements that the chief executive may require from time to time.
- (2) The person must provide the chief executive with financial and statistical returns and statements to the chief executive's satisfaction within any reasonable time that is specified by the chief executive.
- (3) In this section, a **person** means a person who is carrying out—
 - (a) a scheduled international air service under a licence; or
 - (b) a class 1 non-scheduled commercial international flight.

Compare: 1990 No 98 s 87ZB

*Suspension and revocation of licences***178 Suspension and revocation of licences**

The Minister may suspend or revoke the licence for a period that the Minister thinks fit, or revoke a licence granted under this Part if—

- (a) the licensee has failed to comply with the provisions of this Act or any enactment made under this Act; or
- (b) the service authorised by the licence is not commenced on the date specified in the licence; or
- (c) the Minister is satisfied that the service authorised by the licence has not been or is not being carried on in conformity with the terms and conditions of the licence; or
- (d) the service authorised by the licence has been terminated; or
- (e) the licence has been granted under, or in accordance with,—
 - (i) any convention, agreement, or arrangement between the Government of New Zealand and the Government of any other country or territory; and
 - (ii) that convention, agreement, or arrangement has been terminated or has ceased to bind or apply to the Government of New Zealand or the Government of that other country or territory; or
- (f) the licence has been granted under, or in accordance with,—
 - (i) any convention, agreement, or arrangement referred to in **paragraph (d)**; and
 - (ii) circumstances have occurred, or any condition has been fulfilled, following which the Minister, or the Government of New Zealand, has become entitled under, or in accordance with, the convention, agreement, or arrangement, to revoke the licence.

Compare: 1990 No 98 ss 87ZC, 87ZD

Class 1 non-scheduled commercial international flights

179 Class 1 non-scheduled commercial international flights not to be operated except as authorised by chief executive

- (1) This section applies to class 1 non-scheduled commercial international flights between—
 - (a) New Zealand; and
 - (b) 1 or more points in any other country or territory.
- (2) No person may operate a class 1 non-scheduled commercial international flight referred to in **subsection (1)**, except as authorised by the chief executive.
- (3) The chief executive must not authorise a series of non-scheduled commercial international flights under this section—
 - (a) if the effect of authorisation would constitute a circumvention of any convention, agreement, or arrangement between the Government of New Zealand and the Government of any other country or territory; and
 - (b) unless the flights have all other necessary approvals to operate.

- (4) Nothing in **subsections (1) to (3)** applies to any class 2 non-scheduled commercial international flight.
- (5) This section is subject to **section 175**.
Compare: 1990 No 98 s 87ZE

Miscellaneous provisions

180 Additional requirements of regulations and rules

- (1) This section applies to any aircraft that is being used in connection with—
 - (a) a scheduled international air service under a licence granted under this Part; or
 - (b) a non-scheduled international flight.
- (2) Nothing in this Part exempts any aircraft described in **subsection (1)** from the operation of any enactment made under this Act that would otherwise apply to that aircraft.
Compare: 1990 No 98 s 87ZF

181 This Part not in force in Tokelau

- (1) This Part is not in force in Tokelau.
- (2) However, regulations may be made under section 4 of the Tokelau Act 1948 that may bring this Part, with or without modifications, to be in force in Tokelau.
Compare: 1990 No 98 s 87ZG

Offences

182 Carrying on scheduled international air service without licence or contrary to licence

- (1) A person commits an offence who—
 - (a) carries on a scheduled international air service in New Zealand without a licence granted under this Part; or
 - (b) being the holder of a licence granted under this Part, carries on a scheduled international air service in New Zealand in a manner contrary to the terms and conditions of the licence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Compare: 1990 No 98 s 49A

183 Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence

- (1) A person commits an offence who—
- (a) operates a non-scheduled international flight to which **section 179** applies contrary to the provisions of that section; or
 - (b) being the holder of a licence, carries on a non-scheduled international flight in a manner contrary to the terms and conditions of the licence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$10,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Compare: 1990 No 98 s 49B

Subpart 2—International air carriage competition

184 Interpretation in this subpart

In this subpart, unless the context otherwise requires,—

capacity means a statement,—

- (a) expressed to apply—
 - (i) to 1 or more specified airlines; or
 - (ii) to all airlines other than 1 or more specified airlines; or
 - (iii) to all airlines; and
- (b) specifying the number of flights to be undertaken between specified points in a period or successive periods by the airline or airlines, with or without reference to—
 - (i) specified classes of aircraft; or
 - (ii) the number of seats to be provided; or
 - (iii) the volume of cargo space to be provided

international carriage by air means the carriage by air of persons, baggage, or cargo—

- (a) between New Zealand and any place outside New Zealand; or
- (b) where that carriage is purchased, sold, or arranged in New Zealand, between places outside New Zealand

tariff means a statement,—

- (a) expressed to apply—
 - (i) to 1 or more specified airlines; or
 - (ii) to all airlines other than 1 or more specified airlines; or
 - (iii) to all airlines; and

- (b) specifying—
 - (i) the fares, rates, and charges applicable to international carriage by air between specified points (irrespective of whether direct, indirect, or involving any stopovers) that may, at any time, be provided by the airlines to which it is expressed to apply; and
 - (ii) any conditions subject to which the fares, rates, and charges, or any of them, are to apply to international carriage by air between those points; and
 - (iii) any conditions subject to which international carriage by air between those points is to be provided on such fares, rates, and charges.

Please see Ministry of Transport commentary document: *Improving the regime for authorisation of airline cooperative arrangements*

Compare: 1990 No 98 s 88(1)

185 When person may apply for authorisation

- (1) A person may apply to the Minister in the prescribed form and on payment of the prescribed fee (if any) for an authorisation in accordance with this Part if the circumstances in **subsection (2)** exist.
- (2) The circumstances are as follows:
 - (a) the person is conducting, or intends to conduct, international carriage by air; and
 - (b) 1 or more of the following circumstances exist:
 - (i) the person wishes to enter into a contract or arrangement, or arrive at an understanding, to which that person considers section 27 or 30 of the Commerce Act 1986 would apply, or might apply;
 - (ii) the person wishes to give effect to a provision of a contract or arrangement or understanding to which that person considers section 27 or 30 of the Commerce Act 1986 would apply, or might apply.
- (3) This section is subject to **section 194**.

186 Actions following receipt of application for authorisation

- (1) If the Minister receives a properly completed application for authorisation in accordance with **section 185**, the Minister must—
 - (a) give public notice of—
 - (i) the Minister's intention to consider exercising the power to grant an authorisation; and
 - (ii) the details of the application for authorisation as the Minister thinks fit; and

- (b) specify in the notice a time within which the Minister will receive written representations from any person regarding the application for authorisation.
- (2) Any person who has an interest in the application for authorisation may give written notice to the Ministry of that person's interest and the reason that interest.
- (3) In relation to any application, the Minister may consult with any person who, in the Minister's opinion, is able to assist the Minister determine the application.

187 Further provisions relating to application for authorisation

- (1) On receipt of an application for authorisation that is incomplete, not in the prescribed form, or accompanied by the prescribed fee, the Minister may, at the Minister's discretion,—
 - (a) accept the application and do the things referred to in **section 186(1)** in respect of that application; or
 - (b) return the application to the person by or on whose behalf it was made; or
 - (c) decline to register the application until the application completed, made in the prescribed form, or accompanied by the prescribed fee (as relevant).
- (2) If the Minister declines to register an application under **subsection (1)(c)**, the Minister must immediately notify the person by or on whose behalf the application was made.
- (3) The Minister may require the following persons to provide, and those persons must provide, within the time the Minister specifies, further documents or information in relation to the application for authorisation for the purpose of enabling the Minister to exercise the Minister's functions under this subpart:
 - (a) the person making the application;
 - (b) any person on whose behalf the application was made;
 - (c) any person to whom the application relates.
- (4) Despite **section 186(1)** and **subsection (4)**, if the Minister is of the opinion that the matters to which an application relates are, for reasons other than arising from the application of any provision of this Act, unlikely to be proceeded with, the Minister may, in the Minister's discretion, return the application to the person by or on whose behalf the application was made.
- (5) Any person who has made an application to the Minister for an authorisation may, at any time, by notice in writing to the Ministry, withdraw the application.

188 Powers of Minister to prohibit disclosure of information, documents, and evidence

- (1) The Minister may, in relation to any application for authorisation, make an order (**order**) prohibiting—
 - (a) the publication or communication of all or any information, document, and evidence which is given to, or obtained by, the Ministry under this subpart:
 - (b) the giving of any evidence involving any information, document, or evidence referred to in **paragraph (a)**.
- (2) An order may be expressed to have effect for a period as is specified in the order.
- (3) However, no order has effect,—
 - (a) if the order was made in connection with any application for authorisation, after the expiry of 20 working days from the date on which the Minister makes a final determination in respect of that application; or
 - (b) if the application is withdrawn before the Minister makes a final determination, after the date on which the application is withdrawn.
- (4) On the expiry of an order the provisions of the Official Information Act 1982 apply in respect of any information, document, or evidence that was the subject of that order.
- (5) Every person who, contrary to an order, publishes or communicates any information, document, or evidence that was the subject of that order commits an offence and is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$4,000:
 - (b) in the case of a body corporate, to a fine not exceeding \$12,000.

189 Minister may authorise international carriage by air

- (1) The Minister may, in relation to an application for an authorisation under this subpart, authorise 1 or more of the following:
 - (a) the scheduling, capacity, or frequency of aircraft:
 - (b) the fixing of tariffs:
 - (c) the conditions and benefits associated with tariffs:
 - (d) frequent flyer schemes:
 - (e) lounge access and other preferential services:
 - (f) revenue sharing:
 - (g) joint procurement:
 - (h) any other operational matters related to co-operation on—
 - (i) tariffs; or

- (ii) capacity; or
 - (iii) tariffs and capacity.
- (2) In determining whether the grant of an authorisation would be in the public interest, the Minister must take into account the main and additional purposes of this Act.

Compare: 1990 No 98 s 88(2), (4)

190 Minister must notify proposed decision to grant or decline authorisation

If the Minister intends to grant or decline an application for authorisation, the Minister must—

- (a) give public notice of Minister's intention to grant or decline the application; and
- (b) specify a time within which the Minister will receive written representations from any person regarding the proposed decision to grant the authorisation.

191 Minister must notify final decision to grant or decline authorisation

After the Minister makes a final decision to grant or decline an authorisation, the Minister must give public notice of that final decision with the Minister's reasons for decision.

192 Further powers of Minister in relation to authorisations

The Minister may do 1 or more of the following in relation to an authorisation:

- (a) specify or vary the duration of an authorisation:
- (b) specify, vary, or revoke the conditions that apply to an authorisation:
- (c) revoke an authorisation.

193 Authorisation of tariffs by Minister in specified circumstances

- (1) The Minister may authorise any tariff in respect of international carriage by air in specified circumstances.
- (2) The circumstances, in relation to the international carriage by air, are—
 - (a) that the relevant places of departure and destination are within the territories of 2 countries, one of which is New Zealand (irrespective whether there is to be a break in the carriage or a transhipment); and
 - (b) that an agreement, arrangement, or understanding contains a provision that requires the tariff to be subject to an authorisation by the Minister.

Compare: 1990 No 98 s 90(1)

194 Application of Commerce Act 1986

- (1) Nothing in section 27 or 30 of the Commerce Act 1986 applies to, or in respect of,—

- (a) the negotiation or conclusion of any contract, arrangement, or understanding—
 - (i) if, and to the extent that, it contains a provision relating to international carriage by air; and
 - (ii) if, and only if, that provision is not given effect to before its authorisation under **section 189**; or
 - (b) any provision of a contract, arrangement, or understanding relating to international carriage by air if, and only if, it is not given effect to before its authorisation under **section 189**.
- (2) Every authorisation by the Minister under **section 189** is declared to be a specific authorisation by an enactment for the purposes of section 43 of the Commerce Act 1986.

Compare: 1990 No 98 s 91

Part 8 Aerodromes

Subpart 1—Airport authorities

195 Interpretation in this Part

In this Part, unless the context otherwise requires,—

aircraft and freight activities means the activities undertaken (including the facilities and services provided) to enable, within a security area or areas of the relevant aerodrome, servicing and maintenance of aircraft and the handling of freight transported, or to be transported, by aircraft; and includes—

- (a) the provision within a security area or areas of the relevant aerodrome, of any 1 or more of the following:
 - (i) hangars:
 - (ii) facilities and services for the refuelling of aircraft, flight catering, and waste disposal:
 - (iii) facilities and services for the storing of freight:
 - (iv) security, customs, and quarantine services for freight:
- (b) the holding of any facilities and assets (including land) acquired or held to provide aircraft and freight activities in the future (whether or not used for any other purpose in the meantime)

airfield activities means the activities undertaken (including the facilities and services provided) to enable the landing and take-off of aircraft; and includes—

- (a) the provision of any 1 or more of the following:
 - (i) airfields, runways, taxiways, and parking aprons for aircraft:
 - (ii) facilities and services for air traffic and parking apron control:

- (iii) airfield and associated lighting:
- (iv) services to maintain and repair airfields, runways, taxiways, and parking aprons for aircraft:
- (v) rescue, fire, safety, and environmental hazard control services:
- (vi) airfield supervisory and security services:
- (b) the holding of any facilities and assets (including land) acquired or held to provide airfield activities in the future (whether or not used for any other purpose in the meantime)

airport authority—

- (a) means a local authority for the time being authorised under **section 197** to establish, maintain, operate, or manage an aerodrome; and
- (b) includes any person or association of persons authorised under **section 197(3)** to exercise the powers of a local authority

airport company means—

- (a) means a company registered under the Companies Act 1993 that is for the time being authorised under **section 197(3)** to exercise the functions of a local authority under that section; and
- (b) includes a company deemed by any other Act to be an airport company

charge includes a fee or due and also includes rent payable under any lease

equity security has the same meaning as in section 8 of the Financial Markets Conduct Act 2013

identified aerodrome activities means any 1 or more of the following, as the case may be:

- (a) airfield activities:
- (b) aircraft and freight activities:
- (c) specified passenger terminal activities

joint venture airport means an aerodrome that is established, maintained, operated, or managed as a joint venture by and between the Crown and an airport authority under this Act

lease includes any form of tenancy and a licence to occupy or use any premises or appliance

local authority means a local authority within the meaning of the Local Government Act 2002

specified airport company means an airport company that, in its last accounting period, recorded passenger movements through the relevant aerodrome that exceed a rate of—

- (a) 1 million passenger movements per year; or

- (b) any other number of passenger movements per year that may be specified by the Governor-General by Order in Council

specified passenger terminal activities—

- (a) means the activities undertaken (including the facilities and services provided) in relation to aircraft passengers while those passengers are in a security area or areas of the relevant aerodrome; and
- (b) includes the provision, within a security area or security areas of the relevant aerodrome, of any 1 or more of the following:
- (i) passenger seating areas, thoroughfares, and airbridges:
 - (ii) flight information and public address systems:
 - (iii) facilities and services for the operation of customs, immigration, and quarantine checks and control:
 - (iv) facilities for the collection of duty-free items:
 - (v) facilities and services for the operation of aviation security and Police services:
- (c) includes any activities undertaken (including the facilities and services provided) in a passenger terminal to enable the check-in of aircraft passengers, including services for baggage handling:
- (d) includes the holding of any facilities and assets (including land) acquired or held to provide specified passenger terminal activities in the future (whether or not used for any other purpose in the meantime); but
- (e) does not include the provision of any space for retail activities

substantial customer has the meaning given to it by **section 196**.

Please see **Ministry of Transport commentary document: *Modernising provisions relating to Airport Authorities***

Compare: 1966 No 51 s 2, 1990 No 98 s 92

196 Meaning of substantial customer

- (1) For the purposes of this subpart, **substantial customer**, in relation to an airport company, means any person that paid, or was liable to pay, that airport company in relation to identified aerodrome activities in that airport company's last accounting period an amount that exceeded 5% of the revenue paid or payable to that airport company during that accounting period in relation to those activities.
- (2) A person is treated as a substantial customer of an airport company for the purposes of this subpart if—
- (a) that person has been authorised in writing to represent, and exercise the powers of a substantial customer under this subpart in relation to, a number of persons that in aggregate paid, or were liable to pay, that airport company in relation to identified aerodrome activities in the airport com-

pany's last accounting period an amount that exceeded 5% of the revenue paid or payable to that airport company during that accounting period in relation to those activities; and

- (b) that person has produced those authorisations to that airport company for inspection by it; and
 - (c) those authorisations have not been withdrawn.
- (3) A person who is treated as a substantial customer under **subsection (2)** may exercise all the powers of a substantial customer under this subpart and any regulations made under **section 332**.

Compare: 1966 No 51 s 2A

197 Airport authorities may establish and carry on aerodromes

- (1) Any local authority, with the prior consent of, and in accordance with any conditions prescribed by, the Governor-General by Order in Council, may—
 - (a) establish, improve, maintain, operate, or manage aerodromes (including the approaches, buildings, and other accommodation, and equipment and appurtenances for the aerodromes); and
 - (b) acquire land for any of those purposes, either within or outside its district or region.
- (2) Any local authority empowered to carry out any undertaking under this section may carry on or cause to be carried on in connection with that undertaking any subsidiary business or undertaking.
- (3) The powers conferred on local authorities by this section may, with the prior consent of, and in accordance with conditions prescribed by the Governor-General by Order in Council, be exercised by any person or association of persons referred to in the Order in Council.
- (4) An Order in Council under this section may be at any time in like manner amended or revoked.

Compare: 1966 No 51 s 3

198 Powers of Crown and local authorities to form airport companies

- (1) The following may form a company that is, or is intended to become, an airport company; and may subscribe for, hold, acquire, and dispose of any equity securities or debt securities issued by the company:
 - (a) the Minister for State-Owned Enterprises and the Minister of Finance (on behalf of the Crown); and
 - (b) any local authority; and
 - (c) any local authorities, jointly; and
 - (d) those Ministers (on behalf of the Crown) and any local authority or local authorities, jointly.
- (2) **Subsection (1)**—

- (a) applies despite any other enactment or rule of law:
 - (b) does not limit the persons who may subscribe for, hold, acquire, or dispose of any equity securities or debt securities issued by a company that is, or is intended to become, an airport company.
- (3) The Minister of Finance may from time to time, from a Crown Bank Account (out of money appropriated by Parliament for the purpose), pay for the acquisition on behalf of the Crown of any equity securities or debt securities under **subsection (1)**.
- (4) The Minister for State-Owned Enterprises and the Minister of Finance, on behalf of the Crown, may from time to time exercise all or any of the Crown's rights and powers as the holder of any equity securities or debt securities acquired under **subsection (1)**.

Compare: 1966 No 51 s 3A(1)–(5)

199 Crown or local authority may transfer business, undertaking, property to airport company

- (1) The Crown or any local authority may transfer an aerodrome to an airport company, on the terms and conditions that the Crown or local authority thinks fit, and any real or personal property owned by the Crown or local authority that at the time of transfer is being used for the purposes of an aerodrome or is held for future use for the purposes of an aerodrome.
- (2) This section applies despite any other enactment or rule of law.

Compare: 1966 No 51 s 3A(6)

200 Application of sections 40 to 42 Public Works Act 1981

Nothing in sections 40 to 42 of the Public Works Act 1981 applies to the transfer of land to an airport company under this Act but, after the transfer, sections 40 and 41 of that Act apply to the land as if the airport company were the Crown and the land had not been transferred under this Act.

Compare: 1966 No 51 s 3A(6A)

201 Application of Reserves Act 1977

- (1) If any land proposed to be transferred to an airport company pursuant to **section 199** is subject to the Reserves Act 1977—
- (a) it may be transferred without complying with that Act; and
 - (b) on the occurrence of the transfer the land is no longer subject to that Act.
- (2) However, a local authority cannot transfer to an airport company land that was vested in the local authority under the Reserves Act 1977 (or that is treated by that Act as having been vested in the local authority under that Act) unless—
- (a) the Minister has given the Minister's written consent to the local authority transferring the land to the airport company and the local authority has given a copy of that consent to the Registrar-General of Land; or

- (b) the Surveyor-General has given a written certificate that the vesting of the land in the local authority was not done by the Crown and the local authority has given a copy of that certificate to the Registrar-General of Land.
- (3) In considering whether to give consent for the purposes of **subsection (2)**, the Minister may take into account any matters the Minister considers appropriate.
- (4) Neither this Act, nor the Reserves Act 1977, limits **subsection (3)**.
- (5) A certificate, signed or otherwise authenticated by the Surveyor-General, that any land described in the certificate, or described in any document on which the certificate appears, is land to which **subsection (1)** applies is sufficient evidence, in the absence of proof to the contrary, that **subsection (1)** applies to the land.

Compare: 1966 No 51 s 3A(7)–(8)

202 Provisions relating to holding of securities by Minister

- (1) Equity securities issued by an airport company and held in the name of a person described as the Minister for State-Owned Enterprises or the Minister of Finance are held by the person for the time being holding the office of Minister for State-Owned Enterprises or Minister of Finance, as the case may be.
- (2) Despite any other enactment or rule of law, it is not necessary to complete or register a transfer of securities upon a change in the person holding the office of Minister or Minister of Finance, as the case may be.
- (3) A Minister may at any time or times, by written notice to an airport company authorise, on the terms and conditions that are specified in the notice, the person that the Minister thinks fit to act as the Minister's representative at any or all of the meetings of shareholders of the airport company or of any class of such shareholders.
- (4) A person authorised under **subsection (3)** is entitled to exercise the same powers on behalf of the Minister as the Minister could exercise if present in person at the meeting or meetings.

Compare: 1966 No 51 s 3AA

203 Airports operated by airport authorities that are not local authorities to be public works

For the purposes of the Public Works Act 1981, an aerodrome operated or managed by an airport authority that is not a local authority is to be treated as a Government work.

Compare: 1966 No 51 s 3D

204 Airport companies must consult concerning charges

- (1) Every airport company must consult with every substantial customer in respect of any charge payable by that substantial customer to the airport company in respect of any or all identified aerodrome activities—
 - (a) before fixing or altering the amount of that charge; and
 - (b) within 5 years after fixing or altering the amount of that charge.
- (2) An airport company must consult with every substantial customer in respect of any direct charge payable to the airport company by any passenger in respect of any or all identified aerodrome activities—
 - (a) before fixing or altering the amount of that charge; and
 - (b) within 5 years after fixing or altering the amount of that charge.
- (3) Despite **subsections (1) and (2)**, an airport company to which **subsection (1) or (2)** applies is not required to consult under this section in respect of any charge with a substantial customer who has consented in writing (and not withdrawn that consent) to not being consulted under this section in respect of that charge.

Compare: 1966 No 51 s 4B

205 Airport companies must consult concerning capital expenditure plans

- (1) In this section,—

identified capital expenditure, in relation to an airport company, means capital expenditure in relation to identified aerodrome activities

related capital expenditure, in relation to identified capital expenditure, means capital expenditure (whether paid or proposed) which relates to or is connected with that identified capital expenditure.
- (2) An airport company with annual passenger movements specified in column 1 of the table must consult with all its substantial customers in respect of identified capital expenditure (and all related capital expenditure) if the amount of that identified capital expenditure (and the amount of any related capital expenditure) will, or is likely to, within the following 5 years exceed an amount specified in relation to those passenger movements specified in column 2 of the table.

Annual passenger movements of airport company	Amount
Less than 1,000,000	\$5,000,000
1,000,000 or more but not more than 3,000,000	\$10,000,000
More than 3,000,000	\$30,000,000

- (3) An airport company is not required to consult under **subsection (2)** in respect of identified capital expenditure (or any related capital expenditure) with a substantial customer who has consented in writing (and not withdrawn that con-

sent) to not being consulted under this section in respect of that identified capital expenditure and any related capital expenditure.

- (4) A failure by an airport company to comply with this section does not affect the validity or enforceability of any deed, agreement, right, or obligation entered into, obtained, or incurred by that airport company.

Compare: 1966 No 51 ss 4C, 9B

206 Airport authority may act in conjunction with Ministers of Crown and other authorities

- (1) Any airport authority may combine or act in conjunction with the Minister as a joint venture under **subpart 2** or with any local authority or airport authority and for that purpose may from time to time enter into and carry out any agreements that may seem to it most suited to the circumstances.
- (2) If in the opinion of the Minister of Finance and the Minister any work or scheme of development or reconstruction to be executed or carried out at or in connection with any aerodrome in accordance with an agreement entered into under this section is of both national and local importance, that agreement must be treated as an agreement entered into under section 224 of the Public Works Act 1981, and the provisions of that section, as far as they are applicable and with the necessary modifications, apply.

Compare: 1966 No 51 s 5(1)–(3), (6)

207 Further provisions concerning leasing powers of airport authorities

- (1) An airport authority must ensure that none of the following affect the safe operation of aircraft on or over the aerodrome:
- (a) the granting of any lease, or the erection, alteration, or removal of any building, equipment, or appurtenances under any lease:
 - (b) the construction of any road or accessway, or the subdivision of any land.
- (2) For the purpose of complying with **subsection (1)** the airport authority must consult with, and act in accordance with the directions of, the CAA.

Compare: 1966 No 51 s 6(7)

208 Local authorities may assist airport authorities

A local authority may, for the purpose of assisting airport authorities in the exercise of their powers and functions, subject to section 63 of the Local Government Act 2002, make grants of money, loans, or grant leases of land at any rental, for any term, and on any terms and conditions that it thinks fit, to any airport authority that is not a local authority.

Compare: 1966 No 51 s 7(b)

209 Bylaws

- (1) Any local authority or airport authority may, in respect of the aerodrome which it operates, make such bylaws as it thinks fit for all or any of the following purposes:
 - (a) the good rule and management of the aerodrome:
 - (b) the more effectual carrying out of the functions and powers of the airport authority in respect of the aerodrome:
 - (c) protecting any property used in connection with the aerodrome from damage or injury:
 - (d) prescribing precautions to be taken for the protection of persons or property from accident or damage:
 - (e) regulating traffic, whether pedestrian or vehicular, and the provision and use of parking places for vehicles at the aerodrome:
 - (f) prescribing the times, terms, and conditions on which the public may enter or be in the aerodrome:
 - (g) providing for the establishing and maintaining of facilities at the aerodrome for the reception and storage of lost property:
- (2) Bylaws under **paragraph (g)** may provide for—
 - (a) the sale by way of auction of any lost property that is unclaimed after being held by the authority for not less than 3 months:
 - (b) publicising, in what the authority considers to be a fair and reasonable manner, of the proposed sale of lost property:
 - (c) despite **paragraphs (a) and (b)**, the disposal of lost property that is perishable or valueless in any manner that may be determined by the authority.

Compare: 1966 No 51 s 9(1), (1A), (2)

210 Other provisions concerning making of bylaws

- (1) A bylaw made under **section 209** by an airport authority that is not a local authority has no force or effect until it has been approved by the Governor-General by Order in Council.
- (2) An Order in Council made under **subsection (3)**—
 - (a) must set out the bylaw approved in a schedule to the order; and
 - (b) is a legislative instrument and a disallowable instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1966 No 51 s 9(3)–(7)

211 Enforcement of bylaws

- (1) A person who breaches a bylaw in force under this subpart is liable on conviction to a fine not exceeding \$500.
- (2) If a person commits a continuing breach of a bylaw in force under this subpart, then, despite anything in any other Act, the District Court may, on application by the airport authority, grant an injunction restraining the further continuance of the breach by that person.
- (3) An injunction may be granted under **subsection (2)**,—
 - (a) even though proceedings for the offence constituted by the breach have not been taken; or
 - (b) if the person is convicted of an offence constituted by the breach, either,—
 - (i) in the proceedings for the offence, in substitution for or in addition to any penalty awarded for the offence; or
 - (ii) in subsequent proceedings.

Compare: 1966 No 51 s 9(8)

212 Information to be supplied to chief executive

- (1) An airport company that is required by regulations made under **section 332** to make any financial statement, financial forecast, or other information publicly available—
 - (a) must supply to the chief executive, within 30 days after the day on which any the statement, forecast, or other information is made available, a copy of that financial statement, financial forecast, or other information:
 - (b) supply any information requested under **subsection (2)** within 30 days after the date on which the request is given (or within any additional time that the chief executive allows).
- (2) For the purpose of monitoring the airport company's compliance with regulations made under **section 332** the chief executive may give an airport company a notice in writing requesting further statements, forecasts, reports, agreements, particulars, and other information.
- (3) All statements, forecasts, reports, agreements, particulars, and information supplied to the chief executive under **subsection (1)(a) or (b)** must be verified by statutory declaration in the form prescribed, and by the person or persons prescribed, by regulations made under **section 332(2)(j)**.

Compare: 1966 No 51 s 9C

Subpart 2—Aerodromes, facilities, and joint venture aerodromes

213 Interpretation in this subpart

In this subpart, unless the context otherwise requires,—

Compare:

214 Powers of Minister in respect of aerodromes and facilities

- (1) The Minister may, for the purposes of civil aviation, establish, maintain, and operate—
 - (a) aerodromes; and
 - (b) services and facilities in connection with the operation of—
 - (i) any aerodrome; or
 - (ii) aircraft engaged in civil aviation.
- (2) The Minister may do all that is necessary, convenient, or incidental to the establishment, maintenance, and operation of—
 - (a) any aerodrome; or
 - (b) any services or facilities in connection with the operation of any aerodrome in all respects.
- (3) For the purposes of **subsection (2)**, the Minister may—
 - (a) do the things referred to in that subsection as if the operation of the aerodrome or of the services or facilities were a commercial undertaking; and
 - (b) carry out any work or undertaking in respect of which the Minister is authorised to enter into any agreement under **section 216**.
- (4) An aerodrome referred to **subsection (2)** may be under the complete or partial control of the Minister.
- (5) The Minister may, in respect of any aerodrome or any facilities in connection with any aerodrome, exercise any power given to the Minister under this Act, irrespective of whether the aerodrome or the facilities had been established by the Minister under this Act.

Compare: 1990 No 98 s 93(1), (3), (4)

215 Further provisions in relation to powers of Minister in respect of aerodromes and facilities

- (1) The Minister must not take over the operation of any aerodrome that is owned or operated by any person other than the Crown, except by agreement with—
 - (a) the owner of the aerodrome; and
 - (b) if the owner is not also the operator of the aerodrome, the operator of the aerodrome.

- (2) All works undertaken under the authority of **section 214** and this section are public works within the meaning of the Public Works Act 1981.
- (3) The powers conferred by **section 214** and this section are in addition to, and not in derogation of, any powers conferred by any other enactment.
- (4) Nothing in **section 214** and this section limit or affect the powers conferred on any person or authority by any other enactment.

Compare: 1990 No 98 s 93(2), (5), (6)

216 Joint ventures

The Minister and any airport authority may enter into and carry out agreements for the establishment, control, management, or operation of an aerodrome or services and facilities in connection with the operation of the aerodrome as a joint venture between the Minister and the airport authority.

Compare: 1990 No 98 s 94(1), (2)

217 Further provisions relating to joint ventures

- (1) Any agreement entered into under **section 216** may be—
 - (a) varied by the parties to the agreement; or
 - (b) terminated in accordance with the terms of the agreement.
- (2) Any agreement relating to the development or reconstruction of an aerodrome that the Crown enters into under section 224 of the Public Works Act 1981 may include any provision referred to in **section 216**.

Compare: 1990 No 98 s 94(3), (4)

218 Crown money may be retained in joint venture aerodrome accounts

- (1) Certain amounts of money, as described in **subsection (2)**, may be retained on behalf of the Crown in the accounts of a joint venture aerodrome with the approval of the Minister of Finance, instead of being paid into a Crown Bank Account.
- (2) For the purposes of **subsection (1)**, the amounts of money are as follows:
 - (a) any money standing to the credit of, or held on behalf of, the Crown in the accounts of a joint venture aerodrome as a result of the operations of that aerodrome; and
 - (b) any money representing the Crown's share of the proceeds of any fees or charges imposed under this Act.
- (3) Any money described in **subsection (2)** may be used for purposes in connection with the operation and development of that aerodrome—
 - (a) as may be authorised by the Minister with the concurrence of the Minister of Finance; and
 - (b) without further authority than this section.

Compare: 1990 No 98 s 95(1)

219 Minister may require Crown money to be paid to Crown

- (1) The Minister may require certain amounts of money, as described in **section 218(2)**, to be paid to the Crown, despite any other enactment, rule of law, deed, or agreement.
- (2) Any money paid to the Crown under **subsection (1)** may be used for such purposes (whether or not related to the aerodrome) as the Minister thinks fit, despite any other enactment, rule of law, deed, or agreement.

Compare: 1990 No 98 s 95(2), (3)

220 Airport authority may withdraw and use certain money in joint venture aerodrome accounts

- (1) An airport authority, in relation to a joint venture aerodrome, may withdraw certain amounts of money, as described in **subsection (2)**, despite any other enactment, rule of law, deed, or agreement.
- (2) For the purposes of **subsection (1)**, the amounts of money are as follows:
 - (a) any money standing to the credit of or held on behalf of an airport authority in the accounts of a joint venture aerodrome as a result of the operations of that aerodrome; and
 - (b) any money representing the aerodrome authority's share of the proceeds of any fees or charges imposed under this Act.
- (3) Any money described in **subsection (2)**, may be used—
 - (a) for purposes (whether or not related to the aerodrome) as the airport authority thinks fit; and
 - (b) subject to the liability (if any) of the airport authority under any enactment, deed, or agreement to pay any part of such money to any other body or person.
- (4) If any money withdrawn under **subsection (1)** is paid by an airport authority, under the liability of the airport authority under any enactment, deed, or agreement, to any other body or person, that money may be used for purposes (whether or not related to the aerodrome) as the body or person receiving it thinks fit.

Compare: 1990 No 98 s 95 (4), (5)

Subpart 3—Sale of alcohol at international airports**221 Sale of alcohol at international airports**

- (1) Alcohol may be sold at any international airport to any passenger on an aircraft departing from, or arriving in, New Zealand if—
 - (a) in the case of alcohol bought for consumption off the airport premises, the passenger is of, or over, the age stated in section 5 of the Sale and Supply of Alcohol Act 2012; and

- (b) in the case of alcohol bought for consumption on the airport premises, the passenger is of, or over, the age stated in section 5 of the Sale and Supply of Alcohol Act 2012.
- (2) Unless alcohol sold under the authority of **subsection (1)** has been entered by the passenger concerned for home consumption in accordance with the Customs and Excise Act 2018, a person must not—
 - (a) deliver the alcohol by or on behalf of the buyer to any other person within New Zealand; or
 - (b) consume the alcohol within New Zealand.
- (3) A person commits an offence who—
 - (a) sells alcohol at any international airport to any passenger on an aircraft departing from, or arriving in, New Zealand who is under the age referred to in **subsection (1)(a) or (b)** (as the case requires); or
 - (b) fails to comply with **subsection (2)**.
- (4) A person who commits an offence against **subsection (3)** is liable on conviction to a fine not exceeding \$1,000.
- (5) Nothing in the Sale and Supply of Alcohol Act 2012 applies to the sale of alcohol under the authority of this section or of any regulations made under **section 345**.

Compare: 1990 No 98 s 96 (1), (2), (4)–(6)

Part 9

International and domestic carriage of passengers and goods by air

Subpart 1—Additional purpose of Part

222 Additional purpose of Part

- (1) The purpose of this Part (in addition to those set out in **sections 3 and 4**), is to provide effective redress for passengers and others in relation to international and domestic carriage of passengers and goods by air.
- (2) This section does not limit **section 3 or 4**.

Subpart 2—International carriage by air

223 Interpretation in this subpart

In this subpart, unless the context otherwise requires,—

Additional Protocol means Additional Protocol—

- (a) that is included in the Warsaw Convention with reference to Article 2 of that Convention; and

- (b) that appears before the Additional Provisions of the Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in **Schedule 3**

Additional Protocol No 1 means Additional Protocol No 1 to amend the Warsaw Convention that opened for signature at Montreal on 25 September 1975

Additional Protocol No 2 means Additional Protocol No 2 to amend the Warsaw Convention and the Hague Protocol that opened for signature at Montreal on 25 September 1975

the amended Convention means the Convention—

- (a) that is the Warsaw Convention as amended by the following protocols:
- (i) the Hague Protocol;
 - (ii) Additional Protocols Nos 1 and 2, and Protocol No 4
- (b) the English text of which is set out in **Schedule 3**

court,—

- (a) in relation to an arbitration allowed by the Montreal Convention, the amended Convention, or the Guadalajara Convention, includes an arbitrator; and
- (b) includes the Disputes Tribunal subject to **section 328**

the Guadalajara Convention means the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier—

- (a) that opened for signature at Guadalajara on 18 September 1961; and
- (b) the English text of which is set out in **Schedule 4**

the Hague Protocol means the Protocol to amend the Warsaw Convention that opened for signature at the Hague on 28 September 1955

High Contracting Party has the same meaning as in Article 40A of the amended Convention

Montreal Convention means the Convention for the Unification of Certain Rules for International Carriage by Air—

- (a) that opened for signature at Montreal on 28 May 1999; and
- (b) the English text of which is set out in **Schedule 5**

Protocol No 4 means Protocol No 4 to amend the Warsaw Convention and the Hague Protocol that opened for signature at Montreal on 25 September 1975

the Warsaw Convention—

- (a) means the Convention—
- (i) for the Unification of Certain Rules Relating to International Carriage by Air; and

- (ii) that opened for signature at Warsaw on 12 October 1929; and
- (b) includes the Additional Protocol to that Convention.

Compare: 1990 No 98 s 91A

224 Application of Guadalajara Convention

In this Part, references to the amended Convention or to any Article of that Convention are, where applicable and subject to any necessary modifications, to be read as references to that Convention or Article as supplemented by the Guadalajara Convention.

Compare: 1990 No 98 s 91B

225 Conventions to have force of law

- (1) This section relates to the Montreal Convention, the amended Convention, and the Guadalajara Convention (**the Conventions**).
- (2) The provisions of the Conventions have the force of law in New Zealand in relation to any carriage by air to which any of the Conventions, as the case may require, applies.
- (3) However, the provisions of the Conventions have the force of law in New Zealand only in so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees, and other persons.
- (4) The provisions of the Conventions apply in New Zealand—
 - (a) subject to the provisions of this Part; and
 - (b) irrespective of the nationality of the aircraft performing the carriage by air.
- (5) Each version of Article 22 of the amended Convention set out in **Schedule 3** applies in the circumstances outlined in the heading of that version.

Compare: 1990 No 98 s 91C

226 Inconsistency between French and English texts

- (1) If there is any inconsistency between the English text of the amended Convention which is set out in **Schedule 3** and the corresponding text in French, the text in French prevails.
- (2) If there is any inconsistency between the English text of the Guadalajara Convention which is set out in **Schedule 4** and the corresponding text in French, the text in French prevails.
- (3) The Secretary of Foreign Affairs and Trade may give a certificate stating that a document to which the certificate is annexed is a true copy of the authentic text in the French language of 1 or more of the following:
 - (a) Additional Protocol No 1:
 - (b) Additional Protocol No 2:
 - (c) the Guadalajara Convention:

- (d) the Hague Protocol:
 - (e) Protocol No 4:
 - (f) the Warsaw Convention.
- (4) Any certificate given must be received in evidence in any proceedings and, in the absence of proof to the contrary, is sufficient evidence of the matters stated in the certificate.

Compare: 1990 No 98 s 91D

227 Fatal accidents

References in section 4 of the Deaths by Accidents Compensation Act 1952 to a wrongful act, neglect, or default, include references to any occurrence which gives rise to a liability under—

- (a) Article 17(1) of the Montreal Convention; or
- (b) Article 17 of the amended Convention.

Compare: 1990 No 98 s 91E

228 Contributory negligence

The provisions of the Contributory Negligence Act 1947 are the provisions the law of New Zealand under which a court may exonerate a carrier wholly or partly from the carrier's liability for the purposes of—

- (a) Article 20 of the Montreal Convention; or
- (b) Article 21 of the amended Convention.

Compare: 1990 No 98 s 91F

229 Limitation of liability

- (1) The limitations on liability referred to in Articles 21 and 22 of the Montreal Convention or in Article 22 of the amended Convention apply whatever the nature of the proceedings by which liability may be enforced.
- (2) Without limiting **subsection (1)**,—
 - (a) the limitations on liability apply where proceedings are brought by a person (**Person A**) to obtain contribution from another person (**Person B**) if Person B is the carrier or a servant or agent of the carrier; and
 - (b) the limitation for each passenger referred to in Article 21 of the Montreal Convention or in paragraph (1) of Article 22 of the amended Convention applies to the aggregate liability of the carrier in—
 - (i) all proceedings that may be brought against the carrier under the law of New Zealand; and
 - (ii) any proceedings brought against the carrier outside New Zealand.
- (3) A court or the Disputes Tribunal (as relevant) before which proceedings are brought to enforce a liability which is limited by Article 21 or Article 22 of the

Montreal Convention or Article 22 of the amended Convention may, at any stage of the proceedings, make any order that appears to the court or the Disputes Tribunal (as relevant) to be just and equitable, in view of—

- (a) the provisions of Article 21 or Article 22 of the Montreal Convention or Article 22 of the amended Convention; and
 - (b) any other proceedings which have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part.
- (4) A court or the Disputes Tribunal (as relevant) before which proceedings are brought to enforce a liability that is limited by Article 21 or Article 22 of the Montreal Convention or Article 22 of the amended Convention has jurisdiction, where the liability is, or may be, partly enforceable in other proceedings in New Zealand or elsewhere, to—
- (a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or
 - (b) make any part of its award conditional on the result of any other proceedings.
- (5) The provisions of **subsection (3)** do not limit the powers conferred on a court or the Disputes Tribunal by **subsection (2)**.
- (6) Unless the context otherwise requires, references in this section to Article 22 of the amended Convention are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by—
- (a) Article 25A of the amended Convention; and
 - (b) Articles V and VI of the Guadalajara Convention.

Compare: 1990 No 98 s 91G

230 Value of special drawing right

- (1) For the purposes of Article 23 of the Montreal Convention or Article 22 of the amended Convention, the value of 1 special drawing right must be treated as equal to a sum in New Zealand currency that is fixed by the International Monetary Fund as being the equivalent of 1 special drawing right for—
 - (a) the date of judgment; or
 - (b) any other relevant date; or
 - (c) if no sum has been fixed for that date, the last preceding date for which a sum has been fixed.
- (2) For the purposes of **subsection (1)**, a certificate may be given by, or on behalf of, the Secretary to the Treasury stating that—
 - (a) a particular sum in New Zealand currency has been fixed as the equivalent of 1 special drawing right for a particular date; or
 - (b) no sum has been fixed for that date, and that a particular sum has been fixed for the date most recently preceding a particular date.

- (3) Any certificate given must be received in evidence in any proceedings and, in the absence of proof to the contrary, is sufficient evidence of the value of 1 special drawing right in terms of New Zealand currency.
- (4) Unless the context otherwise requires, references in this section to Article 22 of the amended Convention are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by—
 - (a) Article 25A of the amended Convention; and
 - (b) Articles V and VI of the Guadalajara Convention.

Compare: 1990 No 98 s 91H

231 Time for bringing proceedings

- (1) No action against a carrier's servant or agent, which arises out of damage to which this Part relates, may be brought after more than 2 years if the servant or agent was acting within the scope of that person's employment.
- (2) For the purposes of **subsection (1)**, the period of 2 years is calculated from the earliest of the following dates:
 - (a) the date of arrival at the destination;
 - (b) the date the aircraft ought to have arrived;
 - (c) the date carriage stopped.
- (3) Neither Article 35 of the Montreal Convention nor Article 29 of the amended Convention applies to any proceedings for contribution between tortfeasors.
- (4) Despite **subsection (3)**, no action may be brought by a person to obtain a contribution from a carrier—
 - (a) in respect of a tort to which any of the following applies:
 - (i) Article 35 of the Montreal Convention;
 - (ii) Article 29 of the amended Convention; and
 - (b) after the expiration of 2 years from the time when judgment is obtained against the person seeking to obtain the contribution.

Compare: 1990 No 98 s 91I(1)–(4)

232 Further provisions in relation to time for bringing proceedings

- (1) The following provisions have effect as if references in those provisions to an action included references to an arbitration:
 - (a) **section 231** :
 - (b) Article 35 of the Montreal Convention;
 - (c) Article 29 of the amended Convention.
- (2) **Subsections (3) and (4)** (which determine the time at which an arbitration is deemed to have commenced) apply for the purposes of **subsection (1)**.

- (3) An arbitration (whether under an enactment or under an arbitration agreement) must be treated as being commenced in the same manner as provided in Article 21 of Schedule 1 of the Arbitration Act 1996.
- (4) If the High Court orders that an award be set aside, it may also order that the period between the commencement of the arbitration and the date of the setting aside order must be excluded in computing the time prescribed by this section for the commencement of civil proceedings (including arbitration) with respect to the dispute referred.
- (5) **Subsections (2) to (4)** do not limit or affect section 39 of the Limitation Act 2010.

Compare: 1990 No 98 s 91I(5)–(9)

233 Actions against High Contracting Parties

- (1) Every High Contracting Party to the amended Convention is to be regarded as having submitted to the jurisdiction of the court in the circumstances described in **subsection (2)**.
- (2) **Subsection (1)** applies where any action is brought in a court in New Zealand by a High Contracting Party, to enforce a claim in respect of carriage undertaken by that Party, in accordance with the provisions of—
 - (a) Article 28 of the amended Convention; or
 - (b) Article VIII of the Guadalajara Convention.
- (3) Rules of court may provide for the manner in which any action is to be commenced and carried on.
- (4) Nothing in this section—
 - (a) authorises the issue of execution against the property of any High Contracting Party; and
 - (b) applies to any High Contracting Party to the amended Convention which has availed itself of the provisions of the Additional Protocol.

Compare: 1990 No 98 s 91J

234 Actions against Parties to Montreal Convention

- (1) Every Party to the Montreal Convention is to be regarded as having submitted to the jurisdiction of the court in the circumstances described in **subsection (2)**.
- (2) **Subsection (1)** applies if any action is brought in a court in New Zealand by a Party to the Montreal Convention, to enforce a claim in respect of carriage undertaken by that Party, in accordance with Article 46 of the Montreal Convention.
- (3) Rules of court may provide for the manner in which any action is to be commenced and carried on.

- (4) Nothing in this section authorises the issue of execution against the property of any Party to the Montreal Convention.

Compare: 1990 No 98 s 91JA

235 Designation of Parties

- (1) The Governor-General may, by Order in Council, certify—
- (a) the identity of—
 - (i) the High Contracting Parties to the amended Convention; or
 - (ii) the Parties to the Guadalajara Convention; or
 - (iii) the Parties to the Hague Protocol; or
 - (iv) the Parties to Additional Protocol No 1; or
 - (v) the Parties to Additional Protocol No 2; or
 - (vi) the Parties to Protocol No 4; or
 - (vii) the High Contracting Parties to the Warsaw Convention; or
 - (viii) the Parties to the Montreal Convention; or
 - (b) the territories in respect of which the parties referred to in **paragraph (a)(i), (ii), (iii), (iv), (v), (vi), (vii), or (viii)** are respectively parties; or
 - (c) to what extent the parties referred to in **paragraph (a)(i), (ii), (iii), (iv), (v), (vi), or (vii)** have availed themselves of the Additional Protocol, which appears before the Additional Provisions of the Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in **Schedule 3**.
- (2) An Order in Council under this section is, except in so far as it has been superseded by a subsequent order, sufficient evidence of the matters so certified.
- (3) An Order in Council under this section may contain transitional and other consequential provisions as the Governor-General considers to be desirable.
- (4) An Order in Council certifying the identity of Parties under **subsection (1)(a)**, must specify the date on and from which any Party became or ceased to be a Party.

