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

Your name: ***Civil Aviation Authority (The Board – not the organisation)***
Nigel Gould – Chairman
Peter Griffiths – Deputy Chairman
Grant Lilly
John Bartlett
Jim Boult

Your email address: [redacted]

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

We are the Board of the Civil Aviation Authority.

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

The Civil Aviation Authority (the Authority) is established under section 72A of the Civil Aviation Act 1990.

The Authority has two distinct roles under the Act:

- *regulatory authority for civil aviation safety and security*
- *aviation security service provider (through the Aviation Security Service (AVSEC))*

This submission is from the Authority in both capacities. We have appreciated the Ministry's willingness to consult with us on issues in this review. We continue to support the process undertaken by the Ministry and are keen to provide assistance where required.

Our response is limited to those areas of direct interest to us.

Part A: Statutory framework

Item A1: Legislative structure

Question A1a: Which option do you support?

(a) Option 1: Amalgamate the Civil Aviation Act and the Airport Authorities Act

(b) 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

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

(d) Some other option (please describe):

We have no preferred option.

In any design, we would look for the clear articulation of the objectives and functions of each entity undertaking a role, and how those functions link to the purpose of the Act.

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***
Economic - airport related	To facilitate the operation of airports, while having due regard to airport users	***No view***
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***

	To enable airlines to engage in collaborative activity that enhances competition, while minimising the risk resulting from anti-competitive behaviour[1]	***No view***
	To provide a framework for international and domestic airline liability that balances the rights of airlines and passengers	***No view***

We agree that the purpose of the safety and security provisions, whether they form part of one Act or are covered in a number of Acts, must be to contribute to a safe and secure aviation system.

The use of the term "contribute" acknowledges that regulating aviation participants does not ensure that the system will be 100 percent safe or secure. There are many other factors which contribute to aviation safety and security.

Incorporating other concepts within the purpose of an Act dealing solely with safety and security provisions, such as furthering economic growth is not supported. An Act's purpose statement is to explain why an Act is enacted. It is to be taken for granted that in any society, aviation supports a number of objectives such as; travel whether for business or pleasure; economic growth of the aviation industry; the ability to trade aviation products. The need for regulation is to contribute as much as possible to ensuring that all these activities can be done safely and securely. To include any of these particular objectives within that purpose confuses the focus.

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

As stated above we do not consider, in relation to the safety and security provisions, that there is a need to include any further concepts. In fact, we consider that there is ample evidence of regulatory failure caused, at least in part, by the creation of conflicting objectives in legislation.

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

The statutory objectives for the Authority need to align with the purpose of the Act. In undertaking functions under the Act, both the Authority and the Director must have safety and security as their key objectives. The Authority acknowledges that the achievement of its objectives must be done in a way that contributes to social connections and economic

[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 and this is a theme consistently applied in the way that Authority performs its functions.

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?

The Authority supports the suggestion that decision-makers be required to carry out their functions in an effective and efficient manner – according to the plain English meaning of those words. That said, we do not understand how the very specific transport related definitions of 'Effective' and 'Efficient' given in 42.1 and 42.2 of the consultation document (see below) could be applied across the roles of the Minister, CAA, Director and the Secretary of Transport.

Effective - moves people and freight where they need to go in a timely manner.

Efficient – delivers the right infrastructure and services to the right level at the best cost.

We would welcome further discussion on this to gain a better understanding of what is intended.

We agree that the Act needs to ensure that New Zealand's obligations under International civil aviation agreements are implemented.

Item A3.1: Functions of the Minister of Transport

We have no comment on the recommendation that:

> 52.1. where possible, a high level description of the Minister's functions be consolidated into one section of the Act or Acts for clarity and consistency

We concur with the following recommendation:

> 52.2. to avoid doubt, the Minister's existing function — "to promote civil aviation safety should include security".

Item A3.2: Functions of the Civil Aviation Authority

We concur with the recommendation to:

> amend section 72B(2)(d) to record that CAA (in its capacity as the responsible safety and security authority), has a discretion to investigate and review civil aviation accidents and incidents, subject to the limitations set out in section 14(3) of the Transport Accident Investigation Commission Act 1990.

