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

Your name [redacted]

Your email address [redacted]@qantas.com.au

Why is your email needed?
Your email address is needed in case we need to contact you with any questions about your submission.

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

Are you:

☐ A private individual?

☐ Part of the transport industry?

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

[redacted] *this submission is made on behalf of Qantas Airways Limited, Jetconnect Limited, Jetstar Airways Pty Limited and Jetstar Airways Limited.*

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:

Qantas agrees with the statement in the consultation document that this option will allow carriers to better access and understand the legislative requirements. This may also result in an increase in compliance, especially with those international air carriers where English is not their first language. It will also present an opportunity to compare and contrast with other jurisdictions with a view to further considering mutual acceptance and harmonisation in the region.

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:

Qantas supports the concepts listed for inclusion a purpose statement (or purpose statements) for the new act or acts as set out in the consultation document. These purpose statements could also incorporate the New Zealand Ministry of Transport's (NZMOT's) sector-wide outcomes for transport which states that civil aviation regulations should achieve its desired outcome in an effective and efficient way.

[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.

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

Further, with respect to security, Qantas believes two additional statements could be considered, namely:

a) *a statement to the effect that "the legislation is designed to create a system to prevent against acts of unlawful interference"; and*

b) *a statement to the effect that "the legislative framework supports a security management system approach to achieving the desired security outcomes".*

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

Yes.

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?

Yes.

Item A3.4: Independent statutory powers

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

☐ **Yes**

☐ **No**

Please state your reasons here.

Qantas considers that having a single point of authority, in the form of the Director of Civil Aviation, provides a focus and rigour in relation to aviation decisions which is of assistance to the industry.

We would not favour the removal of powers from the Director of Civil Aviation to a Minister as we consider that the proper exercise of these powers will require understanding of issues that are linked and interdependent and will demand the skills and experience of a full time aviation specialist. We also consider it more appropriate to vest powers in the Director, rather than the Board of the Civil Aviation Authority (CAA). To do otherwise, would fundamentally change the nature of the Board's role (which currently is focused upon governance and oversight).

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.

We consider that it is important to retain an aviation-centric approach to assessment of the fit and proper person test, given the unique level of health and safety risks/consequences present in the aviation industry over other transport sector roles.

That said, we do consider that there should be improvements made to the manner in which the fit and proper person test is applied, and the systems that are in place to enable the assessment to be made.

First, we consider that there should be a regular review of a participant's fit and proper person status. At present, once someone holds an aviation document, they may not have their status as a fit and proper person reviewed unless they take on a new role requiring a fresh review. We consider that CAA should have the ability to access other government held information and to compel the provision of information by participants or others in the aviation industry with information relevant to the participant, to enable periodic reviews of participants' fit and proper person status to be made.

Second, we consider that a centralised pilot records system should be implemented to enable operational and/or assessment records, and other information relevant to a participant's fit and proper person status, to be deposited by aviation sector entities. This repository of information would then provide a further basis for fit and proper person assessments to be undertaken, as well as provide aviation sector entities with reliable information regarding participants.

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)?

No comment.

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)?

No comment.

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):

Please state your reasons

Qantas is concerned that allowing a third streamlined pathway could lead to a situation where a case is progressed without the necessary rigour provided by the existing pathways for medical certification. Given we already have some reservations regarding existing medical certification pathways, particularly where flexibility is relied upon under Section 27B, we would not want to see a third streamlined adopted without comprehensive review and consideration.

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

No comment.

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

We consider that it is better if applicants for aviation documents are required to be assessed by an Aviation Doctor who is familiar with the New Zealand aviation system and is known to CAA.

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

If there is to be acceptance of overseas medical certificates, oversight should be by the Director of Civil Aviation, with obligations on the holders to advise the Director of changes in status. This will give the greatest certainty as to the quality of the oversight and remove the need to put in place information sharing mechanisms with overseas regulators which may fail to provide timely or adequate information regarding matters such as a change in status.

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?

All of the key aspects of Part 2A should apply, allowing the Director of Civil Aviation to have access to relevant information, and to exercise all decision making powers allowed for in Part 2A in relation to foreign medical certificates as if they were New Zealand issued documents.

