Appendix 1

Questions for your submission

This submission form is intended to be used alongside the consultation document to guide your feedback. Please give reasons for your answers or in support of your position so that your viewpoint is clearly understood, and also to provide more evidence to support decisions.

You can send us a written submission focusing on the questions in this document that are relevant to you by completing all or part of this submission template.

Please email your written submission to ca.act@transport.govt.nz with the word "Submission" in the subject line, or post it to:

Civil Aviation Act Review
Ministry of Transport
PO Box 3175
Wellington 6140

The deadline for all forms of submission is 31 October 2014.

Your role

[redacted] [redacted]

[redacted] [redacted]

1. What is your interest in Civil Aviation Act and Airport Authorities Act Review?

Private Individual

2. If you are part of the sector, please describe your role:

My role is now essentially to provide commentary on aviation matters however until earlier this year I was an advocate on behalf of commercial Industry for change.

Part A: Statutory framework

Item A1: Legislative structure

Question A1a: Which option do you support?

✔**Option 1:** Amalgamate the Civil Aviation Act and the Airport Authorities Act

Option 2: Separate the provisions in the Civil Aviation Act into three separate Acts:

(i) an Act dealing with safety and security regulation

(ii) an Act dealing with airline and air navigation services regulation

(iii) an Act dealing with airport regulation

Option 3: Status Quo – Civil Aviation Act and Airport Authorities Act maintained.

Some other option (please describe):

Please state your reasons:

The CA Act already is a mix of safety and economic regulation. Merging. the two pieces of legislation into one Act provides the industry with a comprehensive reference point, facilitates rationalisation and removal of redundant or inconsistent provisions and ensures Airports are an integral part of the aviation system

Item A2: Purpose statement and objectives

Question A2a: Do you support the concepts listed in Part A, paragraph 29 for inclusion in a purpose statement?

Subject area of the Act or Acts	Purpose	Do you support?
Safety and security related	To contribute to a safe and secure civil aviation system	**Yes** ✓**No**
Economic - airport related	To facilitate the operation of airports, while having due regard to airport users	**Yes** ✓**No**
Economic – airline related	To provide for the regulation of international New Zealand and foreign airlines with due regard to New Zealand's civil aviation safety and security regime and bilateral air services	✓ **Yes** **No**
	To enable airlines to engage in collaborative activity that enhances competition, while minimising the risk resulting from anti-competitive behaviour[1]	✓ **Yes** **No**
	To provide a framework for international and domestic airline liability that balances the rights of airlines and passengers	✓ **Yes** **No**

Please state your reasons:

There should be one overall objective for the CA Act and that should be to" To establish rules of operation and divisions of responsibility within the New Zealand civil aviation system in order "to *promote the safe*

[1] Depending on the outcome of the review, international air carriage competition provisions may be moved out of transport legislation and into the Commerce Act 1986.

development of aviation". The long title of the Act should retain sub clauses (b) and (c)
This objective could apply to both Section One – Safety and security and proposed new Section Two the Economic –airport related.
Section three Economic- airline related – sub parts two and three make sense however part one appears to be a mix of Economic and Safety and Security. As the proposal presently reads international airlines based in New Zealand and foreign airlines operating to through and within New Zealand appear to be subject to a separate safety/security regime whereas presently they operate under Part One (Safety/Security)

Question A2b: What other concepts do you think should be included in the purpose statement of the Act or Acts? (Please specify)

I am suggesting the use of the word "development" because of the criticality of a forward looking element in the safety mission and the importance of managing the dynamics of change in the system.

The definition of coverage in the HS Reform Bill for aircraft is not sensible and imposes inconsistent reporting requirements. As the CA Act is the "'"specialist" legislation opportunity should be taken to make it very clear that the reporting requirements, definition of accident and serious harm under the CA Act apply to all incidents and accidents notified under the CA Act.

The CAA should exercise jurisdiction in respect of investigating all accidents and incidents in the context of CAR 12.

Section 7 of the HS reform Bill could then be amended to read all accidents and incidents covered by CAR 12 will be the responsibility of the CAA to determine appropriate action. It is accepted that the Workplace safety legislation should apply to aviation – the matter however is where does responsibility rest for investigation and which reporting regime applies given that there are different definitions of accident and very different reporting requirements. The issue of regulatory efficiency and clarity must be addressed.

Question A2c: Should the revision of statutory objectives align with the purpose of the Act or Acts?

Yes. Similarly the Objective and function of the Minister, Authority and Director should be aligned around the dual concepts of "safe" and "development"

Question A2d: Do you support the revision of statutory objectives to include a requirement that decision-makers (for example, the Minister, the CAA, and the Secretary of Transport) be required to carry-out their functions in an effective and efficient manner?

No introducing the concept of effectiveness and efficiency is introducing a Un-quantifiable dynamic to the system. Everything that is undertaken by the Minister, the CAA and Secretary as a matter of course should be Carried out in an effective efficient manner. If the risk management Process is correctly applied then decisions are effective and efficient.

Item A3.4: Independent statutory powers

Question A3.4: Should independent statutory powers continue to reside with the Director of Civil Aviation?