Further, we consider that there would be merit in amending 72B(2)(d) to make it clear the Authority conducts such investigations for regulatory purposes – it does not conduct 'no fault' investigations in accordance with ICAO Annex 13. The Transport Accident Investigation Commission is responsible for Annex 13 investigation. We are aware that some sectors of the aviation sector are confused over this division of responsibility and consider that there would be merit in clarifying the distinction in legislation.

Item A3.3: Functions of the Director of Civil Aviation

We concur with the following proposal in the Document:

> We believe that the Director's regulatory functions are generally clear, concise and adequately defined. However, we recommend one small change. Section 72I(3)(b) empowers the Director to —take such actions as may be appropriate in the public interest to enforce the provisions of this Act..... This section should be clarified to be clear that the Director can take such action in relation to civil aviation safety and security provisions. There is a small number of economic-related airline offence provisions included in the Act that the Director is not accountable for.

Item A3.4: Independent statutory powers

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

We consider that the independent statutory powers should continue to reside with the Director.

Please state your reasons here.

We agree with the recommendation made at para. 85 for the reasons expressed in 85.1 and 85.2. We consider that the Director is best placed to hold the powers and do not see any reason for the status quo to change.

The powers currently given to the Director need to be, and be seen to be, exercised independently from Ministerial direction or influence. Given that the Authority is appointed by the Minister, if the statutory powers resided with the Authority, then that independence would not be provided.

We support the comments made by Sir Kenneth Keith quoted in paragraph 75 of the consultation document, namely:

> *CAA has a regulatory function that must always be seen to be implemented in an independent manner.*
>
> *Several of its functions involve judgements about particular people, things and situations.*
>
> *Such functions are usually exercised by independent experts (for example, Director of Civil Aviation) not subject to any specific control by Ministers or others who are ordinarily superior to them in an administrative hierarchy.*
>
> *The power should be exercised following a proper process and independently by the responsible person, subject to any rights of appeal.*
>
> *These arrangements should be implemented to maintain public confidence in the decision-making process.*

There is an additional complication that would be introduced if the powers were transferred to the Authority. So long as the Aviation Security Service holds an aviation document (or documents) the Authority could not hold regulatory powers relating to document holders.

Item A3.5: Secretary for Transport

We have no view about the proposal to include a formal list of functions for the Secretary for Transport in the revised legislation, similar to the approach taken for the Minister and CAA.

Entry into the system

Item B1: Provisions relating to fit and proper person assessment

Question B1a: Which option do you support?

We do not have a strong view but consider that there might be merit in Option 2 - aligning the fit and proper person test in the act with other transport legislation as set out in Paragraph 41 of the consultation document namely;

A requirement for the Director to consider information about wider offences, including:

any offence relating to controlled drugs (as defined in the Misuse of Drugs Act 1975) or relating to any prescription medicine (as defined in the Medicines Act 1981), whether or not—

- the conviction was in a New Zealand court; or
- the offence was committed before the commencement of the revised Civil Aviation Act:

The discretion for the Director to consider the fact that a person has been charged with any offence of a nature that the public interest would require a person convicted of that offence not be considered fit and proper.

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)?

We do not propose any change to Part 1 or Part 1A of the Act – we consider that the current legislation works well to achieve its intended safety and security outcomes.

Participant obligations

Item B2: References to safety and security in the Civil Aviation Act

The Document advises in paragraph 59:

> The Director's powers outlined above do not expressly refer to action being taken in the interests of security. This limitation could result in security issues not being adequately considered under the Civil Aviation Act 1990.

We do not see any need for amendments in relation to participant obligations or the Directors powers in Part 2 of the Act – we consider the current legislation works well. We see some merit in the addition of 'security' in sections 17, 18 and 21.

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)?

We do not agree with the concept of codifying the Authority's current Regulatory Operating Model in legislation. Such action would limit the Authority's ability to change its regulatory approach in the future in the response to changing circumstances. It might also introduce anomalies between occupational health and safety legislation and the Civil Aviation Act.