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

Please state your reasons here

This option would have the benefit of reducing the medical certification application fee. Qantas would welcome the opportunity to provide input to determine an appropriate fee level.

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

No comment.

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 comment.

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?

Although Qantas does not consider that penalty levels under the Act generally need to be revised, we do consider that there could be increased penalties, or education, or enforcement action in relation to certain areas of aviation security risk such as that involving "Disruptive Passengers" and matters such as the use of laser pointing devices against aircraft.

We have experienced an increase in incidents of passengers being disruptive and consider that increased focus by the regulator on this problem would be helpful.

We would support a penalty for giving false or misleading information to an airline official which is likely to present a risk to the safety, security or health of the aircraft or the passengers on board the aircraft (e.g. providing false information in response to a question like "have you travelled to West Africa in the last 21 days or have you been exposed to a person suffering from Ebola?"). Where Governments are relying on the airlines to ask these questions, there should be appropriate penalties in place to reinforce the requirement to provide true and not misleading information. Provisions exist prohibiting misleading government officials in New Zealand under various Acts and we would support similar provisions. Like sections 76 and 96 of the Civil Defence Emergency Act 2002 these provisions could include the ability for the Secretary or the Minister of Transport to delegate authority to airlines to ask these question and, if information provided is false or misleading, the individual may be prosecuted or receive a fine.

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

No comment.

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:

Qantas prefers an 'in-between' solution, with the appointment of an aviation expert to assist a District Court Judge on their review. We do not consider that a specialist tribunal is required to be established, although the use of an expert aviation member to sit with a judge would be valuable. We do not consider this cost should be borne by participants in the process, although if it is to be passed on, then a reasonable daily rate fee, payable by the litigant, would be one manner in which costs could be resolved.

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

No comment.

Rules and regulatory frameworks

Item B9: Rule making

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

We are concerned at the length of time it sometimes takes for rules to be passed, as in some cases two to three years may elapse before the rule-making process is completed.

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

We consider that a combination of temporary rules (which may be reviewed on challenge) and the delegation of rule-making functions to CAA (the Director, with ratification by the CAA Board) could enable rule-making to be completed more quickly.

A review to the Minister (or someone appointed by the Minister), or to the Regulations Review Committee of Parliament, would provide options for review of temporary or delegated rule-making.

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?

As this is an administrative mechanism designed to streamline operations between the Ministers' office and CAA, we consider it would be appropriate for the Minister to delegate rule-making in any area which he/she considers is appropriate.

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:

Qantas supports a 'first principles' review of rule-making to consider proving the same powers to the Director as set out in Option 2. If this was instituted, the more technical rules could be managed by the Director and the others by the CAA Board.

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.

No comment.

Information management

Item B11: Accident and incident reporting

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

Qantas believes that all aviation sector participants must recognise the importance reporting details of accidents and incidents as set out under CAA's Regulatory Strategy. We consider that the notion of open reporting of incidents and a willingness to look at matters of health and safety as paramount in the industry. We consider on occasions there are some participants of the aviation industry who demonstrate an unwillingness to embrace constructive criticism, and to develop a culture of continuous improvement in standards and this sometimes creates a 'cone of silence' amongst aviation sector participants when it comes to their own observations of others' behaviours and actions.

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

We consider that more interaction by CAA with aviation sector participants, reinforcing the importance of a culture of continuous improvement, and the critical importance of health and safety matters in the aviation sector, would be of assistance. We consider that messaging around CAA's culture of a preference for non-enforcement when reporting occurs, but hard-enforcement when it does not, would be of assistance. We also consider that recognition should be given to operators whose non-reporting of incidents arises not because of systemic failure, but because of individual participants' decisions to withhold information from the operator as well as the regulator.

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?

Further to our comments with respect to Question B1a, we consider full access to all government held data should be available to the Director. We also consider that a centralised pilot's record database should be established.

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:

We consider that the significance of the fit and proper person test is such that there should be no barriers to the Director having access to any and all relevant information.

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.

We support this for the reasons outlined in the consultation document. We note however, that the standard operating procedures designed for Avsec to deal with unattended items must be established with a view to minimise the potential disruption to operations in the landslide area of an airport.

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.

