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] [redacted] **Aircraft Owners and Pilots Association NZ Inc.**

Your email address [redacted]**@aopa.co.nz**
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:

AOPA represents many of the private and recreational flyers in NZ

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):

No comment

Please state your reasons:

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 We support** ☐
Economic - airport related	To facilitate the operation of airports, while having due regard to airport users	☐ **Yes** ☐
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:

We support the well-defined concepts in legislation

[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)

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

With the addition of wording to make it cost efficient also. Just being efficient is not enough as it should be balanced to be cost efficient for the operators in the system.

Item A3.4: Independent statutory powers

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

☐ **Yes**

Please state your reasons here.

The Director needs statutory powers to be able to act in a situation without delay.

However the decision by the Director should be subject to a panel review by a group of appropriately qualified industry peers within a given time period of say 30 days to provide transparency to the actions taken. How this panel review process would work in practice is discussed in more detail under Question B8 Appeals Process.

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):

We favour option 2 bearing in mind that the Director has many of the powers already but an alignment with other legislation makes sense.

Please state your reasons here.

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)?

Make sure that the wording is clear and unambiguous in all clauses.

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)?

Refer to our comments under B5 and B8 regarding the need for a more robust and cost effective review process for medial and general appeals against decisions of the Director of Civil Aviation

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):

We support option 2

For the reason that it follows international standards that are working in other contracting ICAO States and does not seem to have any ill effects on the medical certification. The SODA method is acceptable provided it is not limited to physical condition only and covers stable medical conditions as well. The addition of "Previously Recorded No Change (PRNC) as used by FAA should also be examined.

Please state your reasons

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

As stated in your discussion document the savings to applicants and Participants would be substantial by avoiding repeats of some tests and the cost of the AMC process which we believe should be at the expense of the applicant.

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

Please state your reasons

The acceptance of certificates from contracting states like FAA, Australia, UK and EASA would be acceptable but many other states would not necessarily have the same standards.

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

The level of oversight should be only on issues that may arise if the Director becomes aware of any change in the medical condition of the participant. A medical certificate relies on self-certification after the examination and should be treated as it would have been if it was issued in NZ

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?

The overseas Medical Certificate should be treated as if it was a NZ certificate and the Director should have the powers to intervene in the same manner.
Our opinion here relies on the assumption that this Act review will also change or clarify the wording to reflect the intention that the Director must be acting on Reasonable grounds. (please take note of AOPA submission on this matter and also on paragraph 85 and 86 of the discussion document).

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

We support Option 2 with modifications

We consider that the convener process must remain but needs to be more robust, independent and transparent. The addition of registered medical specialists as reviewers of say cardiac issues or other specialist areas needs to be included so that the review is done by a panel rather than a single person appointed to the position in appropriate cases. Co-opting additional specialists could be initiated either at the discretion of the convener if he or she considers that a case raises special or unique issues that would benefit from a wider peer review process; or at the request of the applicant.

Where requested by the applicant, the cost should be to the applicant in the initial instance but maybe on CAA if the applicant achieves a reversal or significant modification of the original medical assessment. It is critical that the convener or panel consults the applicant's specialists and does not just review the decision of the Director on the basis of the Director's and his or her specialist's opinion.

Please state your reasons here

We do not agree with the assumption in the consultation document that the low level of appeals and convener reviews, and the low level of decisions reversed by the convener means that the convener review process and/or medical assessment process is functioning well.

Anecdotal feedback suggests widespread dissatisfaction or scepticism about the robustness of the convener decision making process and there is a perceived or actual lack of independence of the convener from the CAA medical unit personnel.

The District Court appeals process is also costly and slow, and due to the current wording of the Director's powers and ability to intervene in medical decision making in Part 2A of the Act (discussed below), the right of appeal is considered in its present form to provide little real protection or ability to challenge adverse medical decisions.

For these reasons we consider that the convener process needs to be retained but significantly strengthened to ensure that it provides a genuinely robust, independent assessment and a demonstrated willingness to alter or at least more critically examine CAA medical decisions in appropriate cases.	

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

In principal, AOPA supports the applicant for a convener review paying the cost of the review. The cost must be based on the actual cost of a review without added corporate overheads either of the Ministry or the CAA in administering the convener or general medical functions. Whether the cost needs to be broken down into bands, for example, to deal with simple or complex cases may require further policy work. As noted above, we consider that where an applicant has paid for a review, and/or paid to appoint additional specialists, but is successful in challenging the CAA medical assessment, there should be the ability to reimburse those costs to the applicant. Where the case is considered to raise particularly complex or unique issues, or ones that might later benefit other applicants for convener review, there should also be some discretion to waive some costs to the applicant.

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)?