We would support amendments related to the protection and use of information (as set out in our submission in the Information Management section) which would, if accepted, prove sufficient to provide transparency in the Act on our regulatory approach.

We welcome further discussion on this topic.

Medical certification

Item B3: Certification pathways and stable conditions

Question B3a: Which option do you support?

We support Option 2: the development of a third pathway for medical certification for individuals affected by stable, long-term or fixed conditions.

We agree that an approach which recognises that the flexibility pathway is not always necessary for individuals affected by stable, long term or fixed conditions.

We support the concept of making it easier for a person who has either, a long term condition that is stable; or has a condition which has resolved to avoid the necessity to utilise the flexibility pathway.

In the first instance a system similar to the Federal Aviation Administration Statement of Demonstrated Ability (SODA) framework may be appropriate, but in the second instance, an amendment may be needed to allow a medical certificate to be granted via the first pathway.

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

We are of the view that finding an alternative route for persons with the conditions noted, would reduce the costs of them of obtaining a medical certificate.

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?

We consider that there is considerable merit in making the legislative changes necessary to empower the Director to recognise medical certificate (unendorsed without any operational

limitations) from ICAO contracting States that the Director has assessed as providing an equivalent level of aviation safety as NZ.

Please state your reasons

It is our understanding that the concept of recognising medical certificates issued by an ICAO contracting state has always been part of New Zealand's civil aviation system (refer to the definition of Medical Certificate in s27A(1)) but has never been implemented.

Such an approach has a number of benefits including:

- *promoting a multilateral approach to aviation medical certification;*
- *reducing compliance costs for pilots and others requiring medical certification when moving between countries;*
- *potentially reducing the cost of providing the State aviation medical certification regime in New Zealand; and*
- *facilitating the New Zealand pilot training industry's ability to source trainees in countries without resident New Zealand Medical Examiners.*

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

We consider that expecting the State that has issued the medical certificate to provide oversight of a person operating in NZ is unrealistic, and that the Director in NZ must have the power to withdraw the recognition given reasonable cause.

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?

No sections of Part 2A of the Act should apply to the withdrawal of recognition. To impose Part 2A of the Act would draw the holder of the medical certificate within the NZ aviation medical certification regime when the NZ system would not hold any information on the individual concerned. Additionally, it would reduce the cost reduction and efficiency benefits offered by recognising the overseas certificate. In the event that recognition was revoked the individual concerned would have the option of applying for certification in the NZ system at which point Part 2A would apply in full.

Item B5: Medical Convener

Question B5a: Which is your preferred option?

We prefer Option 2: status quo to continue and a separate fee for the Medical Convener Review to be charged to applicants

Please state your reasons here

We consider that the Convenor process allows the Director, the Authority, and the applicants for medical certificates to be assured that the process used in decision making are appropriate, and that the decisions made are reasonable.

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

No view

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)?

No

Offences and penalties

Item B6: Penalty levels

Question B6a: Which is your preferred option?

The penalties in the Act for offences have not been reviewed since the early 1990's. We are supportive of a comprehensive and thorough review to determine an appropriate level for each penalty. We are keen to provide input into this review as required.

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

The penalties in the Act for offences have not been reviewed since the early 1990's. We are supportive of a comprehensive and thorough review to determine an appropriate level for each penalty. We are keen to provide input into this review as required.

Item B7: Acting without the necessary aviation document

Question B7: Which is your preferred option?

We support option 2 - Amend the provision to separate out the offences (Ministry of Transport preferred option)

Please state your reasons

We agree with the comments in the Discussion document in paragraph 121 namely:

> Given the comments from the High Court and the confusion in this area it seems preferable that section 46 be amended to split the offence into the two parts. The penalty levels would need to be adjusted as it likely that a higher penalty would be necessary for a knowledge offence.

A division of the provision into two offences could provide alternative options for prosecution that could be considered by the Director, depending on the severity of the offence.

Appeals

Item B8: Appeals process

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

We consider that a specialist aviation appeals panel or tribunal should not be established in addition to the District Court process.