☑ **Yes**

Please state your reasons here.

International credibility is retained –the Director's Statutory independence is embedded in the framework of credible international aviation jurisdictions. To depart from the concept raises issues as to the "political independence" of the Director.

Regulating safety in civil aviation is as much an economic issue as it is about the credibility of the system. The ability to exercise influence without knowledge of the safety implications undermines the safety system

Public confidence could be compromised given the lack of confidence in the political processes

Removing statutory independence has the potential to undermine participants confidence in the system particularly given the integral nature of safety and economic issues

The infrequent poor decision making of the CAA regulators can be overcome by applying robust risk analysis processes and the adherence to the risk management standard.

Transparency and consultation are an integral part of the present

regulatory system – the statutory independence of the Director is integral to this process and adds robustness around decision making

Removal of the requirement for the Director to be "independent" has the potential to introduce conflicting "political" requirements with the increased ability to "undermine" and compromise safety

Entry into the system

Item B1: Provisions relating to fit and proper person assessment

Question B1a: Which option do you support?

Option 1: Status quo – no change to the matters which the Director should consider when undertaking a fit and proper person test

- ✓ **Option 2:** Align the fit and proper person test in the act with other transport legislation (Ministry of Transport preferred option)

Some other option (please describe):

Please state your reasons here.

The matters taken into account in other Transport jurisdictions are equally relevant to aviation – ie it is about protecting the public interest.

Question B1b: Are there any issues with the provisions in Part 1 or 1A of the Civil Aviation Act 1990 that you think should be addressed? If so, what options do you propose to address the issue(s)?

See comments relating to Section 11 in answer to Question B2

Consideration should be given to alignment of the statutory test for "safe" in the HSE Act and the test for "Safe" under the CA Act. A challenging issue is being subject, as is presently the case to two different tests for "Safe". These two different tests impose additional compliance costs. As the HSE legislation has undergone substantial overhaul recently opportunity should be taken to align the threshold test by adopting the term "reasonably practicable" as the proxy for safe.

Safe would be defined as that which is, or was, at a particular time reasonably able to be done taking into account and weighing up all relevant matters including : -

(a) The likelihood of the hazard or the risk concerned occurring; and

(b) The degree of harm that might result from the hazard or risk; and

(c) What the person concerned knows or ought reasonably to know about –

a. The hazard or risk; and

b. Ways of eliminating that risk; and

(d) The availability and suitability of ways to eliminate or minimise the risk; and

(e) After assessing the extent of the risk and the available ways of eliminating or minimising the risk, including whether the cost is grossly disproportionate to the risk

Reference Health and Safety Reform Bill - model Work Health and Safety

Act Australia s18

Participant obligations

Question B2: Are there any issues in relation to participant obligations and Director's powers in Part 2 of the Civil Aviation Act 1990 that you think should be addressed? If so, what options do you propose to address the issue(s)?

Section 15 A, 17 and 11 – there should be both time constraints and process of appeal to a higher judicial authority than the District Court.

New Zealand participants in the system are at a competitive disadvantage relative to Australia both in terms of the speed with such matters as revocation of documents; adverse finding and the like are dealt within our present system and the quality of the judicial decision

For example within the Australian administrative system it is possible to obtain a hearing before a specialist Tribunal within 5 days and an extension of up to 45 days before a decision as to full or partial revocation must be made or by agreement some other period of extension agreed. By contrast New Zealand document holders can be held in limbo by the CAA's decision making process without access to third party review indefinitely. This has led to closure of business because most SME's are unable to withstand a prolong period of grounding. The effect of this is that the powers of CAA are unfettered in this area and unrealistically business cannot wait until a District Court hearing which may take

upwards of three years to obtain.

However the likelihood of there being a specialist tribunal established to parallel Australia is not very great even if the sector indicated that it would pay for such an institution but there is an absolutely essential need to improve both the quality and timeliness of CAA decisions and the best alternative is to make these decision subject to both timeliness and independent review.

It is suggested that where there is reference in in the above mentioned sections to the District Court this be amended to read High Court – the issues are invariably complex in nature and need to be addressed with greater urgency and secondly Section 15A subsection 2 be amended by removing the words "as soon as practicable and inserted a period of 5 days with one extension of conclusion of the investigation within 20 days. Any extension beyond 20 days can be mutually agreed by the parties or referred to the High Court for determination of the need for any additional extensions.

Insertion of similar time lines in Section 17 subsections (2) and (3)

If the Director is so sufficiently concerned that the matter relates to critical issues of aviation safety then it is possible to make decisions as to the continuation of the document holder in the system. Equally however it should be possible as it is within Australia to enter into discussions with the Director as to how the document holder may return to compliance with the system. That is to develop a plan which if not implemented can be subject to scrutiny by an independent and credible external authority. This is the primary reason for vesting such powers in the High Court as quite simply most District court judges do not have the time to deal with what at times can be quite complex technical issues

To not proceed with some form of performance incentive for the CAA to make quality decisions in a timely manner is to place New Zealand industry at a competitive disadvantage with Australia.