Qantas believes Avsec should have the power to use EDD to determine if a non-commercial vehicle is 'suspect' or gives rise to a concern. This would be a more cost effective and efficient use of resources, the cost of which should be recovered from all airport users and not merely the airline community. Once established that a concern exists, the issue should then be handed over to the local Police to determine any actual risk to aviation.

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:

For the reasons stated above, Qantas supports the use of EDD within a landside environment of an airport. Again, associated costs with this function should be recovered from all airport users and not only the airline community.

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?

Qantas agrees with the proposed changes, however with the powers pertaining to seize "other identity document" being limited to those ID cards or 'other ID Documents' issued within New Zealand. Should, for example, Avsec have an issue with an Australian Aviation Security Identification Card (ASIC), the ASIC should not be seized, but rather handed over to the aircraft commander or local airline representative after Avsec have identified their concerns.

We would like to see single cards being able to access multiple airports (for example, Auckland, Wellington, Christchurch). We would also like to see consistency for processing of applications for AIC's across the regions. At present cards take a longer time to process depending on which airport you are seeking access to.

Finally, we do not consider that the process in determining whether a red or yellow background is appropriate for a particular applicant is being followed consistently. We consider that there should be more weight given to a request for a particular background (and therefore access level) for applicants from organisations such as major airlines as a bureaucratic assessment of an applicant's 'need' to have certain access can be out of line with the practical requirements of operators.

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.

Qantas supports the use of alternative airport designs or configurations, such as a common departure terminal, in the future. On balance, alternative terminal configurations, such as the Common Departure Terminal (CDT), improves efficiency, increases flexibility and should lead to lower charges to passengers.

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

We consider that charges for these alternative configurations should be linked to actual passengers, and not a prediction or estimate of passenger numbers.

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:

We believe the list of defences under part 9B section 91Z should be expanded so that carriers are not liable if they can prove that the delay:

1. *arose by reason of the act or omission of a third party who is not the airlines' employees or representatives; or*
2. *was outside the airlines' control, including but not limited to unforeseen technical faults.*

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:

If such a presumption was introduced, Qantas believes the additional defences above should apply to delay in the carriage of baggage as well and a lower cap should apply for delay of baggage than loss.

[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

Please state your reasons:

We believe the current arrangements are effective and provide a balanced approach.

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:

We believe educational measures by the Ministry of Transport may be useful but are not necessary.

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

- ☐ **Yes**
- ☐ **No**

☐ Please state your reasons here:

Qantas supports the status quo and does not believe that stronger protection provisions are necessary. The current arrangements provide a balanced approach.

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

N/A

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

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?

N/A

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:

As stated in the consultation document, this option would reduce the administrative burden on the Ministry and operators.

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:

Please see response to Question D1a.

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:

Approach 1 is supported to ensure the definition for systematic is consistent.

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

N/A

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:

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):

Amendment to the Act to reduce the submission period, but continue to require notice for all routes.

Please state your reasons here:

We support the above option because third parties should have the opportunity to make submissions about planning and implementing services regardless of whether air services rights or capacity are limited or unlimited.

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?

We support a 10 day submission period.

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):

Qantas does not object to Option 2.

Please state your reasons here:

As stated in the consultation document, various circumstances have been dealt with using other provisions in the Act.

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:

If New Zealand is going to allow an airline to operate to New Zealand in the absence of air services arrangements, they should be licensed to ensure that safety, security and financial requirements are met for the benefit of the travelling public.

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:

The NZMOT has developed the relevant expertise to consider authorisation of collaborative arrangements between airlines and it makes sense to preserve decision making authority in this body. Amending the Civil Aviation Act regime to expressly reflect the cost-benefit assessment that authorisation involves, specify an authorisation process and allow for conditional authorisation would provide certainty and clarity without significantly altering existing practice. We would also support the NZMOT having the ability to authorise conduct beyond that relating to 'tariffs and capacity' as this removes the potential for an artificial distinction between what is often related conduct and between what the NZMOT can authorise and what remains subject to regulation under the Commerce Act.

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

Please see response to Question D6a. Amending the Civil Aviation Act will provide greater certainty and transparency, as well as consistency with equivalent international approaches.

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

No comment.

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?)

No comment.

Item D7: Commission Regimes (section 89)

Question D7: Which is your preferred option?