Please state your reasons:

We consider that in a country the size of NZ it would be very difficult to constitute a specialist aviation administrative appeals panel or tribunal that combined the required knowledge of the law and aviation without being in some way conflicted in a reasonable proportion of the cases it dealt with. That is not to say that we dismiss the concept of a national – or possibly even a transport sector – administrative appeals tribunal.

We consider that the question of whether an Appeal Tribunal is appropriate is a matter for the Ministry of Justice to consider in terms of the overall administration of the Justice sector.

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

No view.

Rules and regulatory frameworks

Item B9: Rule making

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

The Board strongly supports the need for greater responsiveness and flexibility in the aviation regulatory framework. It is our view that the current Rule Development process is not fit for purpose. While improvements can be made to the existing rules process (including the design of rules) there are many examples where the application of the existing framework (rather than necessarily the framework itself) is inadequate.

Subsequent questions in this section deal with alternatives to the current legislative framework and the Board strongly supports some of those alternatives. It is noteworthy, however, that s28(5) of the Act already provides a mechanism that would at least partially accommodate the intent those options are seeking to achieve. It would not deal with current capacity constraints in current rule development process but it would permit more use of performance-based rules with required standards to be established by the Director or Authority. The Board recommends that as an interim improvement measure the Ministry actively promotes the use of this existing facility.

Question B9b: Which is your preferred option?

We consider that some combination of Options 3 and 4 is most likely to provide a system that is fit for purpose.

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)

For clarification, we consider that any delegation of Rule-making power should be to the Authority rather than the Director.

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?

We support the criteria such as:

- *Necessary for New Zealand to comply with existing international obligations (assuming policy work confirms that New Zealand will not file a difference)*
- *Requiring routine or editorial revisions, for example where changes are required to improve legislative clarity, to fix errors or to clarify existing legislative intent.*
- *Changes to technical standards specified in Rules.*
- *Changes that have low economic impact but provide for greater clarity or safety*
- *Dealing with issues that are low in complexity and do not need a complex process to resolve*
- *Managing issues that are temporary in nature – including temporary accommodation of rapid technological change while a longer term regulatory regime is developed.*

Given that the delegation of this rule making power is to manage issues that are minor in nature and are not intended to result in significant regulatory impact, there is scope for the Act specifying a streamlined process that the Director/Authority should follow.

We note the advocacy for greater delegated legislation by the Productivity Commission and the Commission's caution that such delegation be subject to stronger controls. We consider that the continued oversight by the Regulations Review Committee will ensure that the Authority/Director is making appropriate use of his or her delegation, combined with clear directions in the Act to guide the Authority/Director in the exercise of this power.

Additional comment re Option 4: Creation of a new tertiary level of legislation

In the absence of a delegation of rule-making power, we would strongly support the addition of a power or process whereby the Authority could be delegated power to make a form of tertiary legislation.

Such an instrument is essential to enable greater use of performance-based rules (where these are appropriate). This is because tertiary instruments provide the necessary technical guidance (and therefore certainty) to industry on how to achieve the performance criteria specified in the rule. Use of non-legislative instruments such Advisory Circulars to provide this technical guidance is problematic as these provide little protection for both the operator and the regulator in the event of non-compliance.

To provide for maximum flexibility, we recommend a similar approach to the HSNO legislation or the Building Act, where the Authority can approve codes of practice or standards that are acceptable means of compliance with the relevant rule.

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

We do not consider a 'first principles' review of rule-making is required to consider the out of scope options (paragraphs 183 – 187) in more detail.

Please state your reasons:

We do not recommend a first principles review of the rules to enable a completely performance based rule-set. Aviation rules will always be a mixture of performance based requirements and prescription. There are some minimum standards (such as VFR and IFR minima and right of way rules) that need to be highly prescriptive, while other requirements (such as rules to manage human factors or fast changing technology) can be designed as more performance based. In addition, as noted in paragraph 186 of the discussion document, the civil aviation rule-set is guided by the ICAO, so in reality there is limited scope for a wholesale review.

However, should a new tertiary instrument be enabled under the legislation, there will need to be a 'rebalancing' of the existing rule set to determine whether the prescription contained in the rules might be better placed in the tertiary instrument. This rebalancing can occur over time, and in accordance with the priorities of the Minister, sector and the Authority.

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.

We agree with the comment in para 190 that the changes proposed in Part A of the Discussion document regarding the purpose of the Act and the Minister's objectives will have a flow on effect to rule making powers provided in Part 3 of the Act.

We agree in principle that the Minister's rule making powers could be more generically defined, but we note that the Minister's rule-making powers can only be to deliver on the stated purpose of the Act – namely "to contribute to a safe and secure civil aviation system" (or the commercial regulation of airports and airlines as specified in the table in Part 29 of Part A of the discussion document.)

This does not prevent the Minister (or the Authority if rulemaking is delegated) from taking economic or environmental considerations into account when making rules. This delivers on the stated objectives for the Minister as set out in paras 37-40 to carry out his or her function in an effective and efficient manner.

With regard to the matters to be taken into account in making rules, we agree that the following matters should be taken into account:

- *ICAO standards and recommended practices*
- *Level of risk to aviation safety and security in each proposed activity and more generally*
- *Cost of implementing the rules*
- *The need to maintain and improve aviation safety*

However we do not agree that elements of good regulatory practice should be enshrined in the Act – including: whether or not the rule addresses the problem, best international practice, evaluation of alternate means of achieving the rule objectives and considering the impact of the proposed measures.

While good regulatory practice is important in the development of rules, we are not aware of any other legislation that dictates good policy process. The regulatory impact statement

already sets out a good process and there are clear guidelines for policy and rule developers to follow.

Information management

Item B11: Accident and incident reporting

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

We are aware that we do not receive notification of all accidents and incidents as required under the Act – nor do we receive additional information that could be valuable in identifying areas of safety risk. A combination of factors will contribute toward this failure to report but we are aware of anecdotal comments about not reporting in order to avoid any possibility of punitive action.

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

We have given this question considerable thought, particularly in light of the proposed changes to the standards in Annex 19 to the Chicago Convention referred to on page 80 of the Discussion document.

We agree with the ICAO approach that an environment where operational personnel are not punished for reporting their errors or omissions is fundamental to ensuring the availability of safety information required to maintain or improve safety.

We would support the incorporation into law of an approach similar to that of the UK CAA (the Mandatory Occurrence Reporting System).

The UK scheme takes the line that proceedings (which include prosecution and administrative action) will not be instituted in respect of unpremeditated or inadvertent infringements of the law which come to the attention of the relevant authorities only because they have been reported under the mandatory scheme, except in cases of gross negligence.

We would, like the UKCAA encourage voluntary reporting across the whole spectrum of aviation operators. Voluntary reports would be processed in a similar way to mandatory reports and offered the same protection.

The Director would maintain the ability to use the full suite of regulatory tools in instances where accidents/ incidents are not reported under the scheme. The fact that an accident or incident was not reported by those involved would be taken into account in assessing the action, if any, to be taken concerning the accident or incident.

We believe that the Official Information Act 1982 and Privacy Act 1990 provide some protections for information supplied. However, we would encourage additional protections to be introduced to legislation in order to provide the levels of protection envisaged in the proposed amendment to Annex 19.

We recommend a new provision in the Act defining a mandatory reporting scheme, including the use and protection that would be provided to information and sources of the information provided under the scheme. This section would replace a number of provisions in CAR Part 12 relating to use and protection of information. Details of the information which would be mandatorily required could be contained in regulation.

We are strongly of the view that introducing protections for mandatory or voluntary reports would encourage reporting and would be a far more effective tool in that regard than any changes to the offence provisions in the Act.

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?

Currently under section 10 of the Act the Director is not confined to consideration of the express criteria set out, but may also take into account such other matters as may be relevant in assessing whether a person is fit and proper to hold an aviation document.

The Director needs a wide range of information.

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?

Other State sector organisations should be required to provide information sought by the Director performing a fit and proper person test. The Act requires the Director to perform the test. It seems illogical that State sector organisations might hold information relevant to the Director's consideration but withhold it. If the intent is for the test to be done then all relevant information available within the State sector should be available to the Director for him/her to consider.