Section 22 Delegation of Minister's functions or powers to Authority – such delegations such are transparent and capable of being cited by members of the public and participants in the industry. Presently such delegations, if there are any, are not available for participants in the industry to understand whereas having an informed industry is a critical component of creating an enhanced operating environment.

Similarly the industry should have full knowledge of levels of delegation within the CAA – Section 23A. A recent case in point was one where the participant considered the Director was the only CAA person capable of making an adverse finding whereas in fact this matter had been delegated

to a General Manager. It is not the matter of the delegation but from the industry participant's view point it was the lack of knowledge in terms of who would actually make the adverse decision that was the complicating factor. There should also be transparency around the delegation of the Director's powers to persons outside the Authority – Section 23B. This is an economic issue as industry should be able to easily access information as to who holds which delegations.

Medical certification

Item B3: Certification pathways and stable conditions

Question B3a: Which option do you support?

Option 1: Status quo – two pathways for medical certification

Option 2: Develop a third pathway for medical certification for individuals affected by stable, long-term or fixed conditions.

✓ **Some other option** (please describe):

Part 2 A should be repealed and such matters as are necessary be inserted in CAR 67.

Please state your reasons

This whole section is unduly prescriptive and places regulatory constraints on participants in the sector who are required to maintain medical fitness at a disadvantage to other participants whose continued discharge of responsibilities is the subject of rules eg holding of engineering licenses. There may need to be some very minor amendments to the Act to ensure that it is very clear that the Director has the power to issue medical

certificates although arguably Section 9 of the Act already confers this power – refer to Interpretation of term "aviation document" Section 2 Interpretation. The matter of delegations etc is covered under Section 23B. It is not suggested that any of the flexibilities provided for in Part 2A be removed but rather that the specifics of medical certification are dealt with like any other matter under the rules.

Question B3b: What savings would likely occur from a third pathway to medical certification?

Removal of redundancies and duplications in Act

Removal of timelines – experience is showing some of the deadlines are unnecessary and unworkable

Increased flexibility associated with reviewing rules relative to Act.

The matters are not of importance to primary legislation ie all other matters relating to aviation documents are dealt with in a general form and specifics in rules

Appeal rights should be consistent with those suggested in terms of changes to Section 11

When the legislative provision was written there were no detailed rules – there are now detailed rules and the matters contained in the Act are best housed as they are for every other aviation matter in rules.

The role of the Convenor could be abolished – an immediate saving to the industry

Performance metrics should apply to the matter of retention/extension/ removal of an aviation document as they do to any other aviation

document – refer to suggested amendments Section 15 A and 17.

Item B4: Provision for the recognition of overseas and other Medical Certificates

Question B4a: Should the Act allow the Director to recognise medical certificates issued by an ICAO contracting State?

✓ **Yes**

Yes, but only those without any operational endorsements issued by States with a robust aviation medical certification regime

No

Please state your reasons

While the qualification 'but only those …etc" appears on its face reasonable this is an immediate contravention of the principles of ICAO. Why for example would we accept an airline operating into New Zealand holding the necessary safety security certificates issued by the "Operating" State but say to hold a pilot who holds a license and medical certificate issued by the same operating state that your medical certification regime is not robust enough!!! Where is the risk? Is it not with the pilots flying upwards of 400 foreign visitors and or New Zealanders to this country as opposed to a pilot holding a foreign license (medical certificate) who may only want to fly him/her around?

If it's good enough for the carrier to operate here then it's good enough for a pilot holding a foreign medical certificate from precisely the same jurisdiction to fly within New Zealand.

Question B4b: Should the Director of Civil Aviation or the State that has issued the medical certificate provide oversight?

The State that has issued the medical certificate ie it is simply treated the same as any other aviation document issued.

Question B4c: If you agree that the Director of Civil Aviation should provide oversight, what provisions in Part 2A of the Civil Aviation Act should apply?

This is another good reason for removing Part 2A and placing those matters considered critical to the operation of the present system in CAR 67. The industry should not have to wait 20 plus years to introduce regulatory efficient changes. This would be the case if Part 2A is retained and or amended.

Item B5: Medical Convener

Question B5a: Which is your preferred option?

Option 1: Status quo continue: Medical Convenor retained (Ministry of Transport preferred option)

Option 2: Status quo continues and a separate fee for the Medical Convener is charged to applicants

✓ **Option 3:** Disestablish Medical Convener role

Other option: please describe

Appeal rights would prevail as per changes proposed for Section11 and 15 A and 17

Please state your reasons here

The Convenor was an attempt to seek redress for perceived regulatory conservatism within the CAA medical unit. This "conservatism" in no longer as prevalent

There have been significant changes within CAA and medicine is now more evidence based.

The remaining issues are to have effective appeal rights - this can be achieved by either adopting the appeal process proposed for Section 11 matters where an adverse decision is proposed or the Director establishing an advisory panel of qualified medical and operational personnel who can provide advice to the Director on not simply individual matters but system changes such as the very controversial issue of colour vision impairment.

The Convenor concept is historical and dated and does not inject regulatory efficiency

It represents an unnecessary cost imposed on industry

Adoption of robust risk management processes and practices prescribed in the risk management standard will provide enhances safety assurance.