- ☐ **Option 1:** Status quo – the Act provides for a Commission Regime to be issued and retains the current Commission Regimes
- ☐ **Option 2:** Repeal and reissue – the Act provides for a Commission Regime to be issued and revises the current Commission Regime
- ☐ **Option 3:** Complete repeal - repeal the existing Commission Regime and section 89 (Ministry of Transport preferred option)
- ☐ **Some other option** (please describe):

Please state your reasons:

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:

As stated in the consultation document, this approach is similar to the Australian regulations with respect to tariffs.

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):

Amend the threshold from annual revenue to passenger movements – for example, airport company that in its last accounting period had in excess of 750,000 passenger movements. We would also support the passenger movement threshold being considered over multiple years, for example three years, so that those airport companies which fluctuate around the threshold continue to meet the definition.

Please state your reasons:

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:

No comment.

Item E2: Redundant provisions

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

It is important that all airports are required to disclose airport related charges. The removal of the provision would probably have limited impact, as airports cannot recover their fees without disclosing them to airlines, however Qantas can see no reason why an airport should be able to withhold its pricing information from any person. Provision 3BA puts the question beyond doubt.

Question E2b: Do you support repealing section 3BA?

- ☐ **Yes**
- ☐ **No**

Please state your reasons:

Please see response to Question E2a.

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?

Currently Section 4A allows for airport companies to set prices as they see fit. Under New Zealand law users have to pay these charges even if they do not agree with them. This essentially protects the airport's monopoly pricing, allowing airports to unilaterally impose charges on airlines without consideration of the impact or reasonableness of the charges.

Airlines have no mechanism for dispute resolution and the airports have no incentive to negotiate or come to an agreement with airlines.

Qantas supports the repeal of Section 4A and also considers that airports have must have a guiding set of principles for airport pricing. In Australia the aeronautical pricing principles are as follows:

a) that prices should:

i. be set so as to generate expected revenue for a service or services that is at least sufficient to meet the efficient costs of providing the service or services; and

ii. include a return on investment in tangible (non-current) aeronautical assets, commensurate with the regulatory and commercial risks involved and in accordance with these Pricing Principles.

b) that pricing regimes should provide incentives to reduce costs or otherwise improve productivity;

c) that prices (including service level specifications and any associated terms and conditions of access to aeronautical services) should:

i. be established through commercial negotiations undertaken in good faith, with open and transparent information exchange between the airports and their customers and utilising processes for resolving disputes in a commercial manner (for example, independent commercial mediation/binding arbitration); and

ii. reflect a reasonable sharing of risks and returns, as agreed between airports and their customers (including risks and returns relating to changes in passenger traffic or productivity improvements resulting in over or under recovery of agreed allowable aeronautical revenue).

d) that price structures should:

i. allow multi-part pricing and price discrimination when it aids efficiency (including the efficient development of aeronautical services); and

ii. notwithstanding the cross-ownership restrictions in the Airports Act 1996, not allow a vertically integrated service provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher.

e) that service-level outcomes for aeronautical services provided by the airport operators should be consistent with users' reasonable expectations;

f) that aeronautical asset revaluations by airports should not generally provide a basis for higher aeronautical prices, unless customers agree; and

g) that at airports with significant capacity constraints, peak period pricing is allowed where necessary to efficiently manage demand and promote efficient investment in and use of airport infrastructure, consistent with all of the above Principles.

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:

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:

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

No comment.

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

No comment.

Item E4: Threshold for consultation on certain capital expenditure

Options for amending the threshold for consultation on certain capital expenditures

Passenger 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:

Qantas believes that it may be practically challenging to implement a percentage applied to identified assets, as set out in the other two options, particularly for small airports that are not reporting their assets with a split into aeronautical and non-aeronautical activities. The calculated threshold would also depend on whether the fair value (i.e. revalued) or historical value is used.

The stepped thresholds for consultation on capital expenditures remain Qantas' preferred method as it is the easiest and fairest to implement.

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

Qantas would propose lower thresholds for the three-tiered approach, respectively $1 million, $2 million and $5 million instead of $5/$10/$30 million as proposed in the consultation document.