Please state your reasons:

We strongly support proposals that would make it clear that State sector organisations, from whom information is sought under section 10(3), must make that information available. The Director must be able to make quick and robust decisions on a document application or when considering the fit and proper person status of an existing document holder.

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?

The Board considers that on the request of the NZ Police, the Aviation Security Service should have the power to screen (using imaging technology or explosive detector dogs) unattended items in the landside part of an aerodrome.

Please state your reasons here.

The Aviation security service has the appropriate assets to do the screening at larger aerodromes. The practical alternative to providing the service with the required power is to evacuate a large area around the suspect unattended device while Police assets are alerted and sent to the aerodrome. Depending on the location of the Police assets, this

could take a considerable time to do. While this is occurring, the aerodrome could effectively be closed – a very considerable cost and inconvenience.

We consider that the security provisions in the Act generally lack clarity. We are supportive of proposals which allow AVSEC to be clear on it legal powers particularly in the airside environment of an airport. We support a redrafting of the security provisions.

The review of the Civil Aviation Act could provide the opportunity to discuss provisions in the Aviation Security Act with the Ministry of Justice. Particularly, the issue of passenger consent when searching checked baggage for items which have been identified during the hold baggage screening process (section 12 (1)).

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)?

The Board considers that this issue is effectively the same as B13a and the same response is provided.

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?

The Board supports the use of EDD within a landside environment of an airport, including public car parks and airport terminals generally at the request of the NZ Police.

Item B14: Dangerous Goods

We support Option 2 for the reasons stated in the Discussion document.

Issue B15: Security check procedures and airport identity cards

We support the proposed amendments to the Act referred to in para. 321.

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

We have no comments regarding sections 77F and G of the Act. We are not aware of any reason to change the content of those sections.

Item B16: Alternative terminal configurations

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

We have no view on the topic except to express the strong preference that airport terminal layout provides an efficient means of providing the required security outcomes.

Please state your reasons here.

Terminal layout is an important factor in determining the cost of Aviation Security Service operations at an airport and therefore the funding requirements for the service.

The issues are well set out in the Discussion document. We would be keen to work closely with the Ministry if this progresses.

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

The processing costs need to be funded in accordance with Treasury and Office of the Auditor General guidance for charging for services in the public sector.

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?

The Board supports the recommendation.

Please state your reasons:

We agree with the Ministry's position.

The amendment was considered by Parliament in 2001. The amendment was not implemented even following the emergence of the capacity to compete with Airways in the provision of the services. We consider that a single provider of the services reduces the complexity of the system and thus supports the best safety outcomes.

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?

We consider that four months is reasonable compromise between the time required to resolve any dispute regarding charging and the need for the CAA to avoid carrying debt. Thus it supports Option 2 – the reduction of the threshold from 6 to 4 months.

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

Question F4: Which is your preferred option?

We support 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).

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

Question F5: Which is your preferred option?

We support Option 2: Amend section 42B to include a power for the Director to require an audit of operators from which it collects levies at the CAA's own cost. The scope of the audit power would be that required to ensure levy payments/ returns were accurate.

Without such a power the Director has no way of checking the levy payments by operators are an accurate reflection of the number of passengers carried – or whatever other basis of payment may be involved.

Some other option (please describe):

In addition to an amendment to section 42B, we also recommend an amendment to section 38 (2) (around differential rates for different classes), to include the ability for an audit of operators who return information that is used to calculate the basis for charges. We are happy to provide further details to the Ministry on this.

In addition, we seek confirmation that the Ministry is reviewing the following sections, to ensure they are fit for purpose:

- *Section 72B (3A) & (3B) and Schedule 3 section 35B & section 38A*
- *Section 72CA with consideration of the removal of this section, to be consistent with the Civil Aviation Authority*
- *Section 72F (3) with consideration of the removal of this section, given the changes to the Crown Entities Act, relating to accountability documents.*

Item F6: Fees and charges for medical costs

Question F6: Which is your preferred option?

We support 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.