Question B5b: How much would you be prepared to pay to have your case reviewed by the Medical Convenor?

Industry should not have to pay for regulatory inefficiency.

Are there any other issues with the provisions in Part 2A of the Civil Aviation Act that you think should be addressed? If so, what options do you propose to address the issue(s)?

Offences and penalties

Item B6: Penalty levels

Question B6a: Which is your preferred option?

Option 1: Status quo – penalty levels remain unchanged

✓ **Option 2:** Increase penalty levels

Other option: Please describe

Question B6b: If you consider that increases to penalty levels are necessary, which penalties, and by how much?

Penalties should reflect other Transport and Health and Safety legislation limits

Item B7: Acting without the necessary aviation document

Question B7: Which is your preferred option?

Option 1: Status quo

✓ **Option 2:** Amend the provision to separate out the offences (Ministry of Transport preferred option)

Other option: Please describe

Please state your reasons

Appeals

Item B8: Appeals process

Question B8a: Should a specialist aviation panel or tribunal be established in addition to the current District Court process?

Yes

No

Please state your reasons:

A specialist tribunal or panel would be preferable however the likelihood/reality of such a change is unlikely given present government policy settings however there are major problems with the present system because of lack of timeliness of matters proceeding the Court

On the one hand it is appropriate for the Director to hold wide discretionary powers however it is the timeliness with which these powers are exercised; the sometimes excessively prolonged decision making; the inability of District Court judges to fully understand quite complicated technical matters and in turn the lack of ability for District Court judges to be assisted by technical experts when making decisions

Careful consideration does need to be given to reform. In this submission it is recommended both time limits and reference to review by the High Court should be given if a system which parallel Australia as much as possible but without a specialist tribunal

Questions B8b: How much would you be prepared to pay for a panel review?

Industry should not have to pay for "justice" that is a public good

Rules and regulatory frameworks

Item B9: Rule making

Question B9a: What enhancements could be made to the rule-making process?

A programme for refreshing existing rules – some rules are over 20 years old now and they require modernisation

Robust application of the risk management standard in policy development. This aspect of rule development has dramatically improved in recent years however the rule making programme needs to be aligned

Rulemaking efficiency was best achieved in the past by CAA working directly with the Minister. The present process has become quite convoluted. In some instances this makes sense but in others it doesn't particularly where the change is non-controversial. Greater emphasis on high quality policy making is also assisting significantly

Question B9b: Which is your preferred option?

Option 1: Status quo – no change

Option 2: Power for Civil Aviation Authority Board (CAA Board) to make temporary rules

✓ **Option 3:** Power to enable the Minister to delegate some of his/her rule-making powers to the Director or CAA Board

Option 4: Creation of a new tertiary level of legislation (e.g. Standards)

Some other option: Please describe

Question B9c: If you prefer Option 3 (Delegation of some of the Minister's rule-making powers to the CAA Board or Director), what matters should the Director or CAA Board be delegated to make rules for?

Technical amendments

Removal of Administrative errors

Rule changes involving refreshment of existing rules and of a non-controversial nature if in the policy development phase there is widespread support for change backed by robust policy analysis

International alignment

Revocation of rules of a historical nature

Changes driven by technological change where the change is clearly document or has become custom and practice within industry egg tracking devices as opposed to mandatory fit of ELT's

Question B9d: Is a 'first principles' review of rule-making required to consider the out of scope options (paragraphs 183 – 187) in more detail?

✓ **Yes**

No

Please state your reasons:

It is always good to adopt from time to time a "first principles" review however this should not be a matter of priority. Making the existing system work more efficiently, particularly where the Board of CAA has certain delegated powers to make rules have the potential to improve system wide performance provided the delegation is transparent. Industry would need to be consulted as to matters to be in the delegation and once

the delegation is established any potential areas requiring clarity would need to be thoroughly discussed. Recognition of the importance of rulemaking within the wider government rule making framework would need to be an important consideration in any delegation ie the delegation must embody some flexibility for specific rules to be subject to the wider rule making process or alternatively be considered as a Board delegation. Perhaps this could be one of the matters discussed at the "policy making" level.

Item B10: Possible amendments to Part 3

Question B10: What matters should the Minister take into account when making rules? Please specify and state your reasons.

How to assess what constitute safe ie incorporation of the proposed new definition to replace S33 (f) and the addition of a new clause relating to the development of the sector to encapsulate technological change.

Information management

Item B11: Accident and incident reporting

Question B11a: What are the barriers to fully reporting accidents and incidents to CAA?

Administrative – the merging of the regulatory intervention and safety investigation functions under one GM does not endear confidence accordingly some safety reports are written in such a way to ensure the "facts" are portrayed in a way to avoid potential for incrimination and prosecution. This problem can be addressed to some degree by the investigation function reporting directly to the Board. This is already provided for in existing legislation so it is simply a matter of internal change. This is best summarised as lack of protection on use. It is acknowledged that the CA has made efforts to ensure a level of protection however the lack of transparency gives the perception that there are issues in terms of disclosure.