Compare: 1990 No 98 s 91K

236 Article 40A of amended Convention

- (1) Paragraph (2) of Article 40A of the amended Convention does not extend references in the amended Convention to the territory of a High Contracting Party to include any territory in respect of which that High Contracting Party is not a Party.
- (2) **Subsection (1)** does not apply to references in the amended Convention to the territory of any State, whether a High Contracting Party or not.

Compare: 1990 No 98 s 91L

237 Power to exclude aircraft in use for military purposes

- (1) The Governor-General may, by Order in Council, direct that **subsection (2)** applies or ceases to apply to New Zealand or any other State specified in the order.
- (2) The Montreal Convention or the amended Convention do not apply to the carriage of persons, cargo, and baggage for the military authorities of a State to which this subsection applies, if—
 - (a) the carriage is undertaken in aircraft registered in that State; and
 - (b) the whole capacity of the aircraft has been reserved by, or on behalf of, those authorities.

Compare: 1990 No 98 s 91M

Subpart 3—Domestic carriage by air

238 Interpretation in this subpart

- (1) In this subpart, unless the context otherwise requires,—

actual carrier means a person, other than the contracting carrier, who—

 - (a) performs the whole or part of the carriage contracted for by the contracting carrier with the authority of the contracting carrier; but
 - (b) is not, in relation to that carriage, a successive carrier

carrier includes a contracting carrier and an actual carrier

contract includes an arrangement made without consideration

contracting carrier—

 - (a) means a person who, as a principal, makes a contract for carriage with a passenger, or with a person acting on behalf of the passenger; and
 - (b) includes a successive carrier

court includes the Disputes Tribunal under **section 328**

international carriage, in relation to carriage by air, means carriage in which, according to the contract between the parties, the place of departure and the place of destination, whether or not there is a break in the carriage or a transshipment, are—

 - (a) within the territories of 2 countries; or
 - (b) within the territory of a single country if there is an agreed stopping place within the territory of another country

passenger means a person carried under a contract for carriage other than a person—

 - (a) assigned by the carrier for duty as a member of the crew of the aircraft; or

- (b) carried for the sole purpose of receiving or giving instruction in the control or navigation of an aircraft in flight

successive carrier means a person who performs part of the carriage if the carriage—

- (a) is performed by 2 or more persons in successive stages; and
 - (b) has been regarded by the parties as a single operation, whether it has been agreed on by a single contract or by 2 or more contracts.
- (2) If any question arises as to whether an actual carrier has authority from a contracting carrier to perform any carriage, that authority is, in the absence of proof to the contrary, to be presumed.

Compare: 1990 No 98 s 91U

239 Application of this subpart

- (1) This subpart applies to any carriage by air (other than international carriage) in which, according to the contract between the parties,—
- (a) the place of departure and the place of destination are both in New Zealand; and
 - (b) there is no agreed stopping place outside New Zealand.
- (2) **Subsection (1)** applies even if—
- (a) the aircraft in which the carriage takes place is at the same time engaged in international carriage; or
 - (b) the contract for the carriage of any passenger is made without consideration.
- (3) This section applies subject to **section 241**.

Compare: 1990 No 98 s 91V

240 Combined carriage

If a contract of carriage made with an air carrier provides for the carriage to be performed partly by air and partly by a mode of carriage other than by air, this subpart applies only to the carriage by air.

Compare: 1990 No 98 s 91ZM

241 Exclusions

- (1) This subpart does not apply to any carriage by air by an aircraft while it is being used solely for military purposes by the Armed Forces.
- (2) This subpart does not apply to any carriage by air on a single flight in respect of which, according to the contract between the parties, the place of departure and the intended place of destination are the same.
- (3) This subpart does not apply to prescribed other types of flights that are excluded from the application of this subpart.

Compare: 1990 No 98 s 91W

242 Provisions if carriage performed by actual carrier

If the whole or any part of any carriage to which this subpart applies is performed by an actual carrier,—

- (a) both the contracting carrier and the actual carrier are subject to any liability imposed by this subpart as follows:
 - (i) the contracting carrier is liable in respect of the whole of the carriage contemplated in the contract between the contracting carrier and the passenger; and
 - (ii) the actual carrier is liable solely in respect of the carriage that the actual carrier performs:
- (b) any special agreement under which the contracting carrier assumes obligations not imposed by this subpart, or any waiver of rights conferred by this subpart, does not affect the actual carrier unless agreed to by the actual carrier.

Compare: 1990 No 98 s 91X

243 Provisions if carriage performed by successive carriers

If carriage is performed or is to be performed by successive carriers, the contracting carrier who is liable is the successive carrier who performed or was to perform the carriage where the delay occurred.

Compare: 1990 No 98 s 91Y

244 Liability of carrier in respect of delay

- (1) A carrier is liable for damage caused by delay in the carriage of passengers.
- (2) Despite **subsection (1)**, a carrier is not liable for damage caused by delay if the carrier proves that the delay—
 - (a) arose by reason of—
 - (i) meteorological conditions; or
 - (ii) compliance with instructions, advice, or information given by an air traffic control service; or
 - (iii) obedience to orders or directions given by a lawful authority; or
 - (b) was made necessary by *force majeure*; or
 - (c) was necessary for the purpose of saving or attempting to save life.

Compare: 1990 No 98 s 91Z

245 Avoidance of liability

The carrier is not liable under this subpart if the carrier proves that—

- (a) the carrier, or the carrier's servants or agents, had taken all necessary measures to avoid the damage; or

- (b) it was not possible for the carrier, or the carrier's servants or agents, to have taken those measures.

Compare: 1990 No 98 s 91ZA

246 Contributory negligence

If the carrier proves that the damage was caused, or contributed to, by the negligence of the passenger, the court may, in accordance with the Contributory Negligence Act 1947, exonerate the carrier wholly or partly from liability.

Compare: 1990 No 98 s 91ZB

247 Limitation of liability

- (1) The liability of the carrier in respect of damage caused by delay is limited to the lesser of—
- (a) the amount of damage proved to have been sustained as a result of the delay; or
- (b) an amount representing 10 times the sum paid for the carriage.
- (2) Despite **subsection (1)**, the carrier may, by special contract, increase the amount of the carrier's liability under that subsection.
- (3) This subpart does not affect any rule of law relating to remoteness of damage.

Compare: 1990 No 98 s 91ZC

248 Contracting out

- (1) A provision in a contract of carriage or in any bylaws made by a carrier purporting to relieve the carrier of liability, or to fix a lower limit than the appropriate limit of liability referred to in **section 247**, has no effect.
- (2) The invalidity under **subsection (1)** of a provision in a contract of carriage or in any bylaws does not, by itself, make any other provision of that contract or those bylaws invalid.

Compare: 1990 No 98 s 91ZD

249 Wilful or reckless misconduct

The limits of liability referred to in **section 247** do not apply—

- (a) if it is proved that the damage resulted from an act or omission of the carrier done—
- (i) with intent to cause damage; or
- (ii) recklessly as to whether damage would result; or
- (b) if it is proved that the damage resulted from an act or omission of the carrier's servants or agents done while the servant or agent was acting within the scope of that servant's or agent's employment—
- (i) with intent to cause damage; or

- (ii) recklessly as to whether damage would result.

Compare: 1990 No 98 s 91ZE

250 Just and equitable orders and awards

- (1) A court before which proceedings are brought to enforce a liability that is limited by this subpart may, at any stage of the proceedings, make any order that appears to the court to be just and equitable in view of—
- (a) the provisions of this subpart; and
 - (b) any other proceedings that have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part.
- (2) Without limiting **subsection (1)**, a court before which proceedings are brought to enforce a liability that is limited by this subpart may, if the liability is, or may be, enforceable in other proceedings in New Zealand or elsewhere,—
- (a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or
 - (b) make any part of its award conditional on the result of any other proceedings.

Compare: 1990 No 98 s 91ZI

251 Application of limitation on liability

- (1) The limitations on liability referred to in **section 247** apply if—
- (a) proceedings are brought by a person (**Person A**) to obtain a contribution from another person (**Person B**); and
 - (b) Person B is the carrier, or a servant or agent of the carrier.
- (2) Person A must not bring proceedings under **subsection (1)** to obtain a contribution from Person B after 2 years from the time when judgment is obtained against Person A.
- (3) This subpart does not affect proceedings brought against any person other than the carrier, or servant or agent of the carrier.

Compare: 1990 No 98 s 91ZJ

252 Relationship between carriers

This subpart does not—

- (a) prevent a carrier from entering into special contractual arrangements with another carrier; or
- (b) affect the rights and obligations of the carriers between themselves.

Compare: 1990 No 98 s 91K

253 Limitation of actions

- (1) An action may not be brought under this subpart against a carrier after 2 years from the later of the following dates:
 - (a) the date of the arrival of the aircraft at the destination; or
 - (b) if the aircraft did not arrive at the destination,—
 - (i) the date on which the aircraft ought to have arrived at the destination; or
 - (ii) the date on which the carriage stopped.
- (2) Despite **subsection (1)**, application may be made to the court, after giving notice to the intended defendant, for leave to bring an action at any time within 6 years after the date on which the cause of action accrued as provided in **subsection (1)**.
- (3) On application under **subsection (2)**, the court may grant leave accordingly if it considers that it is just to do so and if it considers that—
 - (a) the delay in bringing the action was caused by—
 - (i) mistake of fact; or
 - (ii) mistake of any matter of law other than the provisions of this subsection; or
 - (iii) any other reasonable cause; or
 - (b) the intended defendant was not materially prejudiced in the defendant's defence or otherwise by the delay.
- (4) If the court grants leave under **subsection (3)**, that leave may be subject to such conditions (if any) that the court thinks just to impose.
- (5) This section applies subject to the special provisions relating to tortfeasors in **section 251**.

Compare: 1990 No 98 s 91ZL

Part 10**Investigation, intervention, compliance, and enforcement**

Subpart 1—Inspection, monitoring, and enforcement powers of Director

254 Director may require or carry out safety and security inspections and monitoring

- (1) The Director may require, in writing, an aviation participant to undergo or carry out any inspections or monitoring that the Director considers is necessary in the interests of civil aviation safety and security.
- (2) In the case of a person holding an Australian AOC with ANZA privileges, the Director may require the person to undergo or carry out any inspections or

monitoring under **subsection (1)** in the interests of civil aviation safety only at the request of CASA.

- (3) The Director may, in respect of an aviation participant who is a holder of a New Zealand AOC with ANZA privileges, require the person to undergo or carry out in Australia any inspections or monitoring that the Director considers necessary in the interests of civil aviation safety and security.
- (4) The Director may, in respect of any aviation participant other than an aviation examiner or a medical examiner, carry out any inspections or monitoring that the Director considers necessary in the interests of civil aviation safety and security.
- (5) For the purposes of any inspection or monitoring carried out in respect of any person under **subsection (4)**, the Director may, in writing, require from that person any information that the Director considers relevant to the inspection or the monitoring.

Compare: 1990 No 98 s 15

255 Director may detain aircraft, seize aeronautical products, and impose prohibitions and conditions in relation to aerodromes, aircraft, and aeronautical products

- (1) If the Director has reasonable grounds to believe that the operation or use of any aerodrome, aircraft, or aeronautical product or a class of aircraft or aeronautical products may endanger persons or property, the Director may, if authorised by a warrant issued by a judicial officer on written application on oath, do all or any of the following:
 - (a) prohibit or impose conditions on the operation or use of the aerodrome:
 - (b) detain the aircraft or any aircraft of that class:
 - (c) seize the aeronautical product or any aeronautical products of that class:
 - (d) prohibit or impose conditions on the operation of the aircraft or aircraft of that class:
 - (e) prohibit or impose conditions on the use of any aeronautical product or any aeronautical products of that class.
- (2) If the Director has reasonable grounds to believe that the operation or use of any aerodrome, aircraft, or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may do all or any of the following:
 - (a) prohibit or impose conditions on the operation or use of the aerodrome:
 - (b) prohibit or impose conditions on the operation of the aircraft or all aircraft of that class:
 - (c) prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class:

- (d) detain particular aircraft or seize particular aeronautical products where necessary in order to prevent their operation or use.

Compare: 1990 No 98 s 21(1), (2)

Please see Ministry of Transport commentary document: *Amendments relating to unmanned aircraft (drones)—Detention, seizure, and destruction of drones*

256 Obligations of Director if taking action under section 255

- (1) Any detention or seizure under **section 255** may be maintained for only such time that the Director considers is necessary in the interest of safety and security.
- (2) Despite **subsection (1)**, if aircraft, aeronautical products, or parts of aircraft or aeronautical products are required for the purpose of evidence in any prosecution under this Act, those aircraft, products, or parts may be retained by the Director for the period that the Director considers necessary for that purpose.
- (3) The owner, operator, or other person for the time being in charge of an aircraft detained or an aeronautical product seized under **section 255(1)** may request the Director to provide the reasons for the detention or seizure.
- (4) If **subsection (3)** applies, the Director must provide, in writing, the requester with the reasons for the detection or seizure.
- (5) A person in respect of whom any decision is made under this section may appeal against that decision to the District Court under **section 362**.
- (6) For the purpose of **section 255**, the Director must notify any prohibitions or conditions, whether or not of a permanent nature, to any persons whom the Director considers it necessary to notify.
- (7) The Director may discharge the duty of notification specified in **subsection (6)** by any means of communication that the Director considers appropriate in the circumstances.

Compare: 1990 No 98 s 21(3)–(6)

257 Powers of entry and access authorised by Director

- (1) The Director may authorise certain persons to do any of the things referred to in **subsection (2)** for the purposes of—
- (a) carrying out the Director’s functions, duties, or powers under this Act or any enactment made under this Act; or
- (b) the ANZA mutual recognition agreements.
- (2) Every person authorised by the Director has right of access at any reasonable time to—
- (a) any aircraft, aerodrome, building, or place; and
- (b) any document or record concerning any aircraft, aeronautical product, or aviation-related service.

- (3) In the case of a person holding an Australian AOC with ANZA privileges, the power conferred by **subsection (2)** may be exercised only at the request of CASA.
- (4) Without limiting **subsection (2)**, a person authorised by the Director who has reasonable grounds to believe any of the following may, at any reasonable time, enter any aircraft, aerodrome, building, or place and carry out an inspection to determine:
- (a) any breach of this Act or any enactment made under this Act is being, or is about to be, committed;
 - (b) in the case of a person holding an Australian AOC with ANZA privileges, a breach of the Civil Aviation Act 1988 (Aust) or of regulations or orders made under that Act is being, or is about to be, committed;
 - (c) a condition imposed under any civil aviation document or Australian AOC with ANZA privileges is not being complied with;
 - (d) a situation exists, or is about to exist, within the civil aviation system that constitutes a danger to persons or property.
- (5) A person who is authorised to have access to or to enter any aircraft, aerodrome, building, or place under **subsection (2) or (4)**—
- (a) may require the production or surrender of a relevant specified document by—
 - (i) a person who is in possession of an aviation document, or of any certificate, book, manual, record, list, notice, or other document that is required to be kept under this Act; or
 - (ii) a person who is in possession of an Australian AOC with ANZA privileges, or of any certificate, book, manual, record, list, notice, or other document that is required to be kept under Australian law; and
 - (b) must, if a document is surrendered under **paragraph (a)**, notify the relevant aviation document holder or the relevant Australian AOC with ANZA privileges holder (as the case may be) that the document has been surrendered, as follows:
 - (i) orally, as soon as practicable; and
 - (ii) in writing.
- (6) Every constable has and may exercise all or any of the powers conferred on a person who has been authorised by the Director under this section.

Compare: 1990 No 98 s 24(1)–(3), (8)

258 Further provisions relating to powers of entry and access

- (1) The right of access and the powers conferred by any of **section 257(2) to (5)** must not be used to gain access to, to inspect, or to require the production or

surrender of a record specified in section 14C(2)(a) or (b) of the Transport Accident Investigation Commission Act 1990.

- (2) A person exercising the power of entry conferred by **section 257(2) or (4)** must carry an authorisation issued by the Director specifying—
 - (a) the name and the office or offices held by the person; and
 - (b) that the person is authorised by the Director to exercise the power conferred by **section 257(2) and (4)** to enter aircraft, aerodromes, buildings, and places and to carry out an inspection; and
 - (c) in the case of an Australian AOC with ANZA privileges, that the power is being exercised at the request of CASA.
- (3) A person exercising the power of entry conferred by **section 257(2) and (4)** must produce the authorisation and evidence of identity—
 - (a) if practicable on first entering the aircraft, aerodrome, building, or place; and
 - (b) whenever subsequently reasonably required to do so.

Compare: 1990 No 98 s 24(3A), (6), (7)

259 Power to enter homes and marae

- (1) Despite **section 257**, an authorised person must not, except with the consent of an occupier or under a warrant, enter any land or building that is a home or a marae or a building associated with a marae.
- (2) An issuing officer may, on an application made in accordance with subpart 3 of Part 4 of the Search and Surveillance Act 2012, issue a warrant to enter a home or a marae or a building associated with a marae if the issuing officer is satisfied that the entry is essential to enable the inspection of the dwellinghouse or marae or building associated with a marae to be carried out.
- (3) Subparts 1, 3, 4, 5, 7, 9, and 10 of Part 4 of the Search and Surveillance Act 2012 apply in relation to the issue of a warrant under **subsection (2)** and its execution.
- (4) Despite **subsection (3)**, sections 118 and 119 of the Search and Surveillance Act 2012 apply only in respect of a warrant issued to a named constable or to every constable.

Compare: 1990 No 98 s 24(4)–(5A)

260 Failure to comply with inspection or monitoring request

- (1) A person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under **section 254(1) or (5)**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000:

(b) in the case of a body corporate, to a fine not exceeding \$100,000.

Compare: 1990 No 98 s 44A

261 Failure or refusal to produce or surrender documents

- (1) A person commits an offence who, without reasonable excuse, fails or refuses to comply with a requirement made in accordance with **section 257(5)**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$1,000.

Compare: 1990 No 98 s 50A

262 Failure to notify accident or incident

- (1) A person commits an offence who fails to disclose, without reasonable excuse, information required by the Director under **clause 8 or 10 of Schedule 2**.
- (2) A person who commits an offence under **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000, or both.

Compare: 1990 No 98 s 46C

Subpart 2—Protections in relation to accident and incident notifications under **subpart 1 of Part 5**

Interpretation

263 Interpretation in this subpart

- (1) In this subpart, unless the context otherwise requires,—

law enforcement action means filing a charging document under this Act in relation to, or issuing an infringement notice under this Act to, a person who is alleged to have committed an offence under this Act

notified incident is an incident that has come to the attention of the CAA because of a notification under **section 103(3)** by any person.
- (2) A person is a **qualifying person** in relation to a notified incident if—
 - (a) the person (**person A**)—
 - (i) notifies the incident to the CAA in accordance with **section 103(3)**; or
 - (ii) is employed or engaged by a person (**person B**), or is receiving training from person B, and notified information relating to the incident to person B in accordance with person B's safety management system in circumstances where person B is required to notify the incident to the CAA in accordance with **section 103(3)**; and
 - (b) the notification, person A provided under **paragraph (a)(i) or (ii)**, is—

- (i) a full and an accurate account of the incident; and
- (ii) provided in accordance with any requirements (for example, as to timeliness of notifications) specified in the rules.

Please see Ministry of Transport commentary document: *Protection of safety information (a 'Just Culture' approach)*

Restriction on admissibility of accident and incident notifications

264 Restriction on admissibility of accident and incident notifications

- (1) An accident notification provided by an individual under **section 103(1) or (4)** is not admissible as evidence in a criminal proceeding against that individual, except in a criminal proceeding that concerns the falsity of the notification.
- (2) An incident notification provided under **section 103(3)** is not admissible as evidence in a criminal proceeding against an individual if—
 - (a) the individual provided the incident notification to the CAA under **section 103(3)**; or
 - (b) the individual while employed or engaged by a person (**person B**), or while receiving training from person B, notified information relating to the incident to person B in accordance with person B's safety management system, and person B was required to provide, and person B provided, the incident notification to the CAA in accordance with **section 103(3)**.
- (3) Nothing in **subsection (2)** applies if the criminal proceeding is a criminal proceeding that concerns the falsity of the notification.

Limitations on Director's powers to take law enforcement action

265 When Director may take law enforcement action

- (1) The Director may take law enforcement action, in relation to a notified incident, against a person who is a qualifying person in relation to that incident only if the Director is satisfied that the public interest in taking action in the circumstances outweighs the aviation safety benefits of full, accurate, and timely notification of aviation incidents.
- (2) Without limiting **subsection (1)**, the Director may be satisfied as to the matter in **subsection (1)** if the Director has reasonable grounds to believe that any one or more of the following apply:
 - (a) the conduct of the person in respect of which enforcement action would be taken is, or appears to be, a major departure from the standard of care expected of a reasonable person in the circumstances;
 - (b) the person recklessly gave rise to unnecessary risk of harm to life or risk of damage to property (or both):

- (c) the conduct of the person in respect of which enforcement action would be taken gave rise to unnecessary risk of harm to life or risk of damage to property (or both), and that behaviour repeats previous behaviour of the same or of a similar kind by that person.

Limitations on Director's powers to take administrative action

266 When Director may take administrative action

- (1) This section applies if the Director is making a decision whether to take action under **section 88 or 90**, as the case may be, in relation to a notified incident against a person who is a qualifying person in relation to that incident.
- (2) In deciding whether the action is necessary in the interests of aviation safety and security under **section 88 or 90**, the Director must be satisfied that the interests in taking the action in the circumstances outweigh the aviation safety benefits of full, accurate, and timely notification of aviation incidents.
- (3) Without limiting **subsection (2)**, the Director may be satisfied as to the matter in **subsection (2)** if the Director has reasonable grounds to believe that any one or more of the following apply:
 - (a) the conduct of the person in respect of which enforcement action would be taken is, or appears to be, a major departure from the standard of care expected of a reasonable person in the circumstances:
 - (b) the person recklessly gave rise to unnecessary risk of harm to life or risk of damage to property (or both):
 - (c) the conduct of the person in respect of which enforcement action would be taken gave rise to unnecessary risk of harm to life or risk of damage to property (or both), and that behaviour repeats previous behaviour of the same or of a similar kind by that person.

Subpart 3—Powers of entry of Airways

267 Meaning of equipment for the purposes of section 268

- (1) In **section 268**, **equipment**—
 - (a) means—
 - (i) equipment used for the purpose of carrying out the functions of Airways; and
 - (ii) equipment installed before 1 January 1988; and
 - (b) includes cables, wires, navigational aids, or other equipment.
- (2) A certificate given by Airways containing a statement that any equipment was installed before 1 January 1988—
 - (a) is admissible in evidence in any proceedings; and

- (b) in the absence of proof to the contrary, constitutes proof of that statement.

Compare: 1990 No 98 s 25(1), (2)

268 Powers of entry of Airways

- (1) Airways may—
- (a) enter upon any land for the purpose of gaining access to equipment; and
 - (b) perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing equipment.
- (2) The power to enter upon land conferred by **subsection (1)** is subject to the following conditions:
- (a) entry to the land may be made only—
 - (i) by an officer, employee, or agent of Airways authorised by Airways in writing; or
 - (ii) by persons under the immediate control of an officer, employee, or agent of Airways authorised by Airways in writing:
 - (b) reasonable notice of the intention to enter must be given:
 - (c) notice must be given in accordance with the provisions of Part 10 of Te Ture Whenua Maori Act 1993 in the circumstances set out in that Part of that Act:
 - (d) entry may be made only at reasonable times:
 - (e) the officer, employee, or agent must carry and produce on initial entry and subsequently if required to do so, evidence of the officer's identity and authority.
- (3) **Subsection (2)** does not apply if the entry is necessary in circumstances of probable danger to life or property.
- (4) Any equipment owned by Airways that is fixed to, or installed over or under, the land and is not owned by Airways—
- (a) is taken to be lawfully fixed or installed; and
 - (b) must continue to be fixed or installed until Airways otherwise decides.
- (5) No person other than Airways has any interest in any equipment referred to **subsection (4)** by reason only of having an interest in the land.

Compare: 1990 No 98 s 25(1), (2)–(5)

Subpart 4—Disqualification

269 Effect of disqualification by court

- (1) If the holder of an aviation document is disqualified by an order of a court from holding or obtaining an aviation document, the document is suspended while

the disqualification continues in force, and during the period of suspension is of no effect.

- (2) **Subsection (3)** applies if the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document.
- (3) The document referred to in **subsection (2)** continues to be of no effect on the expiration of the disqualification and until the holder of it undergoes and passes any tests and fulfils any requirements that the Director may specify.

Compare: 1990 No 98 s 59

270 Commencement of period of disqualification

If an order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification commences on the date of the making of the order or any later date the court making the order directs.

Compare: 1990 No 98 s 60

271 Retention and custody of document

- (1) If by an order of a court the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the order is made must immediately, and whether or not demand is made, surrender the document to—
 - (a) the Registry of the court where the order was made; or
 - (b) to the CAA.
- (2) If an aviation document is surrendered under this section, it must immediately be forwarded to the Director who must—
 - (a) endorse the terms of the disqualification on the document; and
 - (b) retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.
- (3) If the person entitled to the document is a person to whom **section 269(3)** applies, the document must not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

Compare: 1990 No 98 s 61

272 Removal of disqualification

- (1) Subject to this section, any person who by order of a court is disqualified for a period exceeding 6 months from holding or obtaining an aviation document may, after the expiration of 6 months after the date on which the order of disqualification became effective, apply to the court by which that order was made to remove the disqualification.

- (2) On an application under this section the court may, having regard to the character of the applicant and the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case,—
 - (a) remove the disqualification from a date the court may specify; or
 - (b) refuse the application.
- (3) If the disqualification was ordered by the District Court, an application under this section must be made to a District Court Judge.
- (4) The application must be made to the Registry of the court in which the order was made.
- (5) Notice of every application under this section must be served on the Director who has a right to appear and be heard in respect of the matter.

Compare: 1990 No 98 s 62

273 Particulars of disqualification orders, etc, to be sent to Director

Particulars of the following orders made by a court must be sent by the Registrar of the court to the Director:

- (a) an order disqualifying a person from holding or obtaining an aviation document or imposing restrictions or conditions (or both) on any aviation document held by or issued to any person:
- (b) an order under **section 272** removing any disqualification.

Compare: 1990 No 98 s 63

274 Appeals against disqualification by court

- (1) For the purposes of Part 6 of the Criminal Procedure Act 2011, an order of the District Court by which a person is disqualified from holding or obtaining an aviation document is deemed to be a sentence or part of a sentence, as the case may be.
- (2) If a notice of appeal against an order referred to in **subsection (1)** is filed, the court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order has immediate effect.
- (3) If a person who is disqualified by an order of the District Court from holding or obtaining an aviation document applies for a removal of that disqualification and the application is refused—
 - (a) the person may appeal against the refusal to the High Court in accordance with Part 6 of the Criminal Procedure Act 2011; and
 - (b) that Part applies with the necessary modifications as if the refusal were a sentence.
- (4) If a person who is disqualified by an order of the High Court from holding or obtaining an aviation document applies for a removal of that disqualification and the application is refused—

- (a) the person may appeal against the refusal to the Court of Appeal in accordance with Part 6 of the Criminal Procedure Act 2011; and
 - (b) that Part applies with the necessary modifications as if the refusal were a sentence.
- (5) If an application is made to the Court of Appeal for leave to appeal to that court against a sentence of the High Court that is or includes an order of disqualification, the High Court may, if it thinks fit, defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.
- (6) If an appeal is made to the High Court or leave to appeal to the Court of Appeal is granted under this section, whether in whole or in part, the Registrar of the High Court must send notice of that fact to the Director who has have a right to appear and be heard in respect of the matter.
- (7) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section must be disregarded.

Compare: 1990 No 98 s 64

Subpart 5—Injunctions

275 Court may grant injunctions

- (1) A court may, on application by the CAA or any other person, grant an injunction—
- (a) restraining a person from engaging in conduct that constitutes or would constitute a breach of this Act or any enactment made under this Act;
 - (b) requiring a person to do an act or thing if—
 - (i) that person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do that act or thing; and
 - (ii) the refusal or failure was, is, or would be a breach of this Act or any enactment made under this Act.
- (2) An injunction may be granted under this section,—
- (a) even though proceedings for any offence constituted by the breach have not been taken; or
 - (b) if the person is convicted of an offence constituted by the breach, either,—
 - (i) in the proceedings for the offence, in substitution for or in addition to any penalty awarded for the offence; or
 - (ii) in subsequent proceedings.

Compare: 2013 No 69 s 480, 1966 No 51, s9 (10)

276 When court may grant restraining injunctions

- (1) A court may grant an injunction restraining a person from engaging in conduct of a particular kind if—
 - (a) it is satisfied that the person has engaged in conduct of that kind; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind.
- (2) The court may grant an interim injunction restraining a person from engaging in conduct of a particular kind if in its opinion it is desirable to do so.
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind.
- (4) **Subsections (1)(b) and (2)** apply whether or not the person has previously engaged in conduct of that kind or there is an imminent danger of substantial damage to any other person if that person engages in conduct of that kind.

Compare: 2013 No 69 s 481

277 When court may grant performance injunctions

- (1) A court may grant an injunction requiring a person to do an act or thing if—
 - (a) it is satisfied that the person has refused or failed to do that act or thing; or
 - (b) it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing.
- (2) The court may grant an interim injunction requiring a person to do an act or thing if in its opinion it is desirable to do so.
- (3) **Subsections (1)(a) and (2)** apply whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing.
- (4) **Subsections (1)(b) and (2)** apply—
 - (a) whether or not the person has previously refused or failed to do that act or thing; or
 - (b) where there is an imminent danger of substantial damage to any other person if that person refuses or fails to do that act or thing.

278 Undertaking as to damages not required by CAA

- (1) If the CAA applies to a court for the grant of an interim injunction under this subpart, the court must not, as a condition of granting an interim injunction, require the CAA to give an undertaking as to damages.

- (2) In determining the CAA's application for the grant of an interim injunction, the court must not take into account that the CAA is not required to give an undertaking as to damages.

Compare: 2013 No 69 s 482

Subpart 6—Powers of Minister to intervene on grounds of national security

279 Powers of Minister to intervene on grounds of national security

- (1) The Minister may, if the Minister is satisfied after taking into account the advice of the intelligence and security agencies that the action is necessary in the interests of national security, by written notice—
- (a) direct that an application referred to the Minister under **section 67** not be granted; or
 - (b) impose restrictions or conditions on an aviation document issued to a person under this Act; or
 - (c) disqualify a person from holding or obtaining an aviation document or a particular aviation document; or
 - (d) prohibit a person from operating, maintaining, servicing, or doing any other act in respect of any aircraft, aerodrome, aeronautical product, or aviation-related service.
- (2) A notice given under **subsection (1)(b), (c), or (d)** may apply for a period not exceeding 24 months that the Minister thinks fit.
- (3) A notice given under **subsection (1)** must be given to—
- (a) the person in respect of whom it is given; and
 - (b) the Director.
- (4) The Minister must inform the person in respect of whom a notice is given under **subsection (1)** of—
- (a) the reasons for the decision (except to the extent that the Minister considers that providing reasons would involve a disclosure of information that would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand); and
 - (b) the review procedure available in relation to the notice under **section 280**.
- (5) A notice given under **subsection (1)** is (subject only to **section 280**) conclusive evidence of the matters stated in it, and the advice given by an intelligence and security agency to the Minister must not be challenged, reviewed, or called into question in any court.
- (6) If a notice is given under **subsection (1)(b)** the holder of the aviation document issued in paper or any other non-electronic form must immediately,

whether or not demand is made, produce that document to the Director for appropriate endorsement.

Please see Ministry of Transport commentary document: *National security considerations within the civil aviation system*

280 Review procedure in relation to notice under section 279

- (1) If the Minister gives a notice under **section 279(1)**, the person in respect of whom the notice is given may, in accordance with section 171 of the Intelligence and Security Act 2017, make a complaint to the Inspector-General of Intelligence and Security in relation to any advice given by an intelligence and security agency to the Minister.
- (2) If the Inspector-General of Intelligence and Security sends a report to the Minister in accordance with section 185 of the Intelligence and Security Act 2017, the Minister may withdraw or confirm the notice.
- (3) For the purposes of this section, **Inspector-General of Intelligence and Security** means the person holding office under section 157 of the Intelligence and Security Act 2017.

281 Effect of disqualification by Minister

- (1) If the holder of an aviation document is disqualified by a notice under **section 279(1)(c)** from holding or obtaining an aviation document, the document is suspended while the disqualification continues in force, and during the period of suspension is of no effect.
- (2) **Subsection (3)** applies if the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document.
- (3) The document referred to in **subsection (2)** continues to be of no effect on the expiration of the disqualification and until the holder of it undergoes and passes any tests and fulfils any requirements that the Director may specify.

282 Commencement of period of disqualification by Minister

If a notice is given under **section 279(1)(c)** disqualifying any person from holding or obtaining an aviation document, the period of disqualification commences on the date of the notice.

283 Retention and custody of document following disqualification by Minister

- (1) If by a notice given under **section 279(1)(c)** the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the notice is given must, if the document was issued in paper or other non-electronic form immediately, and whether or not demand is made, surrender the document to the Director.
- (2) The Director must—
 - (a) endorse the terms of the disqualification on the document; and

- (b) retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.
- (3) If the person entitled to the document is a person to whom **section 269(3)** applies, the document must not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

284 Offences relating to breach of notice given by Minister on national security grounds

- (1) A person commits an offence who—
 - (a) intentionally fails or refuses to comply with any restriction or condition imposed by a notice under **section 279(1)(b)**; or
 - (b) applies for or obtains an aviation document while disqualified by a notice under **section 279(1)(c)** from obtaining such a document; or
 - (c) intentionally does any act contrary to the terms of a prohibition in a notice under **section 279(1)(d)**.
- (2) Any aviation document in respect of which an offence is committed under **subsection (1)(b)** is of no effect.
- (3) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both;
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) If a person is convicted of an offence under **subsection (1)(b)**, the court may order the person to be disqualified from holding or obtaining an aviation document for any period not exceeding 12 months that the court thinks fit.

Subpart 7—General offences

285 Communicating false information

- (1) A person commits an offence who, by any means, provides to the CAA or the Director information relevant to the CAA's or the Director's exercise of powers under this Act or any enactment made under this Act, knowing the information to be false.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000, or both;
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Compare: 1990 No 98 s 49(1)(a) and (2)

286 Obstruction of persons duly authorised by Director

- (1) A person commits an offence who obstructs or impedes any person who is duly authorised by the Director and acting in the performance or exercise of any functions, duties, or powers conferred on the person by or under this Act, and is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000, or both;
- (b) in the case of a body corporate, to a fine not exceeding \$10,000.
- (2) **Subsection (1)** applies only where the person obstructed or impeded is in uniform or produces evidence of the person's authority.

Compare: 1990 No 98 s 50

287 Trespass

- (1) A person commits an offence who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which technical facilities or services for civil aviation are operated, when directed not to enter or not to remain by—
- (a) a person duly authorised by the Director in writing for that purpose, a constable, or an aviation security officer; or
- (b) a notice posted by a person referred to in **paragraph (a)**.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$2,000, or both.

Compare: 1990 No 98 s 51

288 Failure to maintain accurate records

- (1) A person commits an offence who contravenes any requirement in or under this Act—
- (a) to make accurate entries in a record; or
- (b) to maintain an accurate record; or
- (c) to provide to the CAA, the Director, or any other person an accurate record.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
- (a) in the case of an individual, to a fine not exceeding \$5,000;
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

Compare: 1990 No 98 s 52

289 Breach of emergency rule, prohibition, or condition

- (1) A person who, without reasonable excuse, acts in breach of or fails to comply with any emergency rule made under **section 60** or any prohibition or condition notified under **section 255** commits an offence.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$30,000.

Compare: 1990 No 98 s 53

290 Flight over foreign country without authority or for improper purpose

- (1) This section applies to—
 - (a) any aircraft that is registered or required to be registered in New Zealand under this Act;
 - (b) any other aircraft operated by a person who is normally resident in New Zealand or whose principal place of business is in New Zealand.
- (2) A person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over a foreign country or territory, knowingly allows that aircraft to be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory.
- (3) In any prosecution for an offence against **subsection (2)**, where it is proved by the prosecution that the aircraft was used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, the foreign country or territory, in the absence of evidence to the contrary it is presumed that the defendant knew that the aircraft was being so used.
- (4) A person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of that country or territory where—
 - (a) the flight is not duly authorised; or
 - (b) there are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory.
- (5) **Subsection (4)**—
 - (a) does not apply if the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.

- (b) is without prejudice to any other requirement to comply with directions given by an aeronautical authority.
- (6) For the purposes of this section, **appropriate aeronautical authority** includes any person, whether a member of the military authorities or the civil authorities of the foreign country or territory, who is authorised under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.
- (7) A person who commits an offence against **subsection (2) or (4)** is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both:
- (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Compare: 1990 No 98 s 53A

Subpart 8—Additional penalty for offences involving commercial gain

291 Additional penalty for offences involving commercial gain

- (1) In addition to any penalty the court may impose under **section 37, 94, 95, or 260**, the court may, On convicting a person of an offence specified in any of those sections, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.
- (2) For the purpose of **subsection (1)**, the value of any gain must be assessed by the court, and is recoverable in the same manner as a fine.

Compare: 1990 No 98 s 47

Subpart 9—Infringement offences

292 Interpretation

In this Act,—

infringement fee, in relation to an infringement offence, means the infringement fee specified in this Act for the offence or prescribed in regulations

infringement offence means—

- (a) an offence specified as an infringement offence in regulations; or
- (b) an offence identified in this Act as an infringement offence

person authorised by the Director means—

- (a) a person authorised by the Director under **section 294**; or
- (b) in the case of an unruly passenger offence that is an infringement offence, a person authorised by the Director under **subpart 13**.

293 Proceedings for infringement offences

- (1) A person who is alleged to have committed an infringement offence may—
 - (a) be proceeded against by the filing of a charging document under section 14 of the Criminal Procedure Act 2011; or
 - (b) be issued with an infringement notice under **section 295**.
- (2) Proceedings commenced in the way described in **subsection (1)(a)** do not require the leave of a District Court Judge or Registrar under section 21(1)(a) of the Summary Proceedings Act 1957.
- (3) *See—*
 - (a) section 21 of the Summary Proceedings Act 1957 for the procedure that applies if an infringement notice is issued; and
 - (b) **section 326** for the modifications to that procedure that apply in the case of an unruly passenger offence that is an infringement offence.

294 Who may issue infringement notices

- (1) The Director may, in writing, authorise a person to issue infringement notices under this Act.
- (2) This section is subject to **section 369(2)(c)**

295 When infringement notice may be issued

The Director or a person authorised by the Director may issue an infringement notice to a person if the Director or person authorised by the Director has reasonable grounds to believe that the person is committing, or has committed, an infringement offence.

296 Infringement notice may be revoked

- (1) The Director or a person authorised by the Director may revoke an infringement notice before the infringement fee is paid, or an order for payment of a fine is made or deemed to be made by a court under section 21 of the Summary Proceedings Act 1957.
- (2) An infringement notice is revoked by giving written notice to the person to whom it was issued that the notice is revoked.
- (3) The revocation of an infringement notice under this section is not a bar to any other enforcement action against the person to whom the notice was issued in respect of the same matter.

297 What infringement notice must contain

An infringement notice must be in the form prescribed in regulations and must contain the following particulars:

- (a) details of the alleged infringement offence that fairly inform a person of the time, place, and nature of the alleged offence:

- (b) the amount of the infringement fee:
- (c) the address of the enforcement authority:
- (d) how the infringement fee may be paid:
- (e) the time within which the infringement fee must be paid:
- (f) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957:
- (g) a statement that the person served with the notice has a right to request a hearing:
- (h) a statement of what will happen if the person served with the notice neither pays the infringement fee nor requests a hearing:
- (i) any other matters prescribed in regulations.

298 How infringement notice may be served

- (1) An infringement notice may be served on the person who the Director or a person authorised by the Director believes is committing or has committed the infringement offence by—
 - (a) delivering it to the person or, if the person refuses to accept it, bringing it to the person's notice; or
 - (b) leaving it for the person at the person's last known place of residence with another person who appears to be of or over the age of 14 years; or
 - (c) leaving it for the person at the person's place of business or work with another person; or
 - (d) sending it to the person by prepaid post addressed to the person's last known place of residence or place of business or work; or
 - (e) sending it to the person at the person's last address for service provided under **section 66** (if that address is not an electronic address); or
 - (f) sending it to an electronic address of the person in any case where the person does not have a known place of residence or business in New Zealand.
- (2) Unless the contrary is shown—
 - (a) an infringement notice (or a copy of it) sent by prepaid post to a person under **subsection (1)** is to be treated as having been served on that person on the fifth working day after the date on which it was posted:
 - (b) despite **paragraph (a)**, an infringement notice in respect of an unruly passenger offence sent by prepaid post is treated as having been served on the defendant when it was posted:
 - (c) an infringement notice sent to a valid electronic address is to be treated as having been served at the time the electronic communication first enters an information system that is outside the control of the enforcement authority.

299 Payment of infringement fees

All infringement fees paid in respect of infringement offences must be paid into a Crown bank account.

Subpart 10—Charging documents and burden of proof**300 Time for filing charging document**

- (1) Despite anything to the contrary in section 25 of the Criminal Procedure Act 2011—
 - (a) the limitation period in respect of an offence against any of the following sections ends on the date that is 12 months after the date on which the matter giving rise to the charge first became known to the CAA:
 - (i) **section 95** (acting without necessary aviation document):
 - (ii) **section 98** (failing to disclose information relevant to granting or holding of aviation document):
 - (iii) **section 101** (acting without required medical certificate):
 - (iv) **section 102** (fraudulent, misleading, or false statements to obtain medical certificate):
 - (v) **section 105** (failure to notify accident or incident):
 - (vi) **section 262** (failure to notify accident or incident):
 - (vii) **section 285** (communicating false information); and
 - (b) the limitation period in respect of any other offence against this Act ends on the date that is 12 months after the date on which the offence was committed.
- (2) Nothing in this section affects the limitation period that applies under section 25 of the Criminal Procedure Act 2011 in respect of the offences in—
 - (a) **section 313** (strict liability for acts endangering safety); and
 - (b) **section 314(1)(d)** (intentional interference with crew member's performance of crew member's duties).

*Please see Ministry of Transport commentary document: **Offences and penalties—Limitation period to apply from the time offence is detected***

Compare: 1990 No 98 s 65

301 Burden of proof of exceptions, etc, for offences

- (1) This section applies to—
 - (a) an offence against this Act that is prescribed in regulations under **section 329(1)(b)** (which relates to prescribing offences for breaches of regulations or rules); and
 - (b) an offence against any of the following sections:

- (i) **section 17** (failure to notify emergency breach of Act, regulations, or rules):
 - (ii) **section 19(1)** (failure to provide identifying information):
 - (iii) **section 98** (failure to disclose information relevant to granting or holding of aviation document):
 - (iv) **section 105(1)** (failure to notify accident or incident):
 - (v) **section 122(1)** (failure to comply with Director's requirement to withdraw or revoke authorisation):
 - (vi) **section 164(1)(b)** (failure to disclose materially relevant information in security check):
 - (vii) **section 260** (failure to comply with inspection or monitoring request):
 - (viii) **section 261** (failure or refusal to produce or surrender documents):
 - (ix) **section 262(1)** (failure to disclose medical information required by Director):
 - (x) **section 287** (trespass):
 - (xi) **section 289** (breach of emergency rule, prohibition, or condition):
 - (xii) **section 324** (failure to comply with requirements relating to information and verification):
 - (xiii) **section 333** (failure to comply with any information disclosure requirements).
- (2) Any exception, exemption, proviso, excuse, or qualification, whether it does or does not accompany the description of the offence,—
- (a) may be proved by the defendant; but
 - (b) need not be negatived in the charging document, and, whether or not it is so negatived, no proof in relation to the matter is required on the part of the prosecutor.
- (3) **Subsection (2)(b)** is subject to section 17(4) of the Criminal Procedure Act 2011.

Compare: 1990 No 98 ss 65AA, 100A

Subpart 11—Evidence and proof

302 Evidence and proof in offence-related proceedings

- (1) In any proceedings for an offence against this Act, the provisions of this section apply.

Aviation document

- (2) In the absence of proof to the contrary, a copy of any aviation document is sufficient to prove that document if the copy of the document is certified correct by—
- (a) the Director; or
 - (b) any employee of the CAA authorised to do so by the Director.
- (3) Unless the contrary is proved, an official certificate is sufficient evidence of the matter certified.
- (4) In **subsection (3)**, **official certificate** means a certificate—
- (a) to the effect that on a specified date a person or an organisation was or was not the holder of—
 - (i) an aviation document; or
 - (ii) a specified type of aviation document; and
 - (b) signed or otherwise authenticated by—
 - (i) the Director; or
 - (ii) any employee of the CAA authorised to do so by the Director.

New Zealand Register of Aircraft

- (5) Evidence of the contents of the New Zealand Register of Aircraft maintained under **section 32** may be given by a certificate signed or otherwise authenticated by—
- (a) the Director; or
 - (b) any employee of the CAA authorised in that behalf by the Director.
- (6) Unless the contrary is proved, every certificate is sufficient evidence of the matters stated in it.

Written statement in relation to medical certificate

- (7) Unless the contrary is proved, a written statement is sufficient evidence of the matter stated.
- (8) In **subsection (7)**, **written statement** means a statement signed or otherwise authenticated by the Director to the effect that on a specified date a person was or was not the holder of a medical certificate issued under—
- (a) **Schedule 2**; or
 - (b) the rules before the commencement of the Civil Aviation (Medical Certification) Amendment Act 2001.

Material incorporated by reference

- (9) In the absence of evidence to the contrary, a certified copy of material incorporated by reference is sufficient evidence that the material produced is the material incorporated by reference in a rule.

Certificates generally

- (10) Unless the contrary is proved, it is presumed that every certificate purporting to have been certified or given under this section has been certified or given by—
- (a) the Director; or
 - (b) any employee of the CAA authorised by the Director to certify documents or give certificates under this section.

Licence

- (11) Any licence granted under **Part 7** may be proved by producing a copy of that licence that is certified as correct by the chief executive.

Compare: 1990 No 98 s 71(1)

303 Evidence and proof of rule in any proceedings

- (1) Unless the contrary is proved, and without limiting any other method of proof, the production in any proceedings of a copy of an item specified in **subsection (2)** is sufficient evidence of—
- (a) the rule; and
 - (b) the fact that it has been made in accordance with the provisions of **Part 3**.
- (2) The items for the purposes of **subsection (1)** are—
- (a) a rule purporting to have been made by the Minister under **subpart 1 of Part 3**; or
 - (b) any emergency rule purporting to have been made by the Director under **section 60**.

Compare: 1990 No 98 s 71(2)

Subpart 12—General provisions relating to proceedings

304 State of mind of employees and agents attributed*State of mind of individual in civil proceedings*

- (1) **Subsection (2)** applies in any civil proceedings under this Act in respect of any conduct engaged in by an individual, being conduct in relation to which any provision of this Act or any enactment made under this Act applies.
- (2) If it is necessary in civil proceedings referred to in **subsection (1)** to establish the state of mind of the individual, it is sufficient to show that an employee or agent of the individual acting within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

State of mind of person other than individual in civil or criminal proceedings

- (3) **Subsection (4)** applies in any civil or criminal proceedings under this Act in respect of any conduct engaged in by a person other than an individual, being

conduct in relation to which any provision of this Act or any enactment made under this Act applies.

- (4) If it is necessary in civil or criminal proceedings referred to in **subsection (3)** to establish the state of mind of the person, it is sufficient to show that an employee or agent of the person acting within the scope of the employee's or agent's actual or apparent authority, had that state of mind.