AOPA believes that the general policy intent of PART 2A of providing for decentralised medical assessments and issuance of certificates, while retaining some ability for the director to intervene where medical criteria are clearly not met or an assessment is clearly and demonstrably wrong, is sound. However AOPA believes that the policy intent is not being achieved, and is open to abuse, in practice. This is in part due to the limited effectiveness of the existing appeal and review rights (discussed above). In addition, it has become apparent that there are drafting and statutory interpretation problems in Part 2A of the Act that mean the Act is being applied by the CAA in ways that we do not consider reflects the actual policy intent when PART 2A was first enacted.

Principally, we consider that the burden of proof for the Director to intervene in medical decisions and to take adverse medical action is too low. This has been alluded to in the small number of cases that have been before the Courts.

Part F: Other matters

We agree with and applaud the Ministry's intention to rewrite a number of sections in the Act that refer to "on reasonable grounds to believe" or "believes on reasonable grounds" to make it clear in all cases that the Director in making relevant decisions, must be "acting on reasonable grounds".

While allowing for some residual discretion, we believe that what constitutes "acting on reasonable grounds" should also be further defined in Part 2A. For example, where the Director purports to rely on medical studies and expert opinions, these should be able to be demonstrated to be up to date and representative of currently accepted medical opinion by relevant main stream medical professional bodies. Where the Director purports to ignore clinical test and examination results, there must also be a compelling medical basis for doing so. There must also be a statutory onus on the CAA medical unit to clearly document the medical rationale for their assessment when communicating adverse medical decisions to applicants or holders of medical certificates.

AOPA has also previously made submissions on the need for legislative amendments to the drafting of section 27(B)(1) specifically seeking the inclusion of the word "OTHER" before the word "characteristic".

This is a subject that cannot be fully canvassed as part of this consultation document, and accordingly AOPA requests the opportunity to meet with Ministry and legislative drafting officials at the relevant stages, to have further input into these areas and any legislative amendments that may be proposed.

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

No comment

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

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**

Please state your reasons:

We consider that a specialist panel or tribunal would be a more cost effective way to challenge any decisions by the Director or CAA. It would be transparent and would offer a way to avoid costly and slow court processes. As stated by us earlier all decisions by the Director should be open to this process after a designated time period of say 30 days. As pointed out in the consultation document this process works well in other ICAO contracting states

As with the medical review process, we consider that the applicant should in principle bear the cost but with an ability to be reimbursed or awarded full costs where the panel or tribunal disagrees with the decision of the Director.

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

This cannot be determined in a simple manner as it would depend on the complexity of the case. However as with our suggestions on the medical convener review process, it should be possible to develop a fee structure that recognises the degree of complexity and/or number of panel members required to review the decision, and with the ability to reimburse the participant for the costs of a successful or partially successful panel review.

Rules and regulatory frameworks

Item B9: Rule making

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

The rule making process must be speeded up and made simpler to amend as the advances in technology in many cases are far ahead of the ability to change rules to allow the latest advances to be used effectively.

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 strongly support the need for change but believe this should be discussed at the level of ACAG to get the input of all sectors of the aviation community.

There appears to be a willingness for change in this field so we should be prepared to facilitate that willingness at this review.

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?

This should be the subject of a debate in a forum like ACAG where all sides can make determinations.
It may be that a combination of option 3 and 4 would be suitable but this needs some collegial input.

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:

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.

Again a discussion at ACAG level would be helpful.

Information management

Item B11: Accident and incident reporting

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

The fear of prosecution.

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

A simplified process of reporting that allows the submitter to remain anonymous.

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?

No Comment covered earlier

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:

Subject to the OIA.

Security

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

Question F3: Which is your preferred option?

- ☐ **Option 1:** Status quo – the Director of Civil Aviation may revoke an aviation document if the related fee or charge is overdue by six months
- ☐ **Option 2:** Reduce the threshold from six to four months
- ☐ **Some other option** (please describe):

Option 1

Please state your reasons:

It appears to be working and is commercially acceptable

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):

Option 1 works but is not always enforced. It is standard commercial practice.

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):

Option 1 but amended to change the phrase "costs directly associated with…" to "the direct costs" of the Director and Convener's functions

Please state your reasons:

The medical department essentially covers its own overhead costs in the administration area and then to add the entire corporate overhead costs on a percentage basis means it is adding substantially to the charge out rate required when many of the corporate overheads relate to matters not associated with the medical department.

The Regulations Review committee has adopted the view that "costs directly associated with" may include indirect and general corporate overhead costs. It is implicit in the Ministry's suggested option 2, that it accepts that the current wording of the fee setting power is however open to interpretation. We do not support option 2 to explicitly expand the scope of that fee setting power to include other indirect and corporate overhead costs.

AOPA has previously made submission on this to the Regulations Review Committee and the Ministry is in possession of a copy of those submissions. AOPA remains strongly opposed to the fee setting power including any indirect or corporate overhead costs, and suggests the legislation should be amended to clearly exclude those costs.