The lack of alignment between the statutory definition of accident under the workplace Safety legislation and CA legislation – it is suggested this be resolved by ensuring all reporting of CA accidents/incidents are under Rule Part 12 and once accidents are reported this is sufficient to also meet Workplace Safety requirements.

Lack of protection from disclosure in the wider public environment – again the CAA has been proactive in this area however a change in internal administrative personnel has lead in the past to this issue being repeatedly revisited.

Perceptions of economic capture prevail particularly when complaints are from competitors about the actions and or inactions of an individual.

The application of "Just Culture" by the CAA is not well understood by Industry

Question B11b: What could be done to overcome the barriers in Question B11a?

CAR 12 needs to be updated to reflect best practice around the globe.

ICAO has also recently issued recommended practices

The penalties provisions of the CA Act need to be aligned to the language of "just Culture" – presently they are not. "Just culture" is difficult for a regulator to practice when their penalties do not align with the "Just Culture" algorithm.

Internal administrative change within the CAA with the Safety Investigation unit being directly responsible to the Board

Establishment of an industry panel of technical specialist to review those aspects of policy and practice which leads to a culture of under reporting and the development of a process to encourage industry to report. One of the ironies of SMS is that reporting is critical to its successful application but the CAA's primary tool is to lambast a company for under reporting. This is counterintuitive to introducing "just culture"

Item B12: Accessing personal information for fit and proper person assessments

Question B12a: What information does the Director need to undertake a fit and proper person assessment?

Status quo – information currently provided appears adequate

Question B12b: Should the Director be able to compel an organisation to provide information about a person in order to undertake a fit and proper person test?

Yes

✓ **No**

Please state your reasons:

The presumption must be that the individual is honest and has disclosed all relevant information. Non-disclosure should result in immediate sanction as is presently the case.

Security

Item B13: Search powers

Question B13a: Should the Aviation Security Service (Avsec) be allowed to search unattended items in the landside part of the aerodrome?

✓ **Yes**

No

Please state your reasons here.

Question B13b: Should Avsec be allowed to search vehicles, in the landside part of the aerodrome, using non-invasive tools such as Explosive Detector Dogs (EDD)?

✓ **Yes**

No

Please state your reasons here.

Question B13c: Do you support the use of EDD within a landside environment of an airport, including public car parks and airport terminals generally? In particular, do you consider it appropriate for EDD to be used around people, including non-passengers?

✓ **Yes**

No

Please state your reasons:

Issue B15: Security check procedures and airport identity cards

Question 15: Do you have any comments regarding Security Check Determinations (sections 77F and G) and the Airport Identity Card regime?

No

Item B16: Alternative terminal configurations

Question B16a: Should alternative airport designs or configurations be allowed in the future, for example, a common departure terminal?

✓ **Yes**

No

Please state your reasons here.

Question B16b: If yes, how should processing costs be funded?

By the airport company on the presumption that there are efficiency benefits which improve/enhance the overall ROI of the company

Items

Item C1: The necessity of specific domestic airline liability provisions

Question C1a: Should air carriers continue to be presumed liable for loss caused by delay in exchange for a limit on that liability?

Yes

✓ **No**

Please state your reasons:

This whole section is an outdated anachronism and should be removed. If there is a requirement to impose liabilities or penalties these should be aligned to all forms of public transport- aviation should not be treated in isolation and this is more correctly and appropriately dealt with now under consumer protection legislation

Question C1b: The Civil Aviation Act delay provisions relate to passenger delay. Should there be a presumption of fault for delay in the carriage of baggage as well?[2]

Yes

✓ **No**

Please state your reasons here:

As per above the section is a nonsense

[2] Note that the Carriage of Goods Act appears to cover the loss of or damage *to* baggage but not losses/damages resulting *from* delayed baggage. So the passenger would need to seek redress under the Consumer Guarantees Act.

Item C2: The effectiveness of specific domestic airline liability provisions

Question C2a: Which is your preferred option?

Option 1: Status quo and potential educations measures developed (Ministry of Transport preferred option)

✓ **Option 2:** Strengthen the consumer protection provisions in the Act

Other option: Please describe

Aviation should not be treated any differently to any sector of the economy. The provision is historical and an anomaly.
The MOT should not be engaged in matters relating to consumer protection unless such protections are to apply to all forms of public transport.

Please state your reasons:

Question C2b: Do you think that educational measures are necessary? If so, what should they be?

Yes (please tick one or more below)

- ☐ Online information on the provisions in the Civil Aviation Act.
- ☐ A 'Know Your Rights' pamphlet or other printed materials for passengers.
- ☐ Government departments working with carriers to introduce a 'Customers Charter' or something similar.
- ☐ Other. Please specify:

✓ **No**

Please state your reasons here:

As above.

Question C2c: Do you think that stronger protection provisions are necessary in the Civil Aviation Act 1990?

Yes

✓ **No**

Please state your reasons here:

As above

Question C2d: If you answered yes to question C2c, what do you think should be included in the Act?

Item C3: The limit on liability for damage caused by delay

Question C3a: Which is your preferred option?