Meaning of state of mind

- (5) In this section, **state of mind**, in relation to a person, includes the knowledge, intention, opinion, belief, or purpose of the person and the person's reasons for that intention, opinion, belief, or purpose.

305 Conduct of employees and agents attributed

- (1) Conduct engaged in on behalf of an individual (**person A**) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by person A:
- (a) an employee or agent of person A, acting within the employee's or agent's actual or apparent authority:
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) either of person A or an employee or agent of person A, given within the scope of the actual or apparent authority of the employee or agent.
- (2) Conduct engaged in on behalf of a person (other than an individual) by any of the following must be treated, for the purposes of this Act, as having been engaged in also by that person:
- (a) an employee or agent of the person acting within the scope of the employee's or agent's actual or apparent authority:
 - (b) any other person at the direction or with the consent or agreement (whether express or implied) of an employee or agent of the person, given within the scope of the actual or apparent authority of the employee or agent.

Subpart 13—Unruly passenger offences

Preliminary provisions

306 Interpretation in this subpart

In this subpart, unless the context otherwise requires,—

details, in relation to a person who is alleged to have committed an offence, means the person's full name, address, and date of birth

person authorised by the Director means a person authorised by the Director under **section 308**.

Compare: 1990 No 98 s 65A(6)

307 Application of this subpart

- (1) This subpart applies to any unruly passenger offence committed—
 - (a) on an aircraft in New Zealand, regardless of the nationality of the aircraft;
 - (b) on an aircraft in flight outside New Zealand, regardless of the nationality of the aircraft, if the next landing of the aircraft is New Zealand.
- (2) For the purposes of this subpart, an aircraft is **in flight** from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.
- (3) However, in the case of a forced landing an aircraft is **in flight**,—
 - (a) if the forced landing occurs in a place within the territorial limits of a country, until the time that competent authorities of that country assume responsibility for the aircraft and for persons and property on board the aircraft; or
 - (b) if the forced landing occurs in a place that is not within the territorial limits of any country, until the time that competent authorities of any country assume responsibility for the aircraft and for persons and property on board the aircraft.

Compare: 1990 No 98 s 65A (1)–(3)

308 Exercise of powers under this subpart

- (1) The Director may authorise an aviation security officer or any other person to exercise a power or perform a function under this subpart.
- (2) A person authorised by the Director must carry evidence of authority issued by the Director that specifies—
 - (a) the name of, and the office or offices held by, that person; and
 - (b) the powers and functions that the person is authorised to exercise and perform under this subpart.
- (3) A constable may exercise and perform all or any of the powers and functions that may be conferred on a person authorised by the Director under this subpart.

Compare: 1990 No 98 s 65A(4)–(5)

309 Liability for offences against this subpart despite extraterritoriality

A person who commits an act or omission on an aircraft in flight outside New Zealand that would be an offence against this subpart if it occurred within New Zealand is, subject to this Act, liable as if the act or omission had occurred in New Zealand.

Compare: 1990 No 98 s 65B

310 Liability for offences under Summary Offences Act 1981 despite extraterritoriality

- (1) A person is liable under the Summary Offences Act 1981 if—
- (a) the person commits an act or omission on an aircraft in flight outside New Zealand; and
 - (b) that act or omission, if it occurred in New Zealand, would be an offence against 1 or more of the following provisions of that Act:
 - (i) section 3 (disorderly behaviour):
 - (ii) section 7 (fighting in public place):
 - (iii) section 9 (common assault):
 - (iv) section 11 (wilful damage):
 - (v) section 27 (indecent exposure).
- (2) For the purposes of the provisions specified in **subsection (1)(b)**, a reference to a public place in any of those provisions includes an aircraft in flight outside New Zealand.

Compare: 1990 No 98 s 65C

311 Liability for offence on foreign aircraft outside New Zealand

- (1) An infringement notice may be issued under **section 295**, or proceedings commenced, for an unruly passenger offence committed on a foreign aircraft outside New Zealand if—
- (a) the pilot-in-command—
 - (i) makes a request in the prescribed form to the Director or a person authorised by the Director to issue an infringement notice or to commence proceedings; and
 - (ii) provides an undertaking in the prescribed form that the pilot-in-command (or the operator of the aircraft) has not made and will not make a similar request to the authorities of any other State; and
 - (b) in the case of proceedings, the Attorney-General consents.
- (2) A person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody, or released on bail before the Attorney-General decides whether to consent to proceedings.
- (3) Despite **subsection (1)(b)**, proceedings for an unruly passenger offence committed on a foreign aircraft outside New Zealand may be commenced without the Attorney-General's consent if—
- (a) a copy of the infringement notice is filed or particulars of the infringement notice are provided under **section 326(1)**; or

- (b) the defendant requests a hearing in respect of the infringement offence to which the infringement notice relates.
- (4) In any proceedings for an offence under this subpart, the pilot-in-command's request and undertaking, if made in the prescribed form or forms, are—
 - (a) admissible in evidence; and
 - (b) in the absence of proof to the contrary, sufficient evidence of the matters stated in the form or forms.

Compare: 1990 No 98 s 65D

312 Proceedings for offences

- (1) Nothing in this subpart affects the liability of a person under any other enactment.
- (2) **Subsection (1)** is subject to **section 310**.

Compare: 1990 No 98 s 65E(3), (4)

Unruly passenger offences

313 Strict liability for acts endangering safety

- (1) A person commits an offence if the person acts in a manner that endangers an aircraft or any person in an aircraft.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both.

Compare: 1990 No 98 s 65F

314 Disruptive conduct towards crew member

- (1) A person commits an offence if, while in an aircraft, the person—
 - (a) uses any threatening, offensive, or insulting words towards a crew member; or
 - (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member; or
 - (c) behaves in a manner that interferes with a crew member's performance of the crew member's duties; or
 - (d) intentionally interferes with a crew member's performance of the crew member's duties.
- (2) A person who commits an offence against **subsection (1)(a), (b), or (c)** is liable on conviction to a fine not exceeding \$5,000.
- (3) A person who commits an offence against **subsection (1)(d)** is liable on conviction to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000, or both.

- (4) It is a defence in a prosecution under **subsection (1)(a)** for using offensive or insulting words if the defendant proves that the defendant had reasonable grounds to believe that the defendant's words would not be overheard or seen by a crew member.
- (5) In this section, **words** include words that are—
- (a) written, printed, gestured, or spoken; and
 - (b) any pictorial representation or visual description of words.

Compare: 1990 No 98 s 65G

315 Interference with aircraft

- (1) A person commits an offence if the person tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$10,000.

Compare: 1990 No 98 s 65H

316 Intoxicated person on aircraft

- (1) A person commits an offence if the person—
- (a) is intoxicated and boards an aircraft; or
 - (b) becomes intoxicated on an aircraft.
- (2) This section does not apply to a person under medical care.
- (3) In proceedings for an offence against **subsection (1)**,—
- (a) the prosecutor need not assert, in the charging document, that the defendant was not a person under medical care; and
 - (b) the burden of proving that the defendant was under medical care lies on the defendant.
- (4) A person who commits an offence against—
- (a) **subsection (1)(a)** is liable on conviction to a fine not exceeding \$5,000;
 - (b) **subsection (1)(b)** is liable on conviction to a fine not exceeding \$3,000.
- (5) The offence in **subsection (1)(a)** is an infringement offence with an infringement fee of \$1,000 (*see subpart 9*).
- (6) The offence in **subsection (1)(b)** is an infringement offence with an infringement fee of \$600 (*see subpart 9*).
- (7) In this section,—
- alcohol** has the same meaning as in section 5(1) of the Sale and Supply of Alcohol Act 2012

intoxication, in relation to a person, means the pilot-in-command, or senior flight attendant authorised by the pilot-in-command for this purpose, has reasonable grounds to believe that the person is under the influence of alcohol or an intoxicating substance to such an extent as to—

- (a) be incapable of properly looking after oneself; or
- (b) behave in a manner that is hazardous to the operation of the aircraft or to the health or safety of persons on the aircraft; or
- (c) offend against the good order and discipline required on an aircraft

person under medical care means a person who—

- (a) is under the supervision of an attendant; and
- (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

Compare: 1990 No 98 s 65I

317 Non-compliance with commands given by pilot-in-command

- (1) A person commits an offence if the person fails to comply with any commands given to the person directly by the pilot-in-command, or indirectly by the pilot-in-command through a crew member, in accordance with the pilot-in-command's duties under **section 14** or the rules.
- (2) Despite **section 58**, a person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$5,000.

Compare: 1990 No 98 s 65J

318 Offensive behaviour or words

- (1) A person commits an offence if, on any aircraft the person—
 - (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
 - (b) uses threatening, offensive, or insulting words.
- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,500.
- (3) It is a defence in a prosecution under **subsection (1)(b)** for using offensive or insulting words if the defendant proves that the defendant had reasonable grounds to believe that the defendant's words would not be overheard or seen.

Compare: 1990 No 98 s 65K

319 Portable electronic devices not to be operated

- (1) A person commits an offence if the person operates a portable electronic device on board an aircraft in breach of the rules.
- (2) Despite **section 58**, a person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,500.

- (3) The offence in this section is an infringement offence with an infringement fee of \$500 (*see* **subpart 9**).

Compare: 1990 No 98 s 65L

320 Non-compliance with seating and safety belt instructions

- (1) A person commits an offence if the person fails to comply with an instruction given by a crew member, passenger information signs, or placards to—
- (a) occupy a seat or berth; and
 - (b) fasten and keep fastened about the person any safety belt or safety harness installed, or provided by a crew member.

- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,500.

- (3) The offence in this section is an infringement offence with an infringement fee of \$500 (*see* **subpart 9**).

Compare: 1990 No 98 s 65M

321 No smoking

- (1) A person commits an offence if the person smokes—
- (a) when instructed not to smoke by a crew member, passenger information signs, or placards; or
 - (b) while on any aircraft that is carrying passengers for hire or reward on any internal flight; or
 - (c) while on any aircraft operated by a New Zealand international airline carrying passengers on any route.

- (2) A person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,500.

- (3) The offence in this section is an infringement offence with an infringement fee of \$500 (*see* **subpart 9**).

- (4) In this section,—

internal flight has the same meaning as in section 2(1) of the Smoke-free Environments Act 1990

New Zealand international airline has the meaning given in **section 165**

to smoke means to smoke, hold, or otherwise have control over an ignited product, weed, or plant; and **smoked** and **smoking** have corresponding meanings.

Compare: 1990 No 98 s 65N

322 Dangerous goods

- (1) A person commits an offence if the person carries, or causes to be carried, any dangerous goods on an aircraft in breach of the rules.

- (2) Despite **section 58**, a person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$2,500.
- (3) The offence in this section is an infringement offence with an infringement fee of \$500 (*see subpart 9*).

Compare: 1990 No 98 s 65O

Requirement for passenger to provide information

323 Requirements relating to information and verification

- (1) The Director or a person authorised by the Director may require a passenger (the **passenger**) to provide the passenger's details to the Director or a person authorised by the Director, if the Director or a person authorised by the Director has reasonable cause to suspect that the passenger has committed an unruly passenger offence other than an offence against **section 313 or 314(1)(d)**.
- (2) If the Director or a person authorised by the Director has reasonable grounds to suspect that any details provided are false or misleading, the Director or a person authorised by the Director may require the passenger to give verification of those details as it is reasonable in the circumstances to require the passenger to provide.
- (3) Evidence provided for verification by the passenger to the Director or a person authorised by the Director must be inspected without delay and returned to the passenger as soon as practicable after the inspection has concluded.

Compare: 1990 No 98 s 65P(3), (4), (7)

324 Consequences for failure to comply with requirements

- (1) A constable may arrest a passenger (the **passenger**) without warrant if the passenger,—
 - (a) without reasonable excuse, refuses or fails to comply with a requirement under **section 323(1) or (2)**; and
 - (b) persists in that refusal or failure after being warned by the Director or a person authorised by the Director that the passenger may be arrested for committing an offence by that refusal or failure.
- (2) The passenger commits an offence and is liable on conviction to a fine not exceeding \$1,000 if, without reasonable excuse the passenger,—
 - (a) refuses or fails to comply with a requirement under **section 323(1) or (2)**; or
 - (b) gives details that materially false or misleading to the Director or a person authorised by the Director in response to a requirement.

Compare: 1990 No 98 s 65P(5), (6)

Additional provisions relating to unruly passenger offences that are infringement offences

325 Notification of alleged infringement offence

The pilot-in-command at the time of an alleged unruly passenger offence that is an infringement offence may, by any available means, notify, or cause to be notified,—

- (a) the Director; or
- (b) a person authorised by the Director.

Compare: 1990 No 98 s 65P(1)

326 Modifications to infringement offence procedure under the Summary Proceedings Act 1957 for unruly passenger offence that is infringement offence

- (1) This section applies if an infringement notice is issued under **section 295** in respect of an unruly passenger offence that is an infringement offence.
- (2) The Director or a person authorised by the Director may provide particulars of the infringement notice in accordance with section 21(4) and (4A) of the Summary Proceedings Act 1957, after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if—
 - (a) the infringement fee for the offence has not by then been paid to the Director as specified in the notice; and
 - (b) the Director has not by then received at the address specified in the notice a request for a hearing in respect of that offence.
- (3) The Summary Proceedings Act 1957 applies as if the infringement notice were a reminder notice served under section 21(2) of that Act, and the provisions of that Act apply, with all necessary modifications, to the alleged offence as if—
 - (a) the reference in section 21(1)(b) to providing particulars of a reminder notice under that section were a reference to providing particulars of the infringement notice under **subsection (2)** of this section; and
 - (b) **subsection (2)** of this section were in the place of section 21(3); and
 - (c) the reference in section 21(3A) to the particulars of a reminder notice not having been provided under section 21(3) were a reference to the particulars of the infringement notice not having been provided under **subsection (2)** of this section; and
 - (d) every reference in section 21(4), (4A), and (4B) to particulars of a reminder notice were a reference to the particulars of an infringement notice and every reference to the contents of a reminder notice were a reference to the contents of an infringement notice; and
 - (e) the reference in section 21(4)(a) to parts of the reminder notice were a reference to parts of the infringement notice; and

- (f) the reference in section 21(4C) to particulars of a reminder notice were a reference to particulars of an infringement notice; and
- (g) the reference in section 21(4C) to the reminder notice were a reference to the infringement notice; and
- (h) the reference in section 21(5) to the verification of particulars of a reminder notice provided under section 21(3) were a reference to the verification of particulars of an infringement notice provided under **subsection (2)** of this section; and
- (i) the references in sections 21(6)(b) and 21(10)(a) to a period of 28 days after the service of a reminder notice were references to the period of 14 days after the service of the infringement notice; and
- (j) each reference in sections 21A and 78B to a reminder notice were a reference to an infringement notice and each reference in sections 21A and 78B to the reminder notice were a reference to the infringement notice; and
- (k) the references to reminder notices in the definition of defendant in section 2, and in section 212, and in any other relevant provisions of that Act or in any regulations made under that Act, were references to the infringement notice.

Compare: 1990 No 98 s 65S

Subpart 14—Liability-related provisions

327 Civil proceedings in relation to liability

A court has jurisdiction to hear and determine applications relating to liability claims against, and to make orders enforcing liability on,—

- (a) a carrier or any other person under **Part 9**; and
- (b) the owner of an aircraft for material damage or loss is caused to property on land or water under **section 40**.

Please see Ministry of Transport commentary document: *Amendments to airline liability provisions*

328 Jurisdiction of Disputes Tribunal

The Disputes Tribunal established under section 4 of the Disputes Tribunal Act 1988 has jurisdiction to hear and determine applications relating to liability claims against, and to make orders enforcing liability on, a carrier or any other person under—

- (a) **subpart 2 of Part 9**, except matters relating to liability for passenger injury or death; or
- (b) **subpart 3 of Part 9**.

Part 11

Regulations and miscellaneous provisions

Subpart 1—Regulations

Regulations generally

329 Regulations

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) prescribing, or providing for the fixing of, fees and charges payable under this Act:
 - (b) prescribing those breaches of the regulations or rules that constitute offences against this Act:
 - (c) prescribing those breaches of the regulations or rules that constitute infringement offences against this Act:
 - (d) specifying the offences in this Act that are infringement offences:
 - (e) prescribing the maximum penalty for each offence prescribed under **paragraph (b) or (c)**, which,—
 - (i) in the case of an individual, must not exceed \$10,000; and
 - (ii) in the case of a body corporate, must not exceed \$50,000:
 - (f) prescribing infringement fees for infringement offences which,—
 - (i) in the case of an individual, must not exceed \$2,000; or
 - (ii) in the case of a body corporate, must not exceed \$12,000:
 - (g) prescribing the information and documents that may be required to be supplied by applicants for scheduled international air services licences under **Part 7**, and the time within which the information or documents must be supplied:
 - (h) specifying, for the purposes of **subpart 2 of Part 2**, the agreements or arrangements between the Governments of Australia and New Zealand regarding mutual recognition of aviation-related certification:
 - (i) prescribing matters relating to maintenance of registers under this Act, including the New Zealand Register of Aircraft, the Civil Aviation Registry, and the register of current medical certificates:
 - (j) providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect.
- (2) Regulations made under this section may—
 - (a) provide differently for different types of persons, aircraft, aerodromes, aeronautical products, aviation participants, or aviation-related services or on any other differential basis; or

- (b) provide differently for the same class of person, aircraft, aerodrome, aeronautical product, aviation participant, or aviation-related service or any other thing in different circumstances.
- (3) Regulations made under this Act are not invalid merely because they confer any discretion on, or allow any matter to be determined or approved by, the CAA or the Director or any other person or allow the CAA or the Director or any other person to impose requirements as to the performance of any activities.

Compare: 1990 No 98 s 100

Information disclosure

330 Regulations relating to information disclosure

- (1) The Governor-General may, by Order in Council, make regulations for all or any of the following purposes:
 - (a) requiring every aviation participant who provides an air traffic service to publish in the prescribed manner information in relation to the provision of that service by that holder; and prescribing the information, including prices, terms, and conditions, that the holder must make available, which information must include—
 - (i) prices, terms, and conditions:
 - (ii) pricing policies and methodologies:
 - (iii) costs:
 - (iv) cost allocation policies and methodologies:
 - (b) requiring every aviation participant who provides an air traffic service to make publicly available prescribed financial statements that follow generally accepted accounting principles (including statements of financial performance and statements of financial position and statements of accounting principles) in respect of that holder, or any of that holder's subsidiaries, or any part or division of the person as if the holder or the subsidiary or a part or division of the holder, as the case may be, were independent and unrelated companies:
 - (c) prescribing the form and manner in which the financial statements required by any regulations made under **paragraph (b)** must be made available:
 - (d) prescribing the form of statutory declaration and by whom it shall be made for the purpose of **section 331**:
 - (e) prescribing requirements for the disclosure of information about rights of passengers, consignors, consignees, and other persons under **Part 9**:
 - (f) prescribing the manner of information disclosure, including—
 - (i) by whom, and to whom, disclosure must be made:

- (ii) when and how disclosure must be made, including any particular words required:
 - (g) prescribing the time limits within which the information disclosure required by any regulations made under this section must be made to the public.
- (2) Nothing in this section limits the power conferred by **section 329**.
- Please see Ministry of Transport commentary document: *Amendments to airline liability provisions—Disclosure of information regarding passenger rights***
- Compare: 1990 No 98 s 99A

331 Information to be supplied to chief executive

- (1) Every person who is required by regulations made under **section 330** to make available statements and information must supply to the chief executive—
- (a) a copy of all statements and information, made available to the public pursuant to regulations made under that section:
 - (b) any further statements, reports, agreements, particulars, and other information requested in writing by the chief executive for the purpose of monitoring the person's compliance with those regulations within 30 days of receipt of the request.
- (2) All statements, reports, agreements, particulars, and information supplied to the chief executive under **subsection (1)(a) or (b)** must be verified by statutory declaration in the form and by the persons prescribed by regulations made under **section 330(d)**.
- Compare: 1990 No 98 s 99B

332 Regulations requiring disclosure of information by airport companies

- (1) Regulations made under this section do not apply to a specified airport company within the meaning of section 56A of the Commerce Act 1986.
- (2) The Governor-General may, by Order in Council, make regulations for any or all of the following purposes:
- (a) requiring every airport company, or every airport company of a specified class or classes to publish in the prescribed manner information in relation to its identified aerodrome activities or any of them, or any class or classes of its identified aerodrome activities:
 - (b) requiring every airport company, or every airport company of a specified class or classes, to complete, within a time prescribed by the regulations, financial statements (in this section referred to as disclosure financial statements) and financial forecasts (in this section referred to as disclosure financial forecasts), or either of them, in relation to its identified aerodrome activities or any of them, or any class or classes of its identified aerodrome activities:

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- (c) requiring every airport company to publish in the prescribed manner and within the prescribed time, any disclosure financial statements and disclosure financial forecasts, that the airport company is required to complete:
 - (d) prescribing the information and other matters that must be included in disclosure financial statements and disclosure financial forecasts:
 - (e) prescribing the certificates and reports that must be prepared in relation to the information, or any specified information, contained in disclosure financial statements and disclosure financial forecasts:
 - (f) prescribing any standard or standards that disclosure financial statements and disclosure financial forecasts must comply with:
 - (g) prescribing any methodology or methodologies that must be used in completing disclosure financial statements and disclosure financial forecasts:
 - (h) enabling the making of guidelines by a person or persons specified by the regulations in relation to the completion of, or the use of any methodology or methodologies (including, without limitation, any methodologies relating to the valuation of assets) in, disclosure financial statements and disclosure financial forecasts:
 - (i) providing that compliance with the guidelines is deemed to constitute compliance with the relevant requirements of the regulations:
 - (j) prescribing the certificates, reports, and statutory declarations that must be prepared in relation to disclosure financial statements and disclosure financial forecasts or in relation to statements, forecasts, reports, agreements, particulars and information supplied to the chief executive under **section 212**:
 - (k) exempting, or providing for the exemption (in accordance with prescribed criteria and after any prescribed public notification) of, any person or persons, or any class or classes of persons, from all or any of the requirements of the regulations.
- (3) Regulations made under **subsection (2)** may require or prescribe different requirements or matters in relation to—
- (a) different classes of airport company; and
 - (b) the disclosure financial statements and disclosure financial forecasts of different classes of airport company.
- (4) No guidelines may be made pursuant to regulations made under **subsection (2)(h)** except after consultation with the persons, representative groups within the aviation industry or elsewhere, substantial customers of airport companies, government departments, and Crown agencies that the person or persons making the guidelines think appropriate.

- (5) Guidelines made under **subsection (2)(h)** are a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1966 No 51 s 9A

333 Offences in relation to information disclosure

- (1) Every person commits an offence against this section who—
- (a) fails, without reasonable excuse, to comply with any information disclosure requirements prescribed in regulations made under **section 330** or **section 332**; or
 - (b) fails, without reasonable excuse, to comply with the requirements of **section 331(1)(a) or (b)**; or
 - (c) fails, without reasonable excuse, to comply with the requirements of **section 212(1)(a)** or with a request made under **section 212(2)**.
- (2) Every person commits an offence against this section who makes a false declaration when supplying any statement, report, agreement, particulars, or information pursuant to **section 331**.
- (3) Every person commits an offence against this section who makes a false declaration under **section 212(3)** in relation to any statement, forecast, report, agreement, particulars, or information supplied under **section 212(1)**.
- (4) Every person who commits an offence against **subsection (1)** is liable on conviction to a fine not exceeding \$200,000.
- (5) Every person who commits an offence against **subsection (2) or (3)** is liable on conviction to a fine not exceeding \$20,000.

Compare: 1990 No 98 s 99C

International carriage by air

334 Regulations for international carriage by air

The Governor-General may, by Order in Council, make regulations—

- (a) prescribing any advance payments for compensation that carriers must make to natural persons under Article 28 of the Montreal Convention;
- (b) prescribing any arrangements for making advance payments for compensation that carriers must make to natural persons under Article 28 of the Montreal Convention;
- (c) amending **Schedule 5** by making such amendments to the text of the Montreal Convention set out in that schedule as are required to bring that text up to date;
- (d) revoking **Schedule 5**, and substitute a new schedule setting out, in an up-to-date form, the text of the Montreal Convention.

Compare: 1990 No 98 s 91T

*Fees and charges***335 Regulations relating to fees and charges**

- (1) The Governor-General may, by Order in Council, make regulations prescribing, or providing for the fixing of, fees and charges payable for all or any of the following purposes:
 - (a) to provide funds to establish, maintain, and operate works, facilities, and services under this Act:
 - (b) to pay the costs and expenses that the Ministry or the CAA or any of their employees incur in exercising functions, powers, and duties, and in providing services, under this Act:
 - (c) to reimburse the CAA and the convener for costs directly and indirectly associated with the Director's functions and the convener's functions relating to medical certification under **Schedule 2**:
 - (d) generally for the purposes of civil aviation.
- (2) Different rates of fees and charges may be prescribed or fixed in respect of different classes of persons, aircraft, aerodromes, aeronautical products, aviation participants, or aviation-related services or on the basis of different times of use, or on any other differential basis.
- (3) The regulations may—
 - (a) specify the persons by whom and to whom any fees or charges are payable:
 - (b) prescribe penal or overtime or additional fees or charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays:
 - (c) prescribe additional charges for reimbursement of travelling time, accommodation, and other expenses:
 - (d) require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns:
 - (e) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases.
- (4) The power to prescribe, or provide for the fixing of, fees and charges in respect of any matter under this Act includes the power to prescribe, or provide for the fixing of, fees or charges, or both, in respect of any matter.
- (5) Nothing in this section limits the power conferred by **section 329**.
- (6) Nothing in this section or in **section 329** authorises the making of regulations prescribing charges in relation to traveller processing to which the Airports (Cost Recovery for Processing of International Travellers) Act 2014 applies.

Compare: 1990 No 98 s 38

336 Rebate of fees or charges

- (1) The person or authority to whom any fees or charges are payable under the regulations may grant a rebate of fees or charges to any person who is liable to pay the fees or charges.
- (2) Every rebate of fees or charges granted under **subsection (1)** must—
 - (a) be based on the quantity of services used by the person liable to pay the fees or charges; and
 - (b) be offered on an equal percentage basis to any other person using a similar quantity of services; and
 - (c) be granted in accordance with the regulations.

Compare: 1990 No 98 s 39

337 Payment of fees and charges

- (1) Subject to the regulations, every application under this Act must be accompanied by payment of all relevant prescribed fees and charges.
- (2) The regulations may—
 - (a) prescribe a date by which any fee or charge is payable;
 - (b) authorise the CAA to fix the date by which the fee or charge is payable;
 - (c) provide for a discount for early payment of any fee or charge or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee or charge.

Compare: 1990 No 98 s 40

338 Suspension or revocation of aviation document if prescribed fees or charges unpaid

- (1) If any fee or charge payable under this Act is not paid by the date prescribed or fixed for the payment of that fee or charge the Director may suspend any aviation document to which the unpaid fee or charge relates.
- (2) If any fee or charge payable under this Act is not paid within 4 months after the date prescribed or fixed for the payment of that fee or charge, the Director may revoke any aviation document to which the fee or charge relates.
- (3) Before suspending an aviation document under **subsection (1)**, or revoking an aviation document under **subsection (2)**, the Director must notify the holder of the document—
 - (a) that the Director intends to suspend or revoke the document; and
 - (b) that the person has a right of appeal under **section 362**, if the Director suspends or revokes the document.
- (4) The CAA, the Director, or other person asked to process an application or provide a service under this Act, may decline to process that application or provide that service until—

- (a) the appropriate fee or charge has been paid; or
 - (b) arrangements acceptable to the CAA or the Director for payment of the fee or charge have been made; or
 - (c) an outstanding debt in relation to any fee or charge payable under this Act or the regulations has been paid.
- (5) The CAA or the Director or other person must not decline to process the application or provide the service under **subsection (4)** if the safety of any person would be put at risk by declining to process the application or provide the service.
- (6) The holder of an aviation document that is suspended under **subsection (1)** or revoked under **subsection (2)**, may appeal against the decision to the District Court under **section 362**.

Compare: 1990 No 98 s 41

339 Recovery of fees and charges for aviation-related services

- (1) If a fee or charge is payable under this Act in respect of any function, power, duty, or service carried out or provided by the CAA or the Director in respect of any aircraft, the person whose name appears on the New Zealand Register of Aircraft in respect of that aircraft is liable to pay that fee or charge.
- (2) Any person who would otherwise be liable to pay a fee or charge in relation to any aircraft in terms of **subsection (1)** is not liable if that person—
- (a) proves—
 - (i) that during any relevant period of use of the aircraft that person was not entitled, whether alone or together with some other person, to possession of the aircraft; or
 - (ii) that another person was unlawfully in possession of it; and
 - (b) has taken all reasonable steps to supply the CAA with information as would identify the actual user.

Compare: 1990 No 98 s 42

Levies

340 Governor-General may impose levies

- (1) For the purpose of enabling the CAA to carry out its functions under this Act and any other Act, the Governor-General may, on the recommendation of the Minister, by Order in Council, make regulations imposing on all or any aviation participants a levy payable to the CAA.
- (2) Without limiting **subsection (1)**, regulations may prescribe—
- (a) the rate of levy; and
 - (b) insofar as the regulations do not set an actual rate, how the actual rate of the levy is to be set; and

- (c) when and how the levy is to be paid; and
 - (d) how the rate of the levy, and any variation of the rate, is to be notified.
- (3) The Minister must not make any recommendation under **subsection (1)** unless—
- (a) the CAA has made a request for, and has given its concurrence to, making the recommendation; and
 - (b) the Minister is satisfied that the CAA has consulted with persons, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies as the Minister considers appropriate.

Please see **Ministry of Transport commentary document: *Minor changes relating to levies***

Compare: 1990 No 98 s 42A

341 Basis on which levies may be imposed

- (1) Different rates of levies may be imposed or varied under **section 340** in respect of different classes of persons, aerodromes, aircraft, aeronautical products, aviation participants, or aviation-related services, or on the basis of different times of use or on any other differential basis.
- (2) Without limiting **subsection (1)**, the rate of any levy imposed or varied under **section 340** may be calculated according to any one of, or any combination of 1 or more of, the following factors:
- (a) the quantity of aviation fuel purchased by any person:
 - (b) the number of passengers able to be carried on any aircraft:
 - (c) the number of passengers actually carried on any aircraft:
 - (d) the amount of freight able to be carried on any aircraft:
 - (e) the amount of freight actually carried on any aircraft:
 - (f) the distance flown by any aircraft:
 - (g) aircraft size or capacity:
 - (h) the purpose for which any aircraft or aeronautical product is used or for which an aviation-related service is supplied:
 - (i) any other basis whatever that relates to the use, capacity, or size of—
 - (i) any aircraft; or
 - (ii) any aeronautical product; or
 - (iii) any aviation-related service; or
 - (iv) any privileges exercisable under any aviation document.

Compare: 1990 No 98 s 42B

342 Other provisions relating to levies

- (1) A levy imposed under **section 340** must be paid to the CAA to be applied by the CAA in performing its functions under this Act.

- (2) Regulations made under **section 340** may—
- (a) specify—
 - (i) the persons who are liable to pay the levy (**levy payers**); and
 - (ii) the place at which the levy is payable:
 - (b) either—
 - (i) prescribe a date by which any levy is payable; or
 - (ii) authorise the CAA to fix the date by which the levy is payable:
 - (c) require levy payers—
 - (i) to make returns; and
 - (ii) to maintain records relating to returns of any levy imposed under **section 340**:
 - (d) prescribe conditions relating to levy payers making returns:
 - (e) prescribe conditions for the purpose of auditing records relating to levy returns under **section 343**:
 - (f) provide for the refund or waiver of any levy in whole or in part, in any specified case or class of cases.
- (3) A levy imposed under **section 340** is treated to be a charge, for the purposes of **section 338**, payable under this Act.
- (4) Levy regulations are treated to be a specific authorisation by an enactment for the purposes of section 43 of the Commerce Act 1986.

Compare: 1990 No 98 s 42D

343 Director may audit levy returns

- (1) Director may conduct an audit of the records relating to the returns of any levy imposed under **section 340**.
- (2) The Director may, for the purpose of an audit of records relating to levy returns,—
- (a) request a levy payer, with reasonable notice, for access to the levy payer's records relating to levy returns; and
 - (b) access, at any reasonable time, the levy payer's records relating to levy returns.
- (3) The Director must not charge, or recover from, any levy payer any cost incurred or to be incurred, by the Director or the Director's agents, in respect of any audit of records relating to levy returns.

344 Offences in relation of levy orders

- (1) A person commits an offence if the person fails to make a return that is required by regulations made under **section 340** to be made.

- (2) A person commits an offence if the person fails to maintain records that are required by regulations made under **section 340** to be maintained.
- (3) A person commits an offence if the person makes a return that the person is required to make by regulations made under **section 340** knowing that the return is false or misleading in a material particular.
- (4) A person who commits an offence under **subsection (1) or (2)** is liable on conviction,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000;
 - (b) in the case of a body corporate, to a fine not exceeding \$25,000.
- (5) A person who commits an offence under **subsection (3)** is liable on conviction,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000, or both;
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Please see Ministry of Transport commentary document: *Offence provision relating to levy orders*

Control of sale of alcohol at international airports

345 Regulations to control sale of alcohol at international airports

The Governor-General may, by Order in Council, make regulations for either or both of the following purposes:

- (a) prescribing the circumstances and conditions relating to the control of the sale of alcohol at international airports to passengers on aircraft departing from, or arriving in, New Zealand who are of, or over, the age referred to in **section 221(1)(a) or (b)** (as the case requires);
- (b) prescribing—
 - (i) offences in respect of the breach of, or non-compliance with, any provision of any regulations made under this section; and
 - (ii) fines, not exceeding \$1,000, that may, on conviction, be imposed in respect of any offence made under this section.

Compare: 1990 No 98 s 96(3)

Consequential amendments to regulations and Orders in Council

346 Regulations or Order in Council made under this Act may make consequential amendments to other regulations or Order in Council

- (1) The Governor-General's power to make regulations or any other Order in Council (the **main regulations or other Order in Council**) under this Act includes a power to make consequential amendments to other regulations or any other Order in Council made by the Governor-General under this Act or any other Act.

- (2) An amendment is **consequential** for the purposes of this section if it is purely consequential on the passing or making of (or amendment to) any or all of the following:
 - (a) this Act;
 - (b) the main regulations or other Order in Council.
- (3) The only facts, circumstances, or preconditions that must exist or be satisfied before the consequential amendments are made are those (if any) for making the main regulations or other Order in Council.

Subpart 2—Airworthiness directives

347 Airworthiness directives

- (1) Without limiting **section 28(2)**, the Director may, by notice in writing, issue an airworthiness directive in respect of aircraft or aeronautical products, as the case may be, of that design if the Director reasonable grounds to believe—
 - (a) that an unsafe condition exists in any aircraft or aeronautical product; and
 - (b) that condition is likely to exist or develop in any other aircraft or aeronautical products of the same design,—
- (2) Notice of an airworthiness directive issued under **subsection (1)** must be given in the *Gazette*.
- (3) An airworthiness directive issued under **subsection (1)** comes into force on the date specified in the directive, which may be a date earlier than the date of notification of the issuing of the directive in the *Gazette* under **subsection (2)**, if—
 - (a) the Director considers that urgent action is required; and
 - (b) the Director notifies the affected parties before the directive comes into force; and
 - (c) notification of the issuing of the directive is given in the *Gazette* not later than 28 days after the directive comes into force.

Compare: 1990 No 98 s 72I(3A)–(3C)

348 Incorporation of material in airworthiness directives

- (1) **Section 65** (which provides for the incorporation of material by reference) applies to airworthiness directives as if airworthiness directives were rules.
- (2) For the purposes of **subsection (1)**, every reference in **section 65** to a rule must be treated as a reference to an airworthiness directive.

Subpart 3—Transport instruments

349 Director may make transport instruments

- (1) The Director may—
 - (a) make a transport instrument for the purposes referred to in **subsection (2)**; and
 - (b) amend or revoke a transport instrument made under **paragraph (a)**.
- (2) The purpose of transport instrument are to define terms, prescribe matters, or make other provision in relation to any activity or thing, including (without limitation) listing standards, controlling activities, setting requirements, procedures, or means of compliance, setting competency requirements, and providing for exceptions.
- (3) A transport instrument made under this section—
 - (a) has legal effect only to the extent that any of the regulations or rules refer to it; and
 - (b) is treated as part of a regulation or rule that refers to it.
- (4) For the purposes of **subsection (3)**, regulations or rules may refer to—
 - (a) a particular transport instrument as amended or replaced from time to time; or
 - (b) any transport instrument that may be made for the purposes of regulations or rules (even if the instrument has not been made at the time the regulations or rules are made).
- (5) Noting in this section limits **section 56(4)** or **section 329(4)** (which provide among other things for rules or regulations to provide for the Director to impose requirements).

Please see Ministry of Transport commentary document: *Transport instruments*

Compare: 2015 No 70 ss 227(1), (2), 228

350 Procedures relating to transport instruments

- (1) The Director must not make a transport instrument unless the Director is satisfied that all persons and organisations that the Director thinks appropriate have been consulted, having regard to the subject matter of the proposed transport instrument.
- (2) The Director may approve an amendment to a transport instrument (including approving incorporation of amendments to, or updates of, documents incorporated by reference) without complying with **subsection (1)** if the Director is satisfied that the amendment is minor or technical.
- (3) A transport instrument is a disallowable instrument, but not a legislative instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act but only to the extent that the instrument is given effect to in accordance with **section 349(3)**.

- (4) The Director must, as soon as practicable after a transport instrument is made,—
- (a) notify the transport instrument in the *Gazette*; and
 - (b) ensure that a copy of the transport instrument is available—
 - (i) free of charge on an Internet site maintained by or on behalf of the regulator; and
 - (ii) for purchase in hard copy at a reasonable charge.
- (5) A failure to comply with **subsection (4)** does not affect the validity of a transport instrument.

Compare: 2015 No 70 s 228

351 Incorporation of material in transport instruments

- (1) **Section 65** (which provides for the incorporation of material by reference) applies to transport instruments as if transport instruments were rules.
- (2) For the purposes of **subsection (1)**, every reference in **section 65** to a rule must be treated as a reference to a transport instrument.

Subpart 4—Cape Town Convention and Aircraft Protocol

352 Interpretation in this Part

- (1) In this Part, unless the context otherwise requires,—

Aircraft Protocol means the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment—

- (a) that opened for signature at Cape Town on 16 November 2001; and
- (b) the English text of which is set out in **Schedule 7**

Cape Town Convention means the Convention on International Interests in Mobile Equipment—

- (a) that opened for signature at Cape Town on 16 November 2001; and
- (b) the English text of which is set out in **Schedule 6**

Contracting State means a State that is a party to the Cape Town Convention and the Aircraft Protocol

declaration means a declaration made by New Zealand under the Cape Town Convention or the Aircraft Protocol

de-registration request means a request for the removal of the registration of an aircraft from the New Zealand Aircraft Register

removal request means a request for the removal of an irrevocable de-registration and export request authorisation from the New Zealand Aircraft Register.

- (2) In this Part, any term defined in the Cape Town Convention or the Aircraft Protocol and used in this Part has the same meaning as in the Cape Town Convention or the Aircraft Protocol.

Compare: 1990 No 98 s 104

353 Cape Town Convention and Aircraft Protocol to have force of law

- (1) The provisions of the Cape Town Convention and the Aircraft Protocol have the force of law in New Zealand.
- (2) Despite **subsection (1)**, the operation of the Cape Town Convention and the Aircraft Protocol in New Zealand is subject to any declaration that New Zealand has made under the Convention or Protocol.

Compare: 1990 No 98 s 105

354 Cape Town Convention and Aircraft Protocol to have effect in place of New Zealand law in certain circumstances

- (1) The provisions of the Cape Town Convention and the Aircraft Protocol have effect in place of any other New Zealand law to the extent that the Convention or the Protocol applies to a matter to which the other law applies.
- (2) Despite **subsection (1)**, the operation of the Cape Town Convention and the Aircraft Protocol in New Zealand is subject to any declaration that New Zealand has made under the Convention or Protocol.

Compare: 1990 No 98 s 106

355 Governor-General may issue copies of declarations

- (1) If New Zealand makes a declaration under the Cape Town Convention or the Aircraft Protocol, the Governor-General may, by Order in Council, issue a copy of the declaration.
- (2) An Order in Council made under **subsection (1)** must state the date on which—
- (a) New Zealand made the relevant declaration; and
 - (b) the declaration takes or took effect.
- (3) An Order in Council made under **subsection (1)** is a legislative instrument, but not a disallowable instrument, for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

Compare: 1990 No 98 s 107

356 Certificates about Contracting States

- (1) The Secretary of Foreign Affairs and Trade may sign a certificate that states whether, in respect of any specified day or period,—
- (a) a State is a Contracting State:

- (b) a declaration made under the Cape Town Convention or the Aircraft Protocol is effective in respect of a Contracting State and, if so, that specifies the contents of that declaration.
- (2) A certificate signed or otherwise authenticated under **subsection (1)** is conclusive evidence for all purposes of the matters stated in the certificate.

Compare: 1990 No 98 s 108

357 Irrevocable de-registration and export request authorisations

- (1) A debtor must submit an irrevocable de-registration and export request authorisation to the Director if the debtor—
 - (a) is the holder of a certificate of registration for a New Zealand registered aircraft; and
 - (b) issues an irrevocable de-registration and export request authorisation substantially in the form annexed to the Aircraft Protocol.
- (2) A submission under **subsection (1)** must be accompanied by the prescribed fee (if any).
- (3) If the Director receives a submission under **subsection (1)**, the CAA must record the irrevocable de-registration and export request authorisation on the New Zealand Register of Aircraft.

Compare: 1990 No 98 s 109

358 De-registration requests

- (1) An authorised party (or the authorised party's certified designee) may, in accordance with the relevant irrevocable de-registration and export request authorisation recorded under **section 357(3)**, submit a de-registration request in the prescribed form to the Director.
- (2) In a request submitted under **subsection (1)**, the authorised party must certify in writing that—
 - (a) the aircraft is not subject to any registered interest that ranks in priority to the international interest that the authorised party holds in the aircraft; or
 - (b) if the aircraft is subject to a registered interest that ranks in priority to the international interest that the authorised party holds in the aircraft, the holder of the higher-ranking registered interest has consented to the de-registration and exportation of the aircraft.
- (3) A request under **subsection (1)** must be accompanied by the prescribed fee (if any).
- (4) If the Director receives a de-registration request under **subsection (1)** that is accompanied by the applicable statement specified in **subsection (2)**, the Director must revoke the relevant certificate of registration—
 - (a) as soon as practicable; but

- (b) in any event, within 5 working days of receiving the request.
- (5) If the Director revokes a certificate of registration under **subsection (4)**, the CAA must remove the registration from the New Zealand Register of Aircraft.
- Compare: 1990 No 98 s 110

359 Removal requests

- (1) An authorised party (or the authorised party's certified designee) may, in accordance with the relevant irrevocable de-registration and export request authorisation recorded under **section 357(3)**, submit a removal request in writing to the Director.
- (2) A debtor may, in accordance with the relevant irrevocable de-registration and export request authorisation recorded under **section 357(3)**, submit a removal request in writing to the Director if the debtor—
- (a) has obtained the written consent of the authorised party to do so; and
- (b) provides a copy of the written consent to the Director with the removal request.
- (3) A removal request under **subsection (1) or (2)** must be accompanied by the prescribed fee (if any).
- (4) If the Director receives a removal request under **subsection (1) or (2)**, the Director must cancel the relevant irrevocable de-registration and export request authorisation—
- (a) as soon as practicable; but
- (b) in any event, within 5 working days of receiving the request.
- (5) If the Director cancels an irrevocable de-registration and export request authorisation under **subsection (4)**, the CAA must remove the authorisation from the New Zealand Register of Aircraft.
- Compare: 1990 No 98 s 111

360 Director must prescribe and publish forms for de-registration requests

The Director must prescribe and publish, on an maintained by, or on behalf of, the CAA, the forms that an authorised party (or the authorised party's certified designee) must use to make a request for the de-registration of an aircraft under **section 358**.

Compare: 1990 No 98 s 112

361 Director may not exercise certain powers

The Director must not exercise any power that the Director may exercise under this Act in relation to a certificate of registration if the exercise of that power would interfere with, or be contrary to, any right or obligation arising under this Part.

Compare: 1990 No 98 s 113

Subpart 5—Rights of appeal

362 Appeal to District Court

- (1) A person may appeal to the District Court against a specified decision made under this Act by the Director if another section of this Act gives that person a right of appeal under this section, and—
 - (a) the person—
 - (i) is a person in respect of whom the decision was made; and
 - (ii) is dissatisfied with the decision; or
 - (b) the person is the owner, operator, or person for the time being in charge of the aircraft or aeronautical product that is the subject of the decision.
- (2) The court may confirm, reverse, or modify the decision appealed against.
- (3) In this section, a **specified decision** is a decision—
 - (a) concerning the grant, issue, revocation, or suspension of an aviation document:
 - (b) to impose conditions on an aviation document:
 - (c) to exercise powers under **section 255** (which relates to the power of the Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions):
 - (d) to decline to register an aircraft under **section 33**:
 - (e) concerning the issue of a medical certificate under **Schedule 2**:
 - (f) to impose or amend conditions, restrictions, or endorsements on a medical certificate under **clause 15(a) of Schedule 2**:
 - (g) to disqualify a licence holder under **clause 15(c) of Schedule 2**:
 - (h) to revoke a medical certificate under **clause 15(d) or clause 16 of Schedule 2**:
 - (i) concerning the implementation of the results of a report by the convener under **clause 21 or 4 of Schedule 2**:
 - (j) to amend a New Zealand AOC with ANZA privileges or withdraw those privileges under **section 84(3)**.

Compare: 1990 No 98 s 66(1), (2), (5)

363 Consequences of appeal to District Court

- (1) If an appeal to the District Court is lodged under **section 362**, pending the determination of the appeal,—
 - (a) every decision of the Director appealed against continues in force; and
 - (b) no person is excused from complying with any of the provisions of this Act on the ground that an appeal is pending.

- (2) Even though an appeal under this section may have been determined in favour of the appellant, the Director may do any of the things specified in **subsection (3)**—
 - (a) subject to the like right of appeal; and
 - (b) on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.
- (3) The Director may refuse to grant, revoke, suspend, disqualify, or otherwise deal with, in accordance with the provisions of this Act,—
 - (a) any aviation document; or
 - (b) any person to which or to whom the appeal related; or
 - (c) any aviation document or approval granted or restored in compliance with the decision of the District Court on the appeal.
- (4) **Subsection (3)** is subject to **subsection (2)**.
Compare: 1990 No 98 s 66(3), (4)

364 Appeal to High Court on question of law

- (1) A party to an appeal under **section 362** may appeal to the High Court on a question of law.
- (2) The High Court Rules 2016 and sections 126 to 130 of the District Court Act 2016, with all necessary modifications, apply to an appeal under **subsection (1)** as if it were an appeal under section 124 of that Act.
Compare: 1990 No 98 s 69

365 Further appeal to Court of Appeal

- (1) A party to an appeal on a question of law under **section 364** may appeal to the Court of Appeal on that question of law—
 - (a) with the leave of the High Court; or
 - (b) if the High Court refuses leave, with special leave of the Court of Appeal.
- (2) On any appeal under **subsection (1)**, the Court of Appeal may make an order or determination as it thinks fit.
- (3) The decision of the Court of Appeal is final—
 - (a) on an appeal under this section; or
 - (b) on an application for special leave to appeal to the court.
- (4) Subject to this section, the procedure in respect of any appeal under this section must be in accordance with the rules of court.
Compare: 1990 No 98 s 70

Subpart 6—Other miscellaneous provisions

*Delegations***366 Delegation of Minister's functions or powers to CAA**

- (1) The Minister may delegate to the CAA all or any of the Minister's functions and powers under this Act.
- (2) Without limiting **subsection (1)**, the Minister may delegate to the CAA the whole or any part of the Minister's function of administering New Zealand's participation in the Convention and any other international aviation convention, agreement, or understanding to which New Zealand is a party.
- (3) A delegation under this section must be in writing.
- (4) A delegation under this section must not include the power to delegate under this section.
- (5) The power of the Minister to delegate under this section—
 - (a) is subject to **section 52** and to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but
 - (b) does not limit any power of delegation conferred on the Minister by any other Act.
- (6) Despite any delegation made under this section, nothing—
 - (a) affects or prevents the Minister's performance of any function or the exercise of any power that the Minister has delegated; and
 - (b) affects the responsibility of the Minister for the actions of any person acting under the delegation.

Compare: 1990 No 98 s 22(1)–(4), (7)

367 Further provisions regarding delegation of Minister's functions or powers to CAA

- (1) The CAA may perform any functions or exercise the powers delegated to the CAA—
 - (a) in the same manner and with the same effect as if they had been conferred on the CAA directly by this section and not by delegation; and
 - (b) subject to any directions given or conditions imposed by the Minister.
- (2) If the CAA purports to act under any delegation under **section 366**, the CAA, must, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (3) The CAA must not delegate any functions or powers delegated to the CAA by the Minister without the written consent of the Minister.

Compare: 1990 No 98 s 22(5), (6), (8)

368 Delegation of Director's functions or powers to employees of CAA

- (1) The Director may delegate to any employee of the CAA any of—
 - (a) the Director's functions and powers—
 - (i) under this Act; or
 - (ii) under any other Act; or
 - (iii) under the regulations; or
 - (iv) under the rules; or
 - (b) the functions or powers delegated to the Director under this Act.
- (2) A delegation under this section must be in writing.
- (3) Despite **subsection (1)**, the Director must not delegate the power under **section 90** to revoke an aviation document.
- (4) The Director must not delegate any functions or powers delegated to the Director by the Minister without the written consent of the Minister.

Compare: 1990 No 98 s 23A(1), (2), (4), (6)

369 Further provisions regarding delegation of Director's functions or powers to employees of CAA

- (1) A delegation under **section 368** may be made—
 - (a) to a specified employee of the CAA; or
 - (b) to employees of a specified class; or
 - (c) to the holder or holders for the time being of a specified office; or
 - (d) to the holder or holders for the time being of a specified class of offices of the CAA.
- (2) A delegation under **section 368**, until revoked, continues in force according to its tenor even if the employee of the CAA by whom it was made has ceased to hold office.
- (3) For the purposes of this section and **section 368**, sections 73(4) and 74 to 76 of the Crown Entities Act 2004 apply as if references to the board were references to the Director, with all necessary modifications.

Compare: 1990 No 98 s 23A(5), (7), (8)

370 Delegation of Director's functions or powers to persons outside CAA

- (1) The Director may delegate to any person who is not an employee of the CAA any of the Director's functions and powers—
 - (a) under this Act; or
 - (b) under the regulations; or
 - (c) under the rules.
- (2) The Director must not delegate—

- (a) the power under **section 90** to revoke aviation documents; or
 - (b) the power under **section 338** to suspend or revoke aviation documents; or
 - (c) the power under **section 295** to issue infringement notices.
- (3) A function or power that may be delegated under **subsection (1)** to a person in New Zealand who is not an employee of the CAA may be delegated under that subsection to an officer of CASA for the purpose of enabling that officer to perform the function or exercise the power in Australia in respect of New Zealand AOCs with ANZA privileges.
- (4) A delegation under this section must be in writing.
- (5) A delegation must not be made under this section without the written consent of the Minister.
- (6) In any case where the Director has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to any other person any of those functions or powers as are so approved.

Compare: 1990 No 98 s 23B (2)–(5)

371 Further provisions regarding delegation of Director’s functions or powers to persons outside CAA

- (1) A delegation under **section 370** may be made—
- (a) to a specified person; or
 - (b) to persons of a specified class; or
 - (c) to the holder or holders for the time being of a specified office; or
 - (d) to the holder or holders for the time being of a specified class of office.
- (2) A delegation under **section 370** must be given for a specified period but may be revoked at any time by written notice.
- (3) A person purporting to act under any delegation under **section 370** must, when reasonably requested to do so, produce evidence of the person’s authority to so act.
- (4) A person who exercises any function or power under a delegation made under **section 370** or under section 73 of the Crown Entities Act 2004 may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.
- (5) For the purposes of this section and **section 370**, sections 73(4) and 74 to 76 of the Crown Entities Act 2004 apply as if references to the board were references to the Director, with all necessary modifications.

Compare: 1990 No 98 s 23B (6)–(12)

372 Restrictions on delegations

Despite **sections 368 to 371** of this Act or section 73 of the Crown Entities Act 2004,—

- (a) neither the CAA nor the Director may delegate any function or power that does not relate to the functions or powers of AvSec to any person in AvSec without the prior written approval of the Minister;
- (b) neither the CAA nor the Director may delegate any function or power in relation to AvSec to any person outside AvSec without the prior written approval of the Minister.

Compare: 1990 No 98 s 23C

*Confidentiality of information***373 Confidentiality of information**

- (1) This section applies if the CAA obtains information or gains access to a document in performing or exercising any function, duty, or power under this Act or the regulations or rules.
- (2) The CAA must not publish or disclose, or direct any person to publish or disclose, any information or document to which this section applies unless—
 - (a) the publication or disclosure of the information or document is for the purpose of promoting any of the main or additional purposes of this Act, and the CAA or the person ensures that the information does not identify, and could not reasonably be expected to identify, any particular person; or
 - (b) the information or document is available to the public under any enactment or is otherwise publicly available; or
 - (c) the information is in a statistical or summary form; or
 - (d) the publication or disclosure of the information or document is—
 - (i) for the purposes of, or in connection with, the performance or exercise of any function, duty, or power conferred or imposed on the CAA or the person under this Act or the regulations or rules; or
 - (ii) to—
 - (A) a regulatory agency or an overseas agency in accordance with **section 374**; or
 - (B) TAIC in accordance with **section 104**; or
 - (iii) to a person who the person disclosing the information is satisfied has a proper interest in receiving the information or document; or
 - (iv) with the consent of the person to whom the information or document relates or of the person to whom the information or document is confidential; or

- (v) required or authorised by law or an order of a court; or
 - (vi) required to meet New Zealand's obligations in relation to reporting of an accident involving aircraft, or a serious incident in accordance with the provisions of the Convention.
- (3) The person must not publish or disclose, or direct a person to publish or disclose, any information or document under **subsection (2)(d)(iii)** unless the person is satisfied that appropriate protections are or will be in place for the purpose of maintaining the confidentiality of the information or document (in particular, information that is personal information within the meaning of the Privacy Act 1993).

Please see Ministry of Transport commentary document: *Protection of safety information (a 'Just Culture' approach)*

Information sharing

374 Sharing of information between CAA, regulatory agencies, and overseas agencies

- (1) The CAA may, subject to any enactment, provide a regulatory agency or overseas agency with any information, or a copy of any document, that it—
 - (a) holds in relation to the performance or exercise of its functions, duties, or powers under or in relation to this Act or the regulations or rules; and
 - (b) considers may assist the regulatory agency in the performance or exercise of the regulatory agency's functions, duties, or powers under or in relation to any enactment.
- (2) The CAA may use any information, or a copy of any document, provided to it by a regulatory agency under any enactment, or by an overseas agency, in the CAA's performance or exercise of its functions, powers, or duties under this Act or the regulations or rules.
- (3) If **subsection (1) or (2)** applies, the CAA or regulatory agency (as the case may be) may impose conditions that it thinks fit relating to the provision of the information or document, including conditions relating to—
 - (a) the storage and use of, or access to, anything provided:
 - (b) the copying, returning, or disposing of copies of any documents provided.
- (4) Nothing in this section limits the Privacy Act 1993.
- (5) This section applies despite anything to the contrary in any contract, deed, or document.
- (6) In this section,—

EPA means the Environmental Protection Authority established by section 7 of the Environmental Protection Authority Act 2011

local authority has the same meaning as in section 5(1) of the Local Government Act 2002

medical officer of health—

- (a) has the same meaning as in section 2(1) of the Health Act 1956; and
- (b) includes the officers referred to in section 22 of that Act

overseas agency means an organisation in another country or territory that performs functions that correspond with, or are similar to, any of those conferred on the CAA

regulatory agency means any of the following:

- (a) the New Zealand Police;
- (b) the New Zealand Transport Agency;
- (c) Maritime New Zealand;
- (d) the EPA;
- (e) a local authority;
- (f) Fire and Emergency New Zealand;
- (g) a designated agency under the Health and Safety at Work Act 2015;
- (h) a medical examiner appointed under this Act;
- (i) medical officer of health;
- (j) the Ministry of Business, Innovation, and Employment, including any statutory officer who carries out work for that business or undertaking;
- (k) the Ministry of Health;
- (l) the Ministry of Transport;
- (m) Worksafe New Zealand.

Claim against Crown in respect of damage, loss, or injury due to service aircraft

375 Claim against Crown in respect of damage, loss, or injury due to service aircraft

- (1) This section applies if a claim is made against the Crown under the Crown Proceedings Act 1950 in respect of any damage, loss, or injury sustained or alleged to have been sustained by or through or in connection with the use of any service aircraft.
- (2) Despite **section 11, sections 39 to 42** apply with respect to the aircraft as if the applicable provisions of this Act and the rules (if any) have been complied with.
- (3) In this section, **service aircraft** has the meaning given to it in section 2 of the Crown Proceedings Act 1950.

Subpart 7—Repeals, revocations, and consequential and other amendments

Repeals

376 Repeals

The following Acts are repealed:

- (a) Civil Aviation Act 1990 (1990 No 98):
- (b) Airport Authorities Act 1966 (1966 No 51).

Revocations

377 Revocations

To come.

Consequential amendments

378 Consequential amendments

Amend the enactments specified in **Schedule 9** as set out in that schedule.

Amendments to Maritime Transport Act 1994

379 Amendments to Maritime Transport Act 1994

This subpart amends the Maritime Transport Act 1994.

380 New sections 199 and 199A inserted

After the cross-heading above section 200, insert:

199 Search and rescue operations

- (1) The Minister—
 - (a) must establish, maintain, and operate a search and rescue co-ordination centre to co-ordinate and conduct—
 - (i) an aviation search and rescue operation; and
 - (ii) a maritime search and rescue operation; and
 - (iii) any other search and rescue operation that the Minister considers appropriate; and
 - (b) may exercise any powers that may be necessary or desirable—
 - (i) for the effective co-ordination and performance of a search and rescue operation specified in **paragraph (a)**; and
 - (ii) to implement any international convention or agreement relating to search and rescue to which New Zealand is a party; and

- (c) may appoint persons to, either generally or in any particular case, participate in or co-ordinate a search and rescue operation specified in **paragraph (a)**.
- (2) The Minister may authorise the payment, out of money appropriated for the purpose by Parliament, of an amount that the Minister considers appropriate to—
 - (a) any person who assisted in a search and rescue operation specified in **subsection (1)(a)** at the request of a person appointed under **subsection (1)(c)**; or
 - (b) the owner of any vehicle, ship, or aircraft used in a search and rescue operation specified in **subsection (1)(a)** in response to a request by a person appointed under **subsection (1)(c)**.

Compare: 1990 No 98 s 14B

199A Minister may direct agencies with respect to search and rescue operations

The Minister may direct the Civil Aviation Authority or Maritime New Zealand, or any other Crown entity or government agency for which the Minister is responsible and whose functions are consistent with search and rescue operations, to do any or all of the following:

- (a) operate and maintain the search and rescue co-ordination centre established under **section 199(1)(a)**;
- (b) co-ordinate, or participate in the co-ordination of, any search and rescue operation specified in **section 199(1)(a)**;
- (c) perform, or participate in the performance of, any search and rescue operation specified in **section 199(1)(a)**;
- (d) exercise any or all of the powers of the Minister under **section 199(1)(b), (c), and (2)**.

Compare: 1990 No 98 s 14C

381 Section 431 amended (Functions of Authority)

Replace section 431(3) with:

- (3) The Authority must, if directed by the Minister under **section 199A**, do any or all of the following:
 - (a) maintain and operate the search and rescue co-ordination centre established under **section 199(1)(a)**;
 - (b) co-ordinate, or participate in the co-ordination of, any search and rescue operation specified in **section 199(1)(a)**;
 - (c) perform, or participate in the performance of, any search and rescue operation specified in **section 199(1)(a)**;
 - (d) exercise any or all of the powers of the Minister under **section 199(1)(b), (c), and (2)**.

Schedule 1

Transitional, savings, and related provisions

s 10

Part 1

Provisions relating to this Act as enacted

Drug and alcohol testing

1 Interpretation

In this clause and **clauses 2 to 8**,—

commencement date means the date on which this Act comes into force

current DAMP operator means a person who, on the commencement date, is a DAMP operator within the meaning of that term in **section 106**

existing employment agreement means an employment agreement, within the meaning of the Employment Relations Act 2000, between a current DAMP operator and a safety-sensitive worker

transition period means the period commencing on the commencement date and ending immediately before the date that is the second anniversary of the commencement date.

2 Application of **subpart 2 of Part 5** to current DAMP operator

Subpart 2 of Part 5 applies to a current DAMP operator subject to this Part.

3 Current DAMP operator must develop and submit DAMP for approval

- (1) On or before the relevant date prescribed by the rules, a current DAMP operator must develop and submit a DAMP that meets the requirements of **section 107** for approval by the Director under this Part.
- (2) The DAMP submitted under **subclause (1)** must include a proposed date of implementation.

4 Approval of DAMP

- (1) If the DAMP submitted under **clause 3** meets the requirements of this Act and any requirements prescribed in the rules, the Director must approve the DAMP.
- (2) When approving the DAMP the Director must specify the implementation date for the DAMP, which must be—
 - (a) the date proposed by the operator under **clause 3(2)**; or
 - (b) such other date that may be agreed between the Director and the operator.
- (3) No implementation date may be later than the date that is the second anniversary of the commencement date.

5 Date of application of subpart 2 of Part 5 to current DAMP operator

Subpart 2 of Part 5 applies in respect of a current DAMP operator—

- (a) on and from the date that is the second anniversary of the commencement date; or
- (b) if another date has been specified as the implementation date for the operator's DAMP under **clause 4**, on and from that date.

6 DAMP of no effect unless a DAMP approved under this Part

- (1) No DAMP of a current DAMP operator has effect before or after the end of the transition period unless the operator has had a DAMP approved under this Part.
- (2) **Subclause (1)** applies until the first renewal of the operator's aviation document that occurs after the end of the transition period.

7 DAMP not to be considered in renewal of aviation document during transition period

If the operator applies during the transition period for a renewal of the operator's aviation document the renewal must be decided without regard to the operator's obligations under **clause 3** to develop and submit a DAMP.

8 Current DAMP operators: Employment Relations Act 2000

- (1) This clause applies to a current DAMP operator who is the employer in an existing employment agreement with a safety-sensitive worker.
- (2) The operator may include in the agreement a provision that allows the operator to carry out random testing of the worker in accordance with the DAMP developed by the operator under **clause 3**.
- (3) The DAMP provision included in an employment agreement under **subclause (2)** may contain such details—
 - (a) as the operator and worker think fit, in the case of an individual employment agreement; or
 - (b) as are mutually agreed on by the operator and the relevant union.

Please see Ministry of Transport commentary document: *Drug and alcohol regulation*

Schedule 2

Medical certificates

s 100

Interpretation

1 Interpretation

(1) In this Schedule, unless the context otherwise requires,—

accredited medical conclusion means the conclusion reached by 1 or more medical experts acceptable to the Director for the purposes of the case concerned, in consultation with flight operations or any other experts that may be necessary

applicant means a person who has applied for a medical certificate; and includes a licence holder who has reapplied for a medical certificate

aviation examiner means a person designated under **clause 28(2)**

convenor means the person designated under **clause 29** who is exercising the duties of the convenor under this Schedule

deputy convenor means a medical practitioner appointed as deputy convenor by the Minister under **clause 29**

licence holder means a person who—

(a) holds an aviation document or is permitted under the rules to operate an aircraft solo as a pilot; and

(b) holds, or is required under the rules to hold, a medical certificate

medical certificate means a medical certificate—

(a) issued by the Director under this Schedule to an applicant or licence holder; or

(b) recognised by the Director under the rules

medical examiner means a medical examiner appointed under **clause 28(1)**

operator includes an air traffic service provider

specified examination means—

(a) an examination of visual and colour perception; or

(b) an examination of hearing; or

(c) a psychological examination; or

(d) any other class of examination prescribed in the rules.

(2) A medical certificate is not an aviation document.

(3) In this Schedule, the phrase privileges to which a medical certificate relates, and its variations, means those privileges under this Act that may be exercised by a person who—

- (a) holds a current aviation document; or
- (b) is permitted under the rules to operate an aircraft solo as a pilot.

Compare: 1990 No 98 s 27A

Issuing of medical certificates

2 Application for medical certificate

- (1) A person may apply to the Director for the issue of a medical certificate under this Schedule.
- (2) The application must be in accordance with the requirements of the rules.
- (3) The applicant must have a medical examination by a medical examiner who must forward the medical examiner's report to the Director.

Compare: 1990 No 98 s 27D(1)

3 Powers of Director to require tests, examinations, and information for purpose of assessing application

- (1) The Director may require the applicant, at the applicant's expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, that the Director reasonably considers necessary to assess the applicant.
- (2) The Director may, by written notice, require any applicant to disclose, or authorise the disclosure of, any information relevant to the applicant's medical condition or history for the purpose of determining whether or not the applicant is eligible for a medical certificate.

Compare: 1990 No 98 ss 27B(5)(b), 27D(2)

4 Referral to convener by agreement

- (1) An application for a medical certificate may, by agreement in writing between the Director and the applicant, be referred to the convener for advice before the Director makes a decision on the application.
- (2) If an application is referred to the convener under **subclause (1)**,—
 - (a) the deadline imposed on the Director under **clause 6** does not apply; and
 - (b) the convener must,—
 - (i) as soon as practicable, assess the application; and
 - (ii) draw on the advice and expertise of at least 1 person who the convener is satisfied is suitably qualified and experienced to assist the convener in the convener's assessment of the application; and
 - (iii) require the applicant, at the applicant's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical infor-

- mation, that the convener considers reasonably necessary to carry out the convener's assessment of the application; and
- (iv) have regard to the purposes of this Act and the Director's duties under this Act when making the convener's assessment of the application; and
 - (v) receive and consider the relevant evidence provided under **subclause (3)**; and
 - (vi) as soon as practicable, report the results of the convener's assessment to the Director in writing.
- (3) The applicant or Director may, either directly or through the applicant's or Director's medical experts, participate in the convener's assessment of the application by providing relevant evidence to the convener regarding any medical matter at issue with respect to that application.
- (4) The convener may not assess the application if the convener—
- (a) acted as an aviation examiner or medical examiner of the applicant with respect to that person's application for a medical certificate; or
 - (b) has any other conflict of interest with respect to the person's medical certificate.
- (5) The Director must, within 10 working days of receiving the convener's report,—
- (a) consider the convener's report; and
 - (b) make the Director's decision under **clause 5** in writing; and
 - (c) provide to the applicant—
 - (i) a copy of the convener's report; and
 - (ii) a copy of the Director's decision.

Compare: 1990 No 98 s 27M

5 Decision of Director on application for medical certificate

- (1) Before issuing a medical certificate, the Director must have regard to the report of the medical examiner and any other information that may be relevant.
- (2) If the Director is satisfied that the applicant meets the medical standards prescribed in the rules, the Director must issue a medical certificate unless the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.
- (3) The Director may, relying on flexibility, issue a medical certificate to the applicant.
- (4) In **subclause (3)**, **flexibility** means the use of judgment to issue a medical certificate if the following conditions are fulfilled:

- (a) an accredited medical conclusion 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:
 - (i) a failure by the applicant to meet the medical standards prescribed in the rules;
 - (ii) a respect in which the Director is not satisfied as to whether or not the applicant meets the medical standards prescribed in the rules.
 - (b) the relevant ability, skill, and experiences of the applicant and operational conditions have been given due consideration; and
 - (c) the medical certificate is endorsed with any conditions, restrictions, or endorsements when the safe performance of the applicant's duties is dependent on compliance with those conditions, restrictions, or endorsements.
- (5) The Director may impose any conditions, restrictions, or endorsements on a medical certificate issued under this clause.

Compare: 1990 No 98 s 27B(1)–(4), (5)(a)

6 Time requirement for decision on medical certificate

- (1) The Director must make a decision on an application for a medical certificate as soon as practicable, but no later than 30 working days after the date of receiving the report of the medical examiner.
- (2) If the Director under **clause 3** requires an applicant to undertake any other test, examination, or re-examination, or to provide any medical information, the period in which the Director must make a decision in relation to the medical certificate does not include the number of days that are required to conduct and deliver the results of the test, examination, or re-examination, or to provide the medical information, to the Director.

Compare: 1990 No 98 s 27B(1), (6)

7 Expiry of medical certificate

- (1) The medical certificate has an effective date and duration as provided by the rules.
- (2) The Director may, on receiving an application for a medical certificate from a licence holder before the expiry of the licence holder's existing medical certificate, grant an extension of no more than 60 days from the expiry date of the licence holder's existing medical certificate with any additional conditions, restrictions, or endorsements that the Director considers necessary.

Compare: 1990 No 98 s 27E

Circumstances where Director must be advised of changes in medical condition of licence holder

8 Changes in medical condition of licence holder

- (1) If a licence holder is aware of, or has reasonable grounds to suspect, any change in the licence holder's medical condition or the existence of any previously undetected medical condition that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the licence holder—
 - (a) must advise the Director of the change as soon as practicable; and
 - (b) must not exercise the privileges to which the licence holder's medical certificate relates.
- (2) If an aviation examiner or medical examiner or operator is aware of, or has reasonable grounds to suspect, any change in the medical condition of a licence holder or the existence of any previously undetected medical condition in the licence holder that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the aviation examiner or medical examiner or operator must advise both the licence holder and the Director of the change as soon as practicable.
- (3) If a medical practitioner has reasonable grounds to believe that a person is a licence holder and is aware, or has reasonable grounds to suspect, that the licence holder has a medical condition that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the medical practitioner must, as soon as practicable,—
 - (a) inform the licence holder that the Director will be advised of the condition; and
 - (b) advise the Director of the condition.
- (4) **Subclauses (1) to (3)** are subject to any directions that the Director may issue under **clause 25(1)(b)**.

Compare: 1990 No 98 s 27C(1)–(3)

Protection from liability for aviation examiner, medical examiner, or medical practitioner

9 Protection from liability for aviation examiner, medical examiner, or medical practitioner

- (1) An aviation examiner or medical examiner or a medical practitioner is not subject to any civil or criminal liability for—
 - (a) doing an indemnified act in good faith in the course of carrying out the examiner's or practitioner's functions under this Schedule; or
 - (b) doing an indemnified act in good faith in the course of answering any questions put to the examiner or practitioner by the Director that—

- (i) concern a licence holder; and
 - (ii) are relevant to any action the Director may take under this Schedule.
- (2) In this clause, **indemnified act** means any of the following acts:
 - (a) advising the Director, whether in writing or otherwise, that a licence holder—
 - (i) may not meet the medical standards prescribed in the rules; or
 - (ii) may be unable to exercise safely the privileges to which the licence holder's medical certificate relates:
 - (b) expressing to the Director, whether in writing or otherwise, an opinion that the licence holder who the aviation examiner or medical examiner or medical practitioner has examined or treated may be unable to exercise safely the privileges to which the licence holder's medical certificate relates because of—
 - (i) illness or any bodily or mental infirmity, defect, incapacity, or risk of incapacity suffered by the licence holder; or
 - (ii) the effect on the licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity:
 - (c) stating to the Director, whether in writing or otherwise,—
 - (i) the nature of a licence holder's illness, infirmity, defect, incapacity, or risk of incapacity; or
 - (ii) the effect on a licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity.