Qantas considers the proposed thresholds are too high to capture some major capital works (such as runway overlays, apron and taxiway extensions, terminal developments), especially if the works are staged over more than five years. Even though these works may be seen as minor, airlines have significant expertise to provide key support in the design and implementation. Consultation with airlines is the best way to ensure the works meet the industry and passengers' requirements, providing value for money (via detailed cost/benefit analysis) and achieve operational efficiency. In many instances, the proposed works can be optimised and benefit the users by limiting charge increases.

Moreover, the proposed capital works can result in a significant increase to the rates paid by the users. It would not be reasonable for airports to significantly increase their charges without prior consultation.

In Australia, it is not uncommon for airports and agencies to consult on all projects over $100,000 (for example, Sydney Airport, Airservices Australia and a number of other airports). However, there have also been many cases where airports have overspent compared to their planned budget, and as a result have requested airlines to pay for the overspent amount without consultation. For example, a major Australian port has overspent on their five years capital plan by $240 million, while another airport has already spent $480 million for terminal redevelopment despite only consulting with airlines for $350 million.

A detailed analysis of timing of works and demand is paramount. Some airports have overestimated growth forecasts and have undertaken works too early for actual demand and gold plated the infrastructure. A subsequent downturn in the market and the substantially higher price resulted in the airport sustaining substantial losses.

Consultation is an essential part of the decision making process, capital infrastructure may not be the optimal solution and this is why we believe the thresholds should be lowered. A tri-party approach is needed at airports involving airlines, air navigation service providers and airports. Consultation with airlines forces airports to more rigorously examine efficiency, both financial and operational, to ensure that the airport asset brings benefit to those it is fundamentally designed to serve – the passengers.

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:

The reasons for which airport authorities can terminate leases without compensation or recourse for compensation should be limited to the purposes of safe and efficient aeronautical operations at the airport. An airport ought not be permitted to terminate a lease in order to maximise non-aeronautical revenues at the expense of aeronautical operations or aeronautical tenants. While we are not aware of any airport attempting to use the provisions in this way, similar arguments have arisen in other countries and clarity on the point can only assist in avoiding future conflict and damage. We do note that existing leases held with airport do cover termination rights.

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)?

No comment.

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):

No comment.

Please state your reasons:

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?

No comment.

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?

No comment.

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?

No comment.

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?

The airports are all monopolies. Without disclosure of the kind contemplated by 9A, airlines and passengers are left with virtually no leverage whatsoever to use to prevent uncontrolled price rises by airports. Section 9A only offers limited leverage in any event, as it depends on the public and politicians engaging and questioning the information provided. Airports in other countries such as Australia have gone to great lengths to conceal and obfuscate in relation to price increases, as no obligation of this kind exists. A state-created monopoly such as an airport must account to the constituents of the state for the profits it generates to allow proper understanding and debate of the benefits of this model of operation. This is especially the case in a state as dependent upon air-travel as New Zealand.

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:

In principle we have no objection to Airways operating as a monopoly. It provides specialist services, which should benefit from the efficiency of Airways enjoying a monopoly across what would otherwise be a small market for Airways to make research and development and technology investment into. The concerns we have are ensuring that proper investment is made notwithstanding the absence of competition, and ensuring that fees are not set at levels which take advantage of the monopoly position. One option might be for there to be a forum established for interested parties to liaise with Airways regarding such matters, and for Airways to be required to provide reporting to the forum on operational, investment and pricing decisions.

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):

No comment.

Please state your reasons:

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):

No comment.

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):

No comment.

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:

In general we have no issue with respect to the current fee levels charged in relation to matters. However, we do have an overarching concern regarding the consistency of the medical certification process and the opportunity for variability of the medical assessment standard between Aviation Medical Examiners. The CAA is aware of the concerns regarding the variability of this standard.

We consider this one area CAA should review (even if this would lead to an increase in cost, and therefore on-charging under section 38(1)(b)). A review of all Aviation Medical Examiners could be completed by CAA, with a regular review to ensure any variability in standard is identified and addressed, will assist in ensuring ongoing high levels of competency and the integrity of medical certification standards.

We do not consider it appropriate to provide a legislative mechanism for fees to be calculated to justify the recovery of broad and potentially unspecified costs.