Option 1: Status quo – liability is capped at an amount representing 10 times the sum paid for the carriage

Option 2: Revise the domestic liability limit for damage caused by delay

✓ **Other option:** Please describe

Remove section in its entirety – it is a nonsense. Normal consumer protection should apply

Please state your reasons:

Question C3b: If you selected Option 2 for Question C3a, what do you consider would be an appropriate liability limit for domestic air carriage and why?

International air services licensing

Item D1: Commercial non-scheduled services

Question D1a: Which is your preferred option?

Option 1: Status quo – the Act continues not to specify the precise scope of 'non-scheduled services'

✓ **Option 2:** Remove the need for case-by-case authorisation for services that do not follow a systematic pattern and provide explicitly for authorisation of supplementary services or a systematic series of flights (Ministry of Transport preferred option)

Some other option (please describe):

Please state your reasons:

Non-scheduled operations should not require any form of authorisation – there should be open access to the market

Question D1b: Do you agree with the proposal to remove the need for authorisation of services that do not follow a systematic pattern?

✓ **Yes**

No

Please state your reasons:

Question D1c: If you answered yes to Question D1b, which approach to determining what is systematic do you prefer?

✓ **Approach 1:** use the same threshold for authorisation by the Secretary as is used for requiring an foreign air operator certificate (that is, more than two take-offs or landings within New Zealand in any consecutive 28 day period, or more than eight take-offs or landings within New Zealand in any consecutive 365 day period)

Approach 2: explicitly define systematic as some other number of services on the same route over a particular time.

Please state your reasons:

Question D1d: If you selected Approach 2, how should the term systematic be defined?

Item D2: Allocation decisions for New Zealand international airlines

Question D2: Which is your preferred option?

Option 1: Status quo – the Minister of Transport continues to consider licensing decisions for New Zealand airlines that involve allocating both limited and unlimited rights

Option 2: Status quo and Secretary to consider licensing decisions for New Zealand airlines involving unlimited rights under delegation

✓ **Option 3:** Amend the Act to allow the Secretary to consider licensing decisions for New Zealand airlines involving unlimited rights (Ministry of Transport preferred option)

Some other option (please describe):

Please state your reasons:

Removes political risk and places such decisions in the "normal" regulatory process.

Item D3: Public notice

Question D3a: Which is your preferred option?

Option 1: Status quo – the Act provides for a 21 day submission period when an application for a new, amended or renewed scheduled international air service licence by a New Zealand airline is received.

✓ **Option 2:** Amendment to the Act to:

- reduce the 21 day submission period, for example, to 14 days or 10 days
- require notice to be given only when limited air services rights for routes or capacity are being allocated.

(Ministry of Transport preferred option)

Some other option (please describe):

Please state your reasons here:

Requiring notification when there are unlimited rights places an additional administrative burden on the system that makes no sense

Question D3b: What is the appropriate submission period to balance the desirability of allowing third parties to make representations with reducing delay for airlines that are planning and implementing services?

21 working days

Item D4: Transferring licences

Question D4: Which is your preferred option?

Option 1: Status quo – Sections 87K and 87Y retained.

✓ **Option 2:** Repeal sections 87K and 87Y, and amend sections 87J,87Q and 87X (Ministry of Transport preferred option)

Some other option (please describe):

Please state your reasons here:

Unnecessary administrative control eliminated

Item D5: Airline operations from countries with which New Zealand does not have an Air Services Agreement

Question D5: Which is your preferred option?

✓ **Option 1:** Status quo – the Act continues to provide for the licensing of foreign international airlines of countries with which New Zealand does not have an Air Services Agreement or similar arrangement (Ministry of Transport preferred option)

Option 2: Repeal – the Act ceases to provide for the licensing of foreign international airlines of countries with which New Zealand does not have an Air Services Agreement or similar arrangement

Some other option (please describe):

Please state your reasons:

International air carriage competition

Item D6: Authorisation of contracts, arrangements and understandings between airlines

Question D6a: Which is your preferred option?

- ✓ **Option 1:** Amended Civil Aviation Act regime – amend the existing provisions to explicitly require an assessment of costs and benefits, specify the process for making a decision, and provide for conditions to be attached to any approval

Option 2: Commerce Act – the authorisation of contracts, arrangements and understandings between airlines will be considered and made under the Commerce Act

Some other option (please describe):

Please state your reasons:

Retention of specialist expertise within the Ministry of Transport delivers the optimum outcome for New Zealand

Question D6b: How do the two options meet the criteria in paragraph 96?

The Commerce Commission is a more expensive option and there appear to be no specific benefits ie the MOT would still provide independent transparent advice – so no specific administrative savings. Compliance costs would increase with no compensatory savings or benefits. MOT already operates a transparent process and we have expert regulators

dealing with expert issues within the context of international aviation and competition. Why impose additional compliance costs on the sector.

Question D6c: What are the costs, benefits, and risks of the two options?

I am unable to comment meaningfully in this area however I would suggest there are administrative costs and these should be easily quantifiable; there are time costs ie how easy would it be to gain time before the Commerce Commission and there are costs associated with a functional split between MOT and Commerce. MOT would still need to write reports and provide expert advice.