Compare: 1990 No 98 s 27C(4)–(5)

Investigation of medical condition of licence holder

10 Investigation of medical condition of licence holder

- (1) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of the licence holder's medical certificate, if the Director has reasonable grounds to believe that the licence holder—
 - (a) may be unable to exercise safely the privileges to which the medical certificate relates; or
 - (b) has obtained the medical certificate fraudulently.
- (2) The Director may, by written notice, require any licence holder, at the CAA's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical infor-

mation, at any time before the expiry of the licence holder's medical certificate if—

- (a) the Director—
 - (i) is monitoring licence holders on the basis of random selection from the register of current medical certificates that is required to be maintained under **clause 23**; or
 - (ii) has reasonable grounds to believe that the licence holder's medical certificate was issued in error; or
 - (iii) is monitoring aviation examiners or medical examiners for compliance with the requirements of this Act or the rules; and
 - (b) the Director has reasonable grounds to believe that any of those tests, examinations, re-examinations, or medical information are necessary to investigate the matters specified in **paragraph (a)**.
- (3) The Director may, by written notice, require any licence holder to disclose, or authorise the disclosure of, any relevant information for the purpose of determining whether or not the licence holder—
- (a) meets the medical standards prescribed in the rules; or
 - (b) is able to exercise safely the privileges to which the medical certificate relates.

Compare: 1990 No 98 s 27H(1), (3), (4)

11 Investigation of medical condition of licence holder whose medical certificate was issued by medical examiner

- (1) This clause applies if any medical certificate held by the licence holder was issued by a medical examiner to whom the authority to issue medical certificates was delegated by the Director under **clause 27**.
- (2) The Director—
 - (a) may, within 60 days after the date the medical certificate was issued, by written notice to the licence holder, withdraw the medical certificate if the Director requires a licence holder to supply additional medical information; and
 - (b) must decide whether to reissue the medical certificate in accordance with **clause 5**.

Compare: 1990 No 98 s 27H(2)

Revocation, suspension, and amendment of medical certificate

12 Revocation, suspension, and amendment of medical certificate

- (1) If the Director has reasonable grounds to believe that a licence holder may be unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director may, by written notice to the licence holder,—

- (a) suspend any medical certificate issued to the licence holder; or
 - (b) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.
- (2) If the Director has reasonable grounds to believe that a licence holder is unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director must, by written notice to the licence holder,—
- (a) suspend any medical certificate issued to the licence holder; or
 - (b) revoke any medical certificate issued to the licence holder; or
 - (c) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.
- (3) If the Director has reasonable grounds to believe that a person who has been delegated authority under **clause 27** to issue a medical certificate has issued a medical certificate other than in accordance with this Schedule or the rules or the terms of the delegated authority, the Director—
- (a) may, by written notice to the licence holder,—
 - (i) suspend any medical certificate issued to the licence holder; or
 - (ii) revoke any medical certificate issued to the licence holder; or
 - (iii) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder; and
 - (b) may, by written notice to the person with delegated authority, revoke that person's delegated authority.
- (4) Any notice issued under this clause must state the grounds for the Director's decision.

Compare: 1990 No 98 s 27I(1)–(4)

13 Duration of notice of suspension

- (1) A notice of suspension issued under **clause 12(1)(a), (2)(a), or (3)(a)(i)** remains in force until the Director determines what action, if any, referred to in **clause 15** is to be taken.
- (2) Despite **subclause (1)**, the suspension expires 10 working days after the date that it is imposed unless, before the expiry of that 10-working-day period, the Director extends the suspension for a further specified period not exceeding 10 working days.
- (3) The aggregate suspension period must not exceed 20 working days after the date on which the suspension is imposed.

Compare: 1990 No 98 s 27I(5)

14 Duration of conditions, restrictions, or endorsement imposed or made

- (1) Any conditions, restrictions, or endorsements that are imposed or made under **clause 12(1)(b), (2)(c), or (3)(a)(iii)** remain in force until the Director determines what action, if any, referred to in **clause 15** is to be taken.
- (2) Despite **subclause (1)**, any of those conditions, restrictions, or endorsements expire 10 working days after the date that they are imposed unless, before the expiry of that 10-working-day period, the Director extends the conditions, restrictions, or endorsements for a further specified period not exceeding 10 working days.
- (3) The aggregate period must not exceed 20 working days after the date on which the conditions, restrictions, or endorsements are imposed.

Compare: 1990 No 98 s 27I(6)

15 Further determination of Director after notice under clause 8

If a notice is issued under **clause 8(1), (2), or (3)**, the Director may, by written notice, take 1 or more of the following actions:

- (a) impose or amend conditions, restrictions, or endorsements for a specified period:
- (b) withdraw any conditions, restrictions, or endorsements:
- (c) disqualify the licence holder from holding the medical certificate for a specified period:
- (d) revoke the medical certificate:
- (e) cancel the suspension.

Compare: 1990 No 98 s 27I(7)

16 Director may revoke medical certificate if licence holder fails to comply with demand under clause 3

The Director may, by written notice, revoke a medical certificate if a licence holder fails, without reasonable excuse, to comply with a demand under **clause 3** within a reasonable period of time.

Compare: 1990 No 98 s 27I(11)

17 Director may notify other aviation document holders if medical certificate revoked, or conditions, restrictions, or endorsement imposed or made

If the Director issues a notice under **clause 8, 15, or 16**, the Director—

- (a) must also, if practicable, notify any aviation document holder affected by the notice, other than the licence holder, if the Director reasonably considers it necessary for reasons of aviation safety; and
- (b) may notify any other affected aviation document holder.

Compare: 1990 No 98 s 27I(10)

18 Surrender of medical certificate revoked, withdrawn, or suspended

A person who has had the person's medical certificate revoked, withdrawn, or suspended or who is disqualified from holding the medical certificate for a specified period must surrender the medical certificate to the Director, a person authorised by the Director, or a constable.

Compare: 1990 No 98 s 27I(9)

*Reviews and appeals in relation to medical certification***19 Review of decisions regarding applications for medical certificates**

An applicant for a medical certificate may ask the convener to review—

- (a) a decision made under **clause 3(2)**; or
- (b) a decision of the Director under **clause 5** other than a decision where the application concerned was referred to a convener under **clause 4**.

Compare: 1990 No 98 s 27L(1)

20 Review of decisions regarding revocation, suspension, or amendment of medical certificate

A licence holder may ask the convener to review any decision made under any of **clauses 12 to 16**, other than a decision made under—

- (a) **clause 12(1)**; or
- (b) **clause 12(2)(a)**; or
- (c) **clause 12(2)(c)**; or
- (d) **clause 12(3)(a)(i)**; or
- (e) **clause 12(3)(a)(iii)**.

Compare: 1990 No 98 s 27L(1)

21 Procedure for review

- (1) An application for review under **clause 19 or 20** must be in writing and be made within 20 working days of the date of the decision.
- (2) The convener must, as soon as practicable, review the decision.
- (3) The convener—
 - (a) must draw on the advice and expertise of at least 1 person who the convener is satisfied is suitably qualified and experienced to assist the convener in the convener's assessment of the decision that is under review; and
 - (b) must have regard to the purposes of this Act and the Director's duties under this Act when carrying out the convener's review of the decision; and
 - (c) may require the person who asked for the review, at that person's expense, to undertake any other tests, examinations, or re-examinations

- conducted by any suitably qualified and experienced person, or to provide any medical information, as the convener considers reasonably necessary to carry out the convenor's review of the decision; and
- (d) must receive and consider the relevant evidence provided under **subclause (4)**.
- (4) The licence holder or applicant or Director may, either directly or through the applicant's or Director's medical experts, participate in the review process by providing relevant evidence to the convener regarding any medical matter at issue with respect to the decision that is under review.
- (5) The convener must, as soon as practicable, report the results of the convenor's review to the Director in writing.
- (6) The Director must, within 10 working days of receiving the convenor's report,—
- (a) implement the results of the decision contained within the convenor's report; or
- (b) if the Director does not implement the convenor's report, notify the licence holder or applicant, in writing, of the Director's reasons for not doing so.
- (7) The convener must not review a decision made by the Director if the convener—
- (a) acted as an aviation examiner or medical examiner of the person requesting the review with respect to that person's application for a medical certificate; or
- (b) has any other conflict of interest with respect to the person's medical certificate.
- (8) Any decision by the Director under review by the convener remains in force until the Director makes a final decision under **subclause (6)**.

Compare: 1990 No 98 s 27L(2)–(8)

22 Right of appeal to District Court

A person affected by a decision of the Director under any of the following provisions has a right of appeal to the District Court under **section 362**:

- (a) **clause 3(2)**;
- (b) **clause 5**;
- (c) **clause 15**;
- (d) **clause 16**;
- (e) **clause 21(6)**.

Compare: 1990 No 98 s 27P

*General provisions***23 Register of medical certificates**

The Director must maintain a register of current medical certificates issued under this Schedule.

Compare: 1990 No 98 s 27B(7)

24 Holder of medical certificate may return certificate voluntarily

- (1) Any licence holder may return the licence holder's medical certificate to the Director and ask the Director, in writing, to cancel the medical certificate.
- (2) If a licence holder asks the Director to cancel the licence holder's medical certificate, the Director must—
 - (a) cancel the medical certificate; and
 - (b) update the register of current medical certificates.

Compare: 1990 No 98 s 27I(12)–(13)

25 General directions and emergency directives

- (1) The Director may, by notice in the *Gazette*, issue general directions in relation to—
 - (a) conducting examinations of applicants and licence holders, and reporting the results of those examinations to the Director; and
 - (b) providing exceptions for temporary medical conditions to the reporting requirements set out in **clause 8**; and
 - (c) specifying the requirements of examinations or other clinical matters, which must be reasonable, including, but not limited to,—
 - (i) the medical content of examinations;
 - (ii) the interpretation and analysis of results of examinations;
 - (iii) the significance of results of examinations for the purpose of determining whether or not an applicant is eligible for a medical certificate under **clause 5**.
- (2) Before issuing general directions under **subclause (1)**, the Director must consult with those persons, health professionals with aviation medical experience, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies that the Director considers appropriate.
- (3) General directions issued in relation to the matters specified in **subclause (1)(a) or (c)** must be—
 - (a) notified in writing to aviation examiners or medical examiners; and
 - (b) incorporated in a medical manual issued by the Director.
- (4) The Director may issue directives in emergency situations without consultation or prior notice in the *Gazette*, but those directives—

- (a) must be published in the *Gazette* as soon as practicable after they are issued; and
 - (b) expire on the day that is 90 days after the date on which they were issued.
- (5) The Director may reissue, under **subclause (1)**, directives issued under **subclause (4)** before or after they expire.

Compare: 1990 No 98 s 27G

26 Delegation of Director's powers under this Schedule to medical practitioners who are employees of CAA

- (1) The Director may, either generally or particularly, delegate to any suitably qualified medical practitioner who is an employee of the CAA any of the Director's functions and powers under this Part or under the rules relating to medical certification.
- (2) Every delegation under this clause must be in writing.
- (3) **Sections 368 and 369** apply to a delegation under this clause.
- (4) Any delegation under this clause may be made to a suitably qualified medical practitioner who is the holder of a specified office of the CAA.

Compare: 1990 No 98 s 27N

27 Delegation of Director's power under this Part to medical examiners who are not employees of CAA

- (1) The Director may, either generally or particularly, delegate to any suitably qualified medical examiner who is not an employee of the CAA any of the Director's functions and powers under this Part or under the rules relating to medical certification other than the power under this Part to revoke medical certificates.
- (2) Despite **subclause (1)**, the Director must delegate to suitably qualified medical examiners who are not employees of the CAA the power to issue medical certificates to any person who qualifies for a medical certificate under **clause 5(2)** or who otherwise meets the criteria for a standard medical assessment as prescribed in the rules.
- (3) Every delegation under this clause must be in writing.
- (4) Subject to any general or special directions given or conditions imposed by the Director, any medical examiner to whom any functions or powers are delegated under this clause may exercise those functions and powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.
- (5) Any delegation under this clause may be made to a specified medical examiner or a specified class of medical examiner or to the holder or holders of a specified office.

- (6) Every delegation under this clause must be given for a specified period but in any event must be revocable at will.
- (7) No delegation under this clause may—
 - (a) affect or prevent the exercise of any function or power by the Director; or
 - (b) affect the responsibility of the Director for the actions of any person acting under the delegation.
- (8) Every delegation under this clause continues in force until it is revoked or it expires, whether or not the person who made the delegation ceases to hold office.
- (9) Every person purporting to act under any delegation under this clause may, when reasonably requested to do so, produce evidence of the person's authority to so act.
- (10) The Director must not delegate under this clause any of the Director's functions or powers under **clause 4 or 21**.

Compare: 1990 No 98 s 27O

28 Designation of aviation examiners and medical examiners

- (1) The Director must designate, by issuing an aviation document under **section 68**, 1 or more medical examiners to conduct examinations under **clause 2**.
- (2) The Director may designate, by issuing an aviation document under **section 68**, 1 or more aviation examiners to conduct specified examinations that the Director may require under this Part.

Compare: 1990 No 98 s 27F

29 Appointment of convener and deputy convener

- (1) The Minister must—
 - (a) appoint a convener and a deputy convener for a period of no longer than 3 years; and
 - (b) consult with the Director, and other parties as the Minister thinks fit, before making either appointment; and
 - (c) take into account any representations made under **paragraph (b)**.
- (2) The Minister may renew an appointment as convener or deputy convener for 1 or more periods, each of which may not exceed 3 years.
- (3) If the Minister renews an appointment, the Minister must—
 - (a) consult with the Director, and other parties as the Minister thinks fit, before making the renewal; and
 - (b) take into account any representations made under **paragraph (a)**.
- (4) The convener and the deputy convener must—

- (a) be medical practitioners who are suitably qualified, and experienced or knowledgeable in civil aviation; and
 - (b) be able to represent the public interest in aviation safety.
- (5) If the convener is unavailable for any reason, the deputy convener must discharge the duties of the convener under this clause until—
- (a) the convener is available; or
 - (b) the Minister has appointed a new convener.

Compare: 1990 No 98 s 27J

30 Cancellation of appointment as convener or deputy convener

- (1) The Minister may cancel a person's appointment under **clause 29** if the person fails to discharge satisfactorily the person's duties as convener or deputy convener, as the case may be.
- (2) Before cancelling an appointment, the Minister must—
- (a) give the person written notice of the matters that constitute grounds for cancellation; and
 - (b) give the person a reasonable opportunity to make representations that explain why the person's appointment should not be cancelled; and
 - (c) take into account any representations made under **paragraph (b)**.
- (3) If the Minister cancels an appointment, the Minister must give the person written notice of the cancellation that sets out the grounds for the cancellation.

Compare: 1990 No 98 s 27K

Schedule 3

**The Warsaw Convention as amended by the Hague Protocol of 1955
and the Montreal Additional Protocols Nos 1 and 2 and Protocol
No 4 of 1975**

s 223

**Convention for the Unification of Certain Rules Relating to
International Carriage by Air**

[See Schedule 4 of the Civil Aviation Act 1990]

Schedule 4
The Guadalajara Convention

s 223

[See Schedule 5 of the Civil Aviation Act 1990]

Schedule 5
The Montreal Convention

s 223

[See Schedule 6 of the Civil Aviation Act 1990]

Schedule 6
Convention on International Interests in Mobile Equipment

s 352

[See Schedule 7 of the Civil Aviation Act 1990]

Schedule 7
**Protocol to the Convention on International Interests in Mobile
Equipment on Matters Specific to Aircraft Equipment**

s 352

[See Schedule 8 of the Civil Aviation Act 1990]

Schedule 8

Airport Authority provisions identified for removal

1 Additional powers of airport authorities

- (1) In the exercise of its powers under **section 197**, and any other powers that it has, an airport authority may from time to time—
 - (a) improve, maintain, operate, or manage an aerodrome, whether or not the aerodrome was established under this Act:
 - (b) improve, maintain, operate, or manage an aerodrome which has been added to, improved, or reconstructed by the Crown, or by some other authority, body, or person since the establishment of the aerodrome:
 - (c) establish, improve, maintain, operate, or manage an aerodrome on any land, whether or not the land is wholly or partly owned by the airport authority:
 - (d) improve, add to, alter, or reconstruct any aerodrome or any part of an aerodrome maintained or operated by the airport authority:
 - (e) establish, operate, or manage, or cause to be established, operated, or managed at aerodromes, refreshment rooms, book stalls, booking offices, travel agencies, and any other facilities that may be considered necessary:
 - (f) enter into and carry out any agreement or arrangement necessary for the exercise of any power or function conferred on the airport authority by this Act.
- (2) An aerodrome operated or managed by an airport authority must be operated or managed as a commercial undertaking.

Please see Ministry of Transport commentary document: *Modernising provisions relating to Airport Authorities*

Compare: 1966 No 51 s 4

2 Airport authority may act in conjunction with Ministers of Crown and other authorities

- (1) Any agreement under **section 206** may provide—
 - (a) for any party to the agreement to undertake or be responsible for the carrying out of the undertaking to which the agreement relates, and to enter into contracts in connection with the agreement:
 - (b) for the acquisition by any party to the agreement of any land required for the undertaking:
 - (c) for any land in **paragraph (b)**, or any part of the land, or any property acquired in connection with the undertaking to be vested in any party to the agreement:

- (d) for the management, control, or maintenance of the undertaking, or any part of the undertaking, to be vested in any party to the agreement:
 - (e) for the apportionment or allocation of the cost of any work in connection with the undertaking, or of any surplus or deficit arising from the operation and management of the undertaking, between the parties to the agreement:
 - (f) for the payment by any party to the agreement of the party's share of the cost of the undertaking either in one sum or by instalments spread over any period or by yearly or other payments as and when the costs are ascertained:
 - (g) for the payment by any party to the agreement in respect of money payable by that party under the agreement of interest at the rate that may be agreed upon between the parties or, in default of agreement, at the rate that the Minister of Finance approves in that behalf:
 - (h) for the giving by any party to the agreement of security for the payment of any money payable by that party under the agreement:
 - (i) for the setting aside out of the revenue of the undertaking, or for the payment by any party to the agreement, of the money that may be agreed upon to form a fund for the repair, renewal, replacement, or improvement of any property acquired in connection with the undertaking or for the purpose of purchasing additional property in connection with the undertaking:
 - (j) for the setting up of a joint committee to control and manage the aerodrome and providing for the constitution, functions, and powers of the committee:
 - (k) for any other terms and conditions that may be agreed upon for the purpose of giving effect to the carrying out and general management of the undertaking.
- (2) Any money set aside or paid for a purpose referred to in **subsection (1)(i)** may—
- (a) be applied for that purpose or any other purpose that may be approved by the parties to the agreement; and
 - (b) be invested and the proceeds of the investment applied in any manner that may be agreed upon by those parties.

Compare: 1966 No 51 s 5(1)–(3), (6)

3 Leasing powers of airport authorities

- (1) Any airport authority may grant a lease of all or any part of any land, buildings, or installations vested in the airport authority for any purpose that will not interfere with the safe and efficient operation of the aerodrome.

- (2) Leases under **subsection (1)** may be granted by private contract or otherwise to any person for any consideration and on any terms and conditions that the airport authority may determine.
- (3) Despite **subsection (2)**, no lessee may erect or make structural alterations to any building or other installation without first obtaining the approval in writing of the airport authority.
- (4) The authority must not give its approval under **subsection (3)** if the erection or structural alteration of a building or installation will interfere with the use and enjoyment of the land as an aerodrome.

Compare: 1966 No 51 s 6(1), (2)

4 Termination of lease

- (1) If at any time during the term of a lease granted under **clause 3** the whole or any part of the property leased is required by the airport authority for the purposes of the aerodrome, the airport authority may terminate the lease as to the whole of the leased property or so much of it as is required for the purposes of the aerodrome.
- (2) No action may be brought in any court for the payment of damages or compensation in respect of the termination of any lease under **subsection (1)** except an action for the payment of compensation provided for in the lease in accordance with **subsection (3)**.
- (3) A lease under this section may contain a provision requiring the airport authority to pay to the lessee on the termination of the lease under **subsection (1)** compensation for improvements effected by the lessee during the term of the lease.
- (4) Compensation for improvements effected by the lessee must be the amount that may be agreed between the parties or, failing agreement, an amount determined by arbitration under the Arbitration Act 1996.
- (5) If the amount of compensation for improvements is submitted for arbitration under the Arbitration Act 1996, this subsection is to be treated as a submission within the meaning of that Act.

Compare: 1966 No 51 s 6(3)–(6)

5 Application of other Acts

Parts 8 to 12 of the Public Works Act 1981, Part 21 of the Local Government Act 1974, and section 11 and Part 10 of the Resource Management Act 1991 do not apply to the subdivision of any aerodrome under **clause 3** or to the laying out of any access roads to the land subdivided.

Compare: 1966 No 51 s 6(8)

6 Local authorities may assist airport authorities

A local authority may, for the purpose of assisting airport authorities in the exercise of their powers and functions, make grants of money, loans, or grant leases of land at any rental, for any term, and on any terms and conditions that it thinks fit, to any airport authority that is a local authority.

Compare: 1966 No 51 s 7(1)(a)

7 Bylaws

- (1) Any local authority or airport authority may, in respect of the aerodrome which it operates, make such bylaws as it thinks fit for all or any of the following purposes:
 - (a) prescribing charges for the use of parking spaces for vehicles or for the admission of members of the public to the aerodrome or to any land adjacent to the aerodrome owned or controlled by the airport authority;
 - (b) prescribing charges for the use of the aerodrome or any part of the aerodrome for air pageants, sports meetings, and any other matters in respect of which no charge is prescribed by regulations under this Act;
 - (c) prescribing charges in respect of the commercial use of any part of the aerodrome, including the delivery of goods to or from the aerodrome and the provision of services at the airport, in respect of which no charge is prescribed under this Act;
 - (d) prescribing charges in respect of aviation security services provided at the aerodrome, in respect of which no charge is prescribed under this Act;
 - (e) generally for the administration of the aerodrome, or for the control of trading activities at the aerodrome or for the management of any business ancillary to the administration of the aerodrome that may be carried on pursuant to this Act.
- (2) Despite **subsection (1)**, an airport authority that is an airport company does not have the power to make bylaws for the purposes set out in **subsection (1)(a) to (e)**.
- (3) Subject to any direction given by the Auditor-General either in respect of airport authorities generally or in respect of any specific airport authority, the following must be paid to the authority:
 - (a) the proceeds of every sale made under bylaws made under **subsection (1)(a)**, after deducting the costs of the sale; and
 - (b) any lost money that is unclaimed.
- (4) The power under this section to prescribe charges for admission to premises is not limited by the provisions of the Reserves Act 1977 restricting the number of days in any year on which charges may be made for admission to recreation reserves.

- (5) For the purpose of determining the days on which charges may be made under the Reserves Act 1977, no day in respect of which charges are made under bylaws made under this section may be taken into account.

Compare: 1966 No 51 s 9(1), (1A), (2)

8 Other provisions concerning making of bylaws

- (1) All bylaws made by a local authority under **section 209** must be made in accordance with the Act under which the local authority is constituted and, except as otherwise provided by this section, the provisions of that Act apply accordingly in respect of the bylaws.
- (2) A bylaw made under **section 209** by a local authority has no force or effect until it has been approved by the Minister.
- (3) For the purposes of the Land Transport Act 1998, a bylaw made under **clause 7(1)(a)** is to be treated as being made by the authority under section 22AB of the Land Transport Act 1998.

Compare: 1966 No 51 s 9(3)–(7)

Schedule 9
Consequential amendments

s 378

Part 1
Consequential amendments to Acts

[To come]

Part 2
Consequential amendments to instruments

[To come]