Question D6d: Under each option, how do you envisage the decision-making process working? (For example, under Option 1 who would undertake the competition analysis and what information gathering powers would be required to undertake this analysis?)

MOT would undertake the competition analysis. Full transparency would be required.

Item D7: Commission Regimes (section 89)

Question D7: Which is your preferred option?

☑ **Option 3:** Complete repeal - repeal the existing Commission Regime and section 89 (Ministry of Transport preferred option)

Please state your reasons:

The commission Regime is an outdated concept

Item D8: Authorisation of unilateral tariffs by the Minister

Question D8: Which is your preferred option?

Option 1: Status quo – the Act continues to provide for authorisation of single airline tariffs

Option 2: Amended provision – replace section 90 with a provision similar to regulation 19A(4) of the Australian Air Navigation Regulations 1947 (Ministry of Transport preferred option)

☑ **Option 3:** Complete repeal – the Act ceases to provide for authorisation of single airline tariffs

Some other option (please describe):

Please state your reasons:

The concept is largely outdated. This is unnecessary regulation

Airport Authorities Act

Item E1: Specified airport companies

Question E1a: Which is your preferred option?

Option 1: Status quo – specified airport companies are defined as an airport company that in its last accounting period received revenue exceeding $10 million.

Option 2: Revise the threshold – specified airport companies are defined as an airport company that in its last accounting period received revenue exceeding $15 million.

Option 3: Amend the threshold to be based on revenue from identified airport activities – for example, specified airport companies are defined as an airport company that in its last accounting period received revenue from identified airport activities exceeding $10 million.

✓ **Option 4:** Amend the threshold from annual revenue to passenger movements – for example, airport company that in its last accounting period had in excess of one-million passenger movements (Ministry of Transport preferred option)

✓ **some other option** (please describe):

Please state your reasons:

The measure is simple and data is already collected. Compliance costs are minimal

It is noted that there is no comment on the term "substantial customer". There needs to be some mechanism whereby other customers can be consulted if they so desire. For example some airport customers who do not meet the "substantial customer" definition wish to engage in the consultation process. Some airport companies accommodate their

participation but others do not. In the interests of fairness and equity where an operator wishes to participate in the consultative process they should be able to do so accordingly an amendment to provide for such parties to participate when the airport receives a request should be accommodated.

Question E1b: Is changing the threshold for a 'specified airport company' the most effective way to distinguish between airports that are in a position to exercise significant market power and those which are not?

✓ **Yes**

No

Please state your reasons:

Item E2: Redundant provisions

Question E2a: What impact, if any, would removing section 3BA have?

This provision is important for non-scheduled and transient operators – how else would an operator find out that a charge was legitimate?

Question E2b: Do you support repealing section 3BA?

Yes

✓ **No**

Please state your reasons:

This provision is about transparency when required.

Question E2c: What impact, if any, would removing sections 4(2) and 4A have for airports that are not regulated under the Commerce Act 1986?

All charges should be set my consultation not just those subject to the Commerce Act

Question E2d: Do you support repealing sections 4(2) and 4A for airports that are not regulated under the Commerce Act 1986?

Yes

✓ **No**

Please state your reasons here:

Users have very few protections and this is one

Item E3: Consultation on certain capital expenditure

Question E3a: Which is your preferred option?

Option 1: Status quo - specified airport companies are required to consult substantial customers before approving certain capital expenditures

✓ **Option 2:** Require all airport companies to consult on certain capital expenditures (Ministry of Transport preferred option)

Some other option (please describe):

Please state your reasons:

Consultation should be a fundamental principle and represent good business practice

Question E3b: Under the status quo, to what extent do airport companies that are not 'specified' consult on capital expenditure? Please give examples.

Question E3c: What would be the costs and benefits of expanding this provision to cover all airport companies?

Item E4: Threshold for consultation on certain capital expenditure

Options for amending the threshold for consultation on certain capital expenditures

Passenge volumes	OR	Annual revenue	Option 1	Option 2	Option 3
< 1 million		< $10 million	> $5 million	10% of identified airport assets (excluding land)	The lower of 30% of identified airport assets or $30 million
> 1 million but < 3 million		> $10 million but < $50 million	> $10 million		
> 3 million		> $50 million	> $30 million		

Question E4: Which is your preferred option?

✓ **Option 1:** Stepped thresholds

Option 2: 10 percent of identified airport assets (excluding land)

Option 3: The lower of 30 percent of identified airport assets or $30 million

Some other option (please describe):

Please state your reasons:

Question E4b: If you prefer Option 1, where do you consider the thresholds for consultation should be set and why?

Item E5: Termination of leases without compensation or recourse for compensation

Question E5: Which is your preferred option?

Option 1: Status quo - airport authorities may terminate a lease at any time if the property is required for the "purposes of the airport", and lessees may not seek redress through the Courts for damages or compensation, except where compensation is provided for under the lease.

✓ **Option 2:** Amend the Act to clarify the reasons for which airport authorities can terminate leases without compensation or recourse for compensation

Some other option (please describe):

Please state your reasons:

There needs to be much greater understanding of "purposes of the airport". When this provision was written airports were not the multi-purpose establishments that they are today.

Question E5b: Are there any other issues with section 6 of the Airport Authorities Act that you think should be addressed? If so, what options do you propose to address the issue(s)?

Item E6: Bylaw making powers

Question E6a: Which is your preferred option?

Option 1: Status quo – the existing bylaw making powers of airport companies, airport authorities, and local authorities are retained

✓ **Option 2:** Repeal some bylaw making powers

Some other option (please describe):

Please state your reasons:

Bylaw powers should only be exercise in respect of aviation critical matters ie not relating to commercial business matters of the airport

Question E6b: For what purposes do you consider it necessary for local authorities, airport authorities, and airport companies to have bylaw making powers, and why?

Question E6c: If airport authorities did not have bylaw making powers, how would or could they manage the matters covered by section 9(1)(a-ff) of the Airport Authorities Act?

Question E6d: If bylaw making powers are retained, what is the appropriate level of oversight for local authorities, airport authorities and airport companies seeking to make bylaws?

Item E7: Information disclosure and specifying what "publicly available" means.

Question E7a: What are the costs and benefits of the current information disclosure regime under section 9A of the Act?

Question E7b: Which is your preferred option?

Option 1: Status quo – the Act does not specify what "publically available" means in section 9A

✓ **Option 2:** Specifying what publicly available means in section 9A (Ministry of Transport preferred option)

Some other option (please describe):

Please state your reasons:

Item F1: Airways' statutory monopoly

Section 35 of the Civil Aviation Amendment Act 1992 provides for the repeal of Airways' statutory monopoly on a date to be appointed by the Governor-General by Order in Council.

We recommend:

- repeal of Section 35 of the Civil Aviation Amendment Act 1992; and
- the retention of Section 99 of the Civil Aviation Act 1990 (which provides for Airways to be the sole provider of area control services, approach control services, and flight information services).

Question F1: Do you agree with our recommendation?

✓ **Yes**

No

Please state your reasons:

Item F3: Length of time before the Director can revoke an aviation document because of unpaid fees or charges

Question F3: Which is your preferred option?

Option 1: Status quo – the Director of Civil Aviation may revoke an aviation document if the related fee or charge is overdue by six months

Option 2: Reduce the threshold from six to four months

Some other option (please describe):

Option Three is favour – CAA should have access to the Small Claims Tribunal and or debt collectors – they should not be constrained as to time. Al that is happening is that these costs are ultimately transferred onto the sector of the industry that is law abiding and pays their charge on time.

Please state your reasons:

Fees and Charges set Pursuant to Part 4 of the Act should be subject to review by the Commerce Commission

There is no good robust reason why monopoly charges imposed by central government should not be the subject of Commerce Commission review. This would establish a robust appeal mechanism that could look at the underlying issues of economic efficiency and allocation of price on an independent basis.

The Regulations Review Committee can only examine process failure they cannot review the decisions of the Executive to impose a charge.

Industry has very limited ability to redress oppressive charges such as the hourly rate and medical charges imposed by CAA. There is no incentive for Treasury to provide independent advice to the Executive or to act akin to an independent third party when they themselves were/are imposing economic restraint across agencies.

Charges imposed by other "market dominant" suppliers are subject to review by the Commerce Commission CAA charges should be no different.

Review by an independent third party would improve the analytics of the debate when CAA enter into consultation with Industry.

Industry has presently no redress in respect of administratively inefficient charges. This is patently an unfair imposition on the productive sector.

Item F4: Power to stop supplying services until overdue fees and charges have been paid

Question F4: Which is your preferred option?

- ✓ **Option 1:** Status quo – Section 41(4) the Civil Aviation Act provides for the CAA, the Director and other persons to decline to process an application or provide a service under the Act until the appropriate fee or charge has been paid (or arrangements for payment made).

 **Option 2:** Amend section 41(4) to clarify its intention – to explicitly provide for the CAA, the Director and other persons to decline to process an application or provide a service under the Act until the appropriate fee or charge or outstanding debt has been paid (or arrangements for payment made).

- ✓ **Some other option** (please describe):

Please state your reasons:

Item F5: The Civil Aviation Authority's ability to audit operators that collect levies

Question F5: Which is your preferred option?

- ✓ **Option 1:** Status quo – the Act does not allow the CAA to require an audit of operators from which it collects levies.

✓ **Option 2:** Amend section 42B to include a power for the CAA to require an audit of operators from which it collects levies at the CAA's own cost

- ✓ **Some other option** (please describe):

Please state your reasons:

Item F6: Fees and charges for medical costs

Question F6: Which is your preferred option?

- ✓ **Option 1:** Status quo – section 38(1)(b) of the Civil Aviation Act allows the Governor-General to made regulations prescribing the fees and charges for the purpose of reimbursing the CAA for "costs directly associated with" the Director and Convener's functions under Part 2A of the Act.
- ✓ **Option 2:** Clarify section 38(1)(b) that this section is intended to cover a broad range of services and corporate overheads associated with the Director and Convener's functions under Part 2A of the Act

✓ **Some other option** (please describe):

Please state your reasons: