

Chair  
Cabinet Economic Development Committee

## **CIVIL AVIATION BILL: CONFIRMATION OF KEY POLICY DECISIONS**

### **Proposal**

1. This paper seeks agreement to progress a Civil Aviation Bill (the Bill) to replace the Civil Aviation Act 1990 and the Airport Authorities Act 1966 with a single statute. The aim of the Bill is to:
  - 1.1. improve the safety and security of New Zealand's aviation system
  - 1.2. improve the efficiency and effectiveness of regulatory decision-making to facilitate a growing and competitive aviation sector
  - 1.3. preserve New Zealand's national security and national interests
  - 1.4. improve the usability of the legislation by regulated parties.
2. This paper asks Cabinet to confirm the policy decisions made by the previous government and agree to a number of new, or revised, policy proposals reflected in the Bill.
3. This paper also seeks agreement to release an exposure draft of the Bill for consultation.

### **Executive summary**

4. The Civil Aviation Act 1990 (the CA Act) governs the civil aviation system in New Zealand and sets the overall framework for aviation safety, security and economic regulation in New Zealand. The Airport Authorities Act 1966 (the AA Act) provides for local authorities and other persons (e.g. airport companies) to be authorised as airport authorities.
5. The Bill responds to drug and alcohol safety issues identified in the aviation sector, through the Carterton Balloon incident and other Transport Accident Investigation Commission (TAIC) investigations. The Bill also modernises the legislation so it is fit for current conditions, and into the future. For example, it responds to the growing use of unmanned aircraft (drones) in the aviation sector.

6. The Bill reflects recommendations from the 2014 review (the Review) of the CA Act and the AA Act<sup>1</sup>, the Domestic Aviation Security Review 2014/15 (the DASR 2014/15)<sup>2,3</sup>; and the policy investigation into reducing the risks of alcohol and drug impairment in aviation, maritime and rail<sup>4</sup>.
7. The Bill will replace the CA Act and the AA Act with a single statute that includes the new and revised provisions. The Bill aims to:
  - 7.1. improve the safety and security of New Zealand's aviation system by strengthening the management of the risk of drug and alcohol impairment in the commercial aviation and maritime sectors
  - 7.2. improve the efficiency and effectiveness of regulatory decision-making to facilitate a growing and competitive aviation sector by strengthening the process for authorising airline cooperative arrangements
  - 7.3. preserve New Zealand's national security and national interests by empowering the Minister to consider national security considerations
  - 7.4. improve the usability of the legislation by regulated parties.

*(Section 1) Policy decisions already made*

8. In 2016, the previous government agreed a number of policy decisions to be reflected in the Bill, covering aviation security and safety issues, and aviation economic regulation matters. A copy of the 2016 Cabinet paper is attached at Appendix Two.
9. Section 1 highlights some of those decisions that I consider Cabinet should be aware of. I am recommending Cabinet confirm the previous government's decisions without any significant changes, except for:
  - 9.1. minor changes relating to the protection of safety information 'Just Culture' policy
  - 9.2. decisions regarding new national security provisions.
10. Information relating to previous policy decisions around the authorisation of airline cooperative agreements, airport charging, having a purpose statement in the Bill, and drug and alcohol management in the aviation sector is also included. Although no changes to the previous government's decisions on these matters are proposed, I expect these issues will be of particular interest to stakeholders.

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<sup>1</sup> CAB-16-MIN-0568 refers.

<sup>2</sup> The DASR examined the vulnerabilities relating to domestic aviation, including taking advice from the Combined Threat Assessment Group and conducting the Ministry's own risk assessment.

<sup>3</sup> NSC-16-MIN-0001 refers.

<sup>4</sup> CAB-16-MIN-0020 refers.

11. I have also included information about provisions in the Bill relating to In-Flight Security Officers (IFSOs). No change to current policy settings for IFSOs is proposed at this time.

[REDACTED]

Withheld, as release of this information is likely to prejudice the security of New Zealand.

*(Section II) New policy decisions*

12. Further issues have arisen since the previous government's policy decisions. I am seeking Cabinet's agreement to include provisions in the Bill to address these matters. The new policy proposals are explained in more detail in Section II.
13. One of these issues, relating to powers to detect, detain and take action against drones, has not yet been reflected in the Bill as I would first like to receive feedback from stakeholders through the planned consultation.

*(Section III) Proposed release of an exposure draft of the Bill*

14. The Ministry formally consulted with interested stakeholders in late 2014 on the review of the CA Act and AA Act through a public discussion document. Stakeholders were generally supportive of the proposed changes. However, policy decisions made by the former government on those proposals have not been formally communicated to the aviation sector since they were made.
15. Given the lack of recent engagement with the sector, the significance of change, the complexity of the Bill, and the emergence of new policy proposals, I propose releasing an exposure draft of the Bill to ensure proper engagement with the aviation sector. The consultation will also be supported by other forms of direct engagement with the sector.

**Background**

16. A number of pieces of work have informed the development of the Bill, which are summarised below.

*The CA and AA Act Review 2014*

17. The CA Act governs the civil aviation system in New Zealand, and, amongst other things:
- 17.1. establishes the Civil Aviation Authority (the Authority)
  - 17.2. identifies the establishment of the Aviation Security Service (Avsec) as a function of the Authority
  - 17.3. establishes the framework for participation in the civil aviation system
  - 17.4. confers functions, duties and powers on those operating in the civil aviation system, including the Authority and Avsec

- 17.5. empowers the Minister of Transport to make Civil Aviation Rules for a range of matters
  - 17.6. empowers the Director of Civil Aviation (the Director) to regulate entry into the civil aviation system, and monitor and enforce compliance with the CA Act and Civil Aviation Rules
  - 17.7. empowers the Minister of Transport to establish, maintain and operate aerodromes
  - 17.8. ensures New Zealand's obligations under international civil aviation agreements are implemented
  - 17.9. provides for the economic regulation of licensing and international air services competition for both foreign and New Zealand based international airlines
  - 17.10. prescribes airline liability and compensation for loss and delay.
18. The AA Act provides for local authorities and other persons (e.g. airport companies) to be authorised as airport authorities, and confers on airport authorities a range of functions and powers to establish and operate airports.
19. The CA and AA Acts have been frequently amended over the decades since their enactment, but have never been substantively revised. The aviation sector and the government's regulatory environment have changed markedly over that same period, during which New Zealand's aviation sector has been a major contributor to economic growth, as it will continue to be.
20. In 2014, the Ministry undertook a review of both Acts and concluded that the legislation is fundamentally sound but a modernisation of both Acts was desirable.

*The DASR 2014/15*

21. On 13 October 2014, the then Prime Minister announced an increase to New Zealand's general terrorist threat level from Very Low to Low. This change triggered a review of domestic aviation security (the DASR 2014/15).
22. The events in Christchurch of 15 March resulted in the general terrorist threat level being raised from Low to High. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
23. [REDACTED]
- [REDACTED]

Withheld, as release of this information is likely to prejudice the security of New Zealand.

24. Following the DASR 2014/15 review, the previous government agreed to a package of new security measures, the majority of which have already been implemented in practice, and did not require changes to primary legislation.
25. However, the introduction of tiered airport security designations needs to be formally reflected in legislation through the Bill. Currently, the CA Act distinguishes between security designated and non-security designated airports. Along with consequential changes to Civil Aviation Rules, the Bill will implement the decision by the previous government to have three categories of security and non-security designated aerodromes. [REDACTED]

Withheld, as release of this information is likely to prejudice the security of New Zealand.

*Drug and alcohol management*

26. In late 2016, the previous government decided to amend the CA Act and the Maritime Transport Act 1994 (the MTA) to strengthen the management of the risk of drug and alcohol impairment in the commercial aviation and maritime sectors. This was in response to the Carterton ballooning incident and recommendations from the TAIC [CAB-16-MIN-0020 refers].
27. Legislation to enable the Director of Maritime New Zealand to carry out drug and alcohol testing within the maritime system was enacted in 2017. I propose to include drug and alcohol measures for the aviation system in the Bill, which are detailed in the next section.

**Section I: Confirmation of, or amendment to, policy decisions made by the previous government**

28. In 2016, the previous government agreed a number of policy changes to be included in the Bill, covering aviation security and safety issues, and aviation economic regulation matters. A copy of the 2016 Cabinet paper is attached at Appendix Two.
29. Section 1 highlights some of the policy decisions made by the previous government that I consider Cabinet should be aware of. I am recommending Cabinet confirm the previous government's decisions without any significant changes, except for:

29.1. minor changes relating to the protection of safety information 'Just Culture' policy; and

29.2. decisions regarding new national security provisions.

30. I have also included information relating to In-Flight Security Officers (IFSOs). Although no changes to the current policy settings for IFSOs are proposed at this time, [REDACTED]

31. These matters are all summarised below.

Withheld, as release of this information is likely to prejudice the security of New Zealand.

***Authorisation regime for airline cooperative arrangements***

32. Section 88 of the CA Act provides that the Minister may authorise arrangements between airlines. The effect of authorisation is an exemption from the Commerce Act so that sections 27 to 30 do not apply.
33. Airlines have increasingly undertaken the cooperation necessary to provide worldwide services through global marketing alliances and integrated bilateral alliances<sup>5</sup> rather than through the International Air Transport Association (IATA) passenger interline system which was in place when the Civil Aviation Act was first passed.
34. Alliances can result in more convenient access to a larger range of destinations, efficiencies that can be passed on to consumers in the form of lower prices, and a better overall product for travellers. However, because they involve competitors or potential competitors agreeing on services and fares they also have the potential to lessen competition, with a risk of higher prices, reduced capacity and increased barriers to entry for other airlines.
35. Alliances that are important in the New Zealand market include Air New Zealand's arrangements with Singapore Airlines, Cathay Pacific, Air China and United Airlines, and the Qantas-Emirates joint venture arrangements.
36. The legislative regime for considering these arrangements has not changed in response to the new developments in the sector or regulatory practice. The specific statutory criteria do not explicitly allow for a full consideration of the impacts of the arrangements, the legislation does not allow for a transparent process or consultation with interested parties and it is unclear whether conditions (including time limitations on authorisations) can be imposed.
37. Officials considered two options to address the weaknesses of the current regime:
  - 37.1. Removing the provision for Ministerial approval of alliances which would have the effect of transferring consideration of these arrangements to the Commerce Commission using the generic Commerce Act regime.
  - 37.2. Include in the Bill a revised regime including criteria that the Minister must take into account when deciding if airline arrangements are in the public interest and set out a transparent process for stakeholder consultation.
38. MBIE's preferred approach is that the Civil Aviation regime be strengthened by transferring responsibility for assessing airline alliances to the Commerce Commission (Commission) under the well-established generic competition law frameworks provided by the Commerce Act.
39. MBIE had proposed a recommendation to transfer consideration of airline alliances to the Commerce Act, but I have not included that alternative recommendation in this paper.

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<sup>5</sup> The fully flexible IATA fares that were prevalent in the early 1980s when the regime was established are now used by a very small percentage of travellers.

40. The previous government decided it was more appropriate to retain it in the CA Act and improve the regime. I have consulted the Minister of Foreign Affairs and we both concur with this decision.
41. A revised regime can explicitly provide for greater transparency and a broader range of considerations than currently to be taken into account.
42. The previous decision on this matter listed specific considerations that the Minister should take into account in making a decision. These included New Zealand's international relations and the impact on the provision of sustainable international air services.
43. I consider that these matters can be appropriately incorporated through reference to the main and additional purposes of the Act.

### ***Airport price setting***

44. Section 4A of the AA Act allows airport companies, following consultation, to 'set charges as they think fit'. For reasons outlined below, the previous government decided to repeal section 4A, and I do not propose revising this decision. I note that this issue is likely to attract significant stakeholder comment however.
45. Section 4A was included at a time when the airport company model was new and untested, to make it clear that airport companies could exercise the powers necessary to operate and manage their airports as commercial undertakings independent of Crown intervention.
46. On its own, the provision has not proven effective in countering the difficulties faced by small airports which often have to negotiate with one major airline customer when seeking to change prices. At the other end of the airport size spectrum, airlines consider that section 4A hinders commercial negotiations between airlines and large airports, and allowing airports to ignore the views of their customers.
47. Airports and airport users hold strongly opposing views.
  - 47.1. Airport users (airlines) argue that an airport's ability to set charges as they think fit creates an environment where monopoly pricing by airports can occur, that consultations between them do not mirror commercial negotiations and that unnecessary investments and excessive pricing can occur.
  - 47.2. Airports argue that section 4A is necessary because:
    - the provision now serves a broader purpose and is a material part of the statutory economic regulation framework for airports;
    - it is a 'circuit breaker' when agreement cannot be reached;
    - without it, there would need to be a fundamental change in the basis for pricing decisions, creating uncertainty for airports;
    - repeal would lead to litigation; and

- repeal could have significant impacts on airport investment.

48. I consider that the provision allowing airports to set charges as they see fit should not be carried over to the Bill. It is no longer needed to serve its original purpose and has potentially undesirable consequences.
49. This will encourage negotiations between airports and airlines and reinforce the recent changes to the Commerce Act, strengthening the threat of more heavy-handed regulation which underpins the current information disclosure regime.
50. The three major airports (Auckland, Wellington and Christchurch) are regulated by the 'information disclosure' regime under Part 4 of the Commerce Act. The Commerce Amendment Act 2018:
- 50.1. clarifies that the Commission's 'summary and analysis' reports on information provided by Airports can comment on whether information disclosure is being effective
  - 50.2. introduces a truncated inquiry process to investigate the need for further regulation of already-regulated airports; and
  - 50.3. clarifies that changes to the type of regulation for an already-regulated airport can be made by Order in Council.
51. I believe this, combined with the Commerce Act, will put in place a regime that more effectively addresses the issues. Section 4A might also create unnecessary overlap if retained. Minor and technical changes may be required to address the potential interface between civil aviation legislation and the Commerce Act.

### ***Drug and alcohol management***

52. The previous government decided to amend the Maritime Transport Act 1994 (the MTA), and reflect in the Bill provisions to strengthen the management of the risk of drug and alcohol impairment in the commercial maritime and aviation sectors. This was a problem identified as a result of the Carterton balloon incident and other TAIC investigations.
53. The package of measures, to be included in the Bill, are:
- 53.1. a mandatory drug and alcohol testing regime by operators (Drug and Alcohol Management Plans (DAMPs));
  - 53.2. mandatory random testing by operators; and
  - 53.3. system oversight by granting the Director of Civil Aviation the power to conduct non-notified testing of safety sensitive workers.



54. These changes will not apply to the recreational aviation sector. I believe that existing provisions in the CA Act – which will be reflected in the Bill - adequately mitigate the risk of drug and alcohol use in this part of the sector<sup>6</sup>.

***Protection of safety information (a ‘Just Culture’ approach)***

55. Civil Aviation Rules and the CA Act require aviation participants to report aviation accidents and incidents to the Authority. Timely access to accurate safety information contained in these reports allows the Authority to identify high and emerging areas of risk throughout the aviation system. This provides a more proactive, evidence-based approach to accident prevention.
56. Just Culture principles seek to improve the quality and level of safety information provided, by ensuring people who self-report incidents are provided certain protections from enforcement action, and that information contained in these reports is protected. Just Culture in aviation is a concept widely promoted by international regulators and groups such as the International Civil Aviation Organization.
57. The previous government agreed to include Just Culture principles in the Bill. Providing for Just Culture principles in primary legislation provides transparency and certainty for aviation participants about how the Authority will use reported safety information, however it also risks creating an inflexible regime.
58. A careful balance is required when reflecting these principles within legislation. The protections need to be at a level which promote the reporting of safety information, while also allowing the Authority to take enforcement or administrative action necessary in order to ensure the safety of the aviation system.
59. The Bill reflects that enforcement or administrative action should not be taken in respect of infringements of civil aviation law, which come to the Authority’s attention through an incident report filed under the Authority’s incident reporting system.
60. As per previous Cabinet decisions, I propose the protection from law enforcement and administrative action is not absolute. The exposure draft allows the Director of Civil Aviation discretion to take enforcement action against an otherwise protected person, when there is a public interest in taking such action. It also allows the Director to take administrative action against an otherwise protected person (such as revoking or suspending a pilot’s license) when there is an aviation safety benefit in doing so.
61. In addition, the Just Culture limitation does not prevent a prosecution under another statute, such as the Crimes Act or the Health and Safety at Work Act. ICAO recommendations note that Just Culture protections must continue to allow for the proper administration of justice. I consider that extending the scope of the Just Culture protections to prosecutions under other legislation may negatively affect the application of justice under those regimes.
62. The Just Culture provisions are likely to attract a high degree of interest and debate within the sector. Although the sector is likely to be supportive of the general

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<sup>6</sup> For example, sections 43A and 44 of the CA Act make it an offence to operate an aircraft in a careless or dangerous manner. Civil Aviation Rule Part 19.7 also makes it an offence for a crew member to be intoxicated or impaired by drugs.

principles, participants are expected to have varying views about the scope of the protections provided and the threshold for which action may be taken.

*I am proposing a few changes to the Cabinet decisions taken in 2016.*

#### A balancing test

63. I propose that the Bill contain a balancing test which the Director must consider before taking action against an otherwise protected person. This provision states that before taking such action, the Director must be satisfied that the public interest or aviation safety benefit in taking action outweighs the safety benefit of receiving full, timely and accurate incident reports.
64. I believe that this test strikes a good balance that allows the Director to take action necessary to ensure the safety of the aviation system, and the proper administration of justice, while also promoting the reporting of aviation incidents.

#### Protection against self-incrimination

65. I propose a new protection that states an accident or incident report is not admissible as evidence in a criminal proceeding against the person who submitted the report, except in a proceeding concerning the falsity of the report.
66. This protection is equivalent to those found in other New Zealand legislation, and aims to protect a person's fundamental right against self-incrimination.

#### Confidentiality of information

67. I also propose including a confidentiality clause which prevents the Authority from publishing or disclosing information that it obtains or has access to when carrying out its functions and powers under the legislation. The provision states that this information (which would include accident and incident reports) may only be published or disclosed in certain circumstances (e.g. when sharing between other regulatory agencies, or when required or authorised by law). This clause closely mirrors a similar provision relating to WorkSafe found in the Health and Safety at Work Act 2015.

#### ***Ensuring issues of national security are appropriately considered***

68. In 2016, Cabinet considered policy issues relating to the Outer Space and High Altitude Activities Bill [EGI-16-MIN-0122], subsequently enacted in 2017. The space regime requires operations taking place between the lower limit of outer space and above the upper limit of controlled airspace (the area between approximately 18kms and 100kms) be subject to a high altitude licence. A national security assessment is part of the licensing process.
69. Potentially, there is a range of technologies in development that operate at high altitudes that could also operate in lower altitudes in New Zealand airspace, and about which there may be national security concerns. Activities using technology operating at lower altitudes are subject to the civil aviation regulatory regime, not the Outer Space and High-altitude Activities Act 2017.

70. The CA Act and Civil Aviation Rules regulate aviation safety and security including (but not limited to) personal security. Security in this context relates to civil aviation security. This is relatively narrow in scope—only covering safety risks arising from the carriage of dangerous goods and the risk to aviation security by unlawful interference with an aircraft. Security in this context does not extend to national security concerns.
71. The civil aviation regulatory regime needs to align, where appropriate, with the space regulatory regime, and be able to mitigate national security risks in the civil aviation system.
72. Currently, the CA Act has no explicit powers to control such activities or operations that may pose a threat to national security. I propose the Bill incorporate national security considerations. The Bill will achieve this by empowering the Minister, on the basis of national security concerns, to issue a notice:
- 72.1. preventing entry of an operator or operation into the civil aviation system;
  - 72.2. removing any operator or operation from the civil aviation system; and
  - 72.3. imposing conditions on any operator or operation.
73. Provisions in the Bill will also enable the Minister to create civil aviation rules prescribing when an application for the issue or renewal of an aviation document is subject to national security considerations.

National security assessment as part of the fit and proper person test

74. The CA Act provides that the Director must consider certain criteria in deciding whether a person is “fit and proper” to be involved in the civil aviation system. However, the Director is not limited to these criteria and can consider any relevant information from any source. When the previous government made policy decisions in 2016, it directed the Ministry and the New Zealand Security Intelligence Service (NZSIS) to consider whether national security should be something the Director must consider, and the cost of doing so, before reporting back to Cabinet.
75. Currently, the Ministry and the NZSIS consider that such an amendment would be of limited benefit, would impose significant costs, and is unnecessary. Officials consider that existing aviation security requirements and controls, together with the proposed national security provisions as set out above, appropriately address the national security risks from aviation.

Withheld, as release of this information is likely to prejudice the security of New Zealand.

76. [REDACTED]
77. [REDACTED]

***In-Flight Security Officers***

- 78. In-Flight Security Officers (IFSOs), also known as air marshals or flight marshals, are covert law enforcement or counter-terrorist agents on board commercial aircraft to counter aircraft hijackings. IFSOs may be provided by airlines or by government agencies.
- 79. Under current legislation, two steps would be needed to allow IFSOs to operate in New Zealand (or on flights to New Zealand):
  - 79.1. by Order in Council, bring into force latent<sup>7</sup> provisions in the Civil Aviation Amendment Act 2007 and the Aviation Crimes Amendment Act 2007; then
  - 79.2. having an IFSO agreement between another State and New Zealand.
- 80. These latent provisions have been in place since 2007, and no policy decisions to the contrary (either to repeal or bring them into force) have been made. [REDACTED]

Withheld, as release of this information is likely to prejudice the security of New Zealand.

[REDACTED]

- 81. I intend that the Bill will continue the status quo at this time, by reflecting provisions from the Civil Aviation Amendment Act 2007 relating to IFSOs. At this time, the commencement clause of the Bill will provide for these provisions to only come into force by a subsequent Order in Council, as is currently the case.
- 82. [REDACTED]

***Purpose and objectives in the Bill***

- 83. While the CA Act and AA Act have long titles to describe what each Act does, neither Act contains a purpose statement. It is common to include purpose statements in modern legislation to provide guidance and clarity about what the Act is intended to achieve, guide statutory decisions made under the Act and help guide interpretation of its provisions.
- 84. There was broad support from stakeholders to include a purpose statement in the CA Act. However, some parties (notably Wellington and Christchurch Airports, and the New Zealand Airports' Association) cautioned that a purpose statement may have unintended consequences, such as creating scope for parties to re-litigate issues which have been resolved in reliance on a particular interpretation of the Acts. Provided the purpose statement is sufficiently high-level and tested, I consider it is unlikely to create a significant risk of re-litigation.
- 85. I agree with the previous government's proposal to include a purpose statement in the Bill. If Cabinet agrees to the inclusion of a purpose statement, then I also recommend

<sup>7</sup> Provisions that have been enacted but not yet brought into force.

that the objectives of the Authority be amended to appropriately align with the main purpose.

86. I expect to receive submissions on the purpose statement in the exposure draft of the Bill. The purpose has been designed to reflect a “safety first” approach, but with additional matters in the additional purposes.

## **Section II: New policy decisions requiring agreement**

87. Section II summarises the new policy decisions I am seeking Cabinet’s agreement to. These recommendations reflect the need to address further issues that have arisen since the previous government’s policy decisions.

### ***Issue 1: Definition of accident to include unmanned aircraft (drones)***

88. The CA Act requires parties to notify the Authority if there is an accident involving manned aircraft, however, there is no equivalent requirement if the accident involves unmanned aircraft<sup>8</sup>. This limits the Authority’s ability to investigate unmanned aircraft accidents, understand the safety risks from these aircraft, and thereby regulate them effectively.
89. I propose that the Bill ensures consistency between the definition of accident and Annex 13 to the Convention on International Civil Aviation (which includes unmanned aircraft).
90. I also propose that the Bill require notification of accidents involving unmanned aircraft, where required to do so by Rules made under the CA Act. The intent is to allow for a nuanced approach to notification of unmanned aircraft accidents, excluding those for which it would be impractical and unnecessary to notify the Authority of.

### ***Issue 2: Amendments to pilot-in-command provisions to allow for drones***

91. The CA Act is designed with the assumption that there is a ‘pilot-in-command’ (PIC) on-board the aircraft who has ultimate responsibility for the safety and control of the flight. The CA Act specifies the duties and obligations of a PIC.
92. The current definition of PIC is not well suited for new and developing aviation technology, such as unmanned or autonomous aircraft, where a traditional pilot may not be present on the aircraft.
93. I propose that the Bill ensure that in the absence of a pilot, the duties, powers and responsibilities of the PIC fall to the operator of the aircraft.

### ***Issue 3: Detention, seizure or destruction of drones***

94. There have been frequent recent instances of drones operating in contravention of civil aviation law, where this has caused significant risk and disruption to other aircraft, aviation operations and people on the ground. The scale of this problem is significant – the Gatwick incursions in late 2018 alone caused an estimated £50 million loss to the United Kingdom economy and affected thousands of passengers.

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<sup>8</sup> Unmanned aircraft include small hobby drones through to larger more complex pilotless passenger carrying aircraft .

95. A range of techniques exist or are under development to respond to these incursions, including nets, radiofrequency jamming or interception, or more extreme action such as destroying the drone. However, it is likely that the use of these technologies is currently only legally justified where there is a significant urgent risk to people or property.
96. There are instances that fall short of a significant urgent risk where the detention, seizure or destruction of a drone would be reasonable. To ensure law enforcement authorities have sufficient legal certainty in these circumstances, I propose consulting the public on options to address this regulatory gap.

***Issue 4: Offence provisions relating to the Civil Aviation (Safety) Levies Order 2002***

97. Aviation operators' levies are calculated from activity returns that operators must provide to the Authority. The returns provide information, according to the type of operation, the amount of passengers or freight carried and the number of hours flown or flights made, or the amount of agricultural products applied.
98. The CA Act provides no explicit sanctions for a failure to provide an activity return or for providing a misleading or false return. Without the ability to appropriately address non-compliance, the Authority may not be in a position to ensure it receives accurate statistical data and prompt payment of levies.
99. Other legislation relying on the submission of returns to provide information needed for levy calculations, also contain corresponding offence provisions to ensure compliance. These include the Biosecurity Act 1993, the Customs and Excise Act 2018 and the Fisheries Act 1996. These statutory offences reflect the importance of maintaining the integrity of the respective cost recovery regimes, and ensuring consistent compliance by levy payers.
100. I propose that the Bill include new offences for:
- 100.1. failure to keep or maintain records as required by a levy order
  - 100.2. failure to submit an activity order as required by a levy order
  - 100.3. knowingly providing an activity return that is false or misleading.

***Issue 5: Addition of 'airlines' to the list of organisations permitted to provide aviation security services***

101. Section 79 of the CA Act provides that regulated aviation security services under the CA Act may be provided by either Avsec or the operator of the aerodrome or navigation facility.
102. However, section 79A of the CA Act also allows the Minister of Transport, by Gazette notice, to specify that only Avsec can provide regulated aviation security services. The then Minister of Transport issued such a notice in 1997,<sup>9</sup> which is still in place.

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<sup>9</sup> <https://gazette.govt.nz/notice/id/1997-go3702>

103. To enable future flexibility in the delivery of regulated aviation security services, I propose that 'airlines' is added as a third potential authorised provider of regulated aviation security services.
104. This amendment has no impact on the standards of service required of a regulated aviation security provider as set out in Civil Aviation Rules.

**Issue 6: Replacing 'consent' requirements in section 79A of the CA Act with 'consult'**

105. Under section 79 of the CA Act, the provision of aviation security services at a security designated aerodrome or navigation installation can only be provided by Avsec or the operator of the aerodrome/installation.
106. The CA Act allows the Minister, by *Gazette* notice, to specify that only Avsec can provide regulated aviation security services at a specific security designated aerodrome or installation. The effect of such a decision by the Minister is to prevent other existing and potential providers from providing aviation security services at that security designated aerodrome/installation.
107. The CA Act provides some protection for any provider already permitted to provide regulated aviation security services in the event that a Minister decides to issue a Notice under section 79A. That is, the Minister must obtain the consent of that provider before issuing the Notice. This provision is potentially problematic in that consent could be refused, which may unreasonably restrict the Minister's decision-making authority.
108. At present, this is a hypothetical problem due to a decision by the then Minister of Transport in 1997 to issue a Notice under section 79A, specifying that only Avsec can provide regulated aviation security services. However, the issue could arise in future if:
  - 108.1. the Minister decides to revoke the Notice;
  - 108.2. a new provider is permitted to provide regulated aviation security services;
  - 108.3. the Minister then decides to issue another Notice under section 79A; and
  - 108.4. the new provider refuses consent.
109. I propose that the Bill replace the requirement for "consent" with a requirement to "consult". I further propose that the Minister must consult with both the relevant provider and the Director. This will mean the Minister must consider both the interests of the provider, and through the Director, any interests of civil aviation safety and security.

**Issue 7: Assaulting an Aviation Security Officer (ASO) and killing, injuring or obstructing an Avsec dog**

110. It is important that there are appropriate offences in place to protect ASOs. There also ought to be consistency with equivalent offences against Customs, Police and Corrections officers. In particular, under the Act:

110.1. it is an offence to obstruct an ASO, but there is currently no specific offence for assaulting an ASO; and

110.2. there is currently no offence for killing, injuring or obstructing a dog used by an ASO.

111. I propose the Bill include offences to address these gaps.

***Issue 8: Infringement offence for being found in a security area without being screened, or without authorisation***

112. Section 84 of the CA Act allows the Director to create security and security enhanced areas at security designated aerodromes. It also establishes strict controls as to who may and may not enter those areas. This section is central to aerodrome security.

113. People who avoid the security screening, or who enter a security or security enhanced area when not authorised, create significant security risks. For example, when an individual avoids screening and enters the sterile area, this can require the re-screening of all those already in the sterile area. This can result in delays for passengers and substantial costs for a number of entities operating in an aerodrome.

114. While the CA Act imposes clear legal controls over entry to the security and security enhanced areas, it lacks the corresponding offence provisions.

115. With passenger volumes passing through New Zealand's airports continuing to increase, it is important that the screening requirements are understood and adhered to.

116. I propose that the Bill create an infringement offence for being found in a security area without having been screened, or without authorisation under the Act or Civil Aviation Rules.

***Issue 9: Transport instruments***

117. Officials have reviewed the CA Act to ensure there are appropriate mechanisms enabling the regulatory system to anticipate and respond to changing circumstances, while providing certainty and ease of access to requirements for users. Overall, the regime is well placed to meet this regulatory stewardship challenge but there are opportunities for improvement.

118. One area for improvement is the ability for the Minister, through Rules, to leave matters to the Director to determine. For example, issues requiring relatively frequent adjustment or that are highly technical in nature can result in the Rules becoming out of date and the regulatory system constantly having to play catch-up to remove unnecessary barriers and compliance costs.

119. I propose to create a power for the Director to make "transport instruments" for the purposes of Rules or regulations. Transport instruments would expressly be legislative in nature and closely modelled on equivalent provisions in other legislation.<sup>10</sup>

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<sup>10</sup> Examples include safe work instruments made under the Health and Safety at Work Act 2015, EPA notices made under the Hazardous Substances and New Organisms Act 1996 and frameworks and methodologies made under the Financial Markets Conduct Act 2013.



120. The key control on transport instruments is that their scope and use would be determined by the Minister – they would have no effect except to the extent that a Rule or a regulation refers to them. For example, the Minister could make a Rule that provides for a transport instrument to set alternative means of compliance to cater for new technologies, or to set additional requirements to meet a Rule. The Minister could subsequently change the Rule to remove or limit the use of transport instruments.
121. The following additional safeguards would also apply:
- 121.1. transport instruments are disallowable instruments – so Parliament can scrutinise them through the Regulations Review Committee;
  - 121.2. the Director must consult before issuing a transport instrument; and
  - 121.3. transport instruments must be published in the Gazette, and be made available online and in hard copy<sup>11</sup>.

**Issue 10: Minor changes relating to levies**

122. The CA Act allows the Governor-General to impose levies on participants to ensure the Authority is appropriately funded to carry out its functions under the CA Act.
123. I propose to reflect four minor changes relating to levies in the Bill.
124. Levies can currently be prescribed by setting levy rates. I propose amending the levy powers, to provide that levy regulations may also prescribe the basis on which the rate is to be calculated to provide greater flexibility in how aviation-related levies are calculated. It would allow, for instance, the ability to set levies by a formula or within a range that adjusts based on estimated and actual over-recovery or short-falls in costs. This change would modernise the provisions and align them with levy powers in similar legislation, such as the Customs and Excise Act 2018.
125. Levy orders under the CA Act are confirmable instruments which must be specifically confirmed by the House of Representatives. This serves no practical or constitutional purpose, because levy payers are able, and do, seek Regulations Review Committee investigations of levy regulations under the disallowance process and confirmation is unusual for this kind of levy. I propose to omit the confirmation requirement from the Bill.
126. Section 42A(3)(b) of the CA Act states that the Minister must be satisfied that the Authority's income from other sources is not or will not be sufficient to enable it to perform its functions under this Act without the imposition of a levy at the rate recommended. This section, if read strictly, is inconsistent with relevant Treasury guidelines and Transport Funding Principles, which tends towards regulators being predominantly funded from levies on participants, rather than Crown (taxpayer) funded. I propose to omit this requirement from the Bill.
127. Currently under the CA Act, levies may be imposed only on holders of aviation documents, or persons who, but for an exemption granted under the Act, would be required to hold a document. I propose expanding the levy making power to allow the

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<sup>11</sup> Once the Legislation Bill is enacted, they would be made by being notified on the Legislation.govt.nz website.

collection of levies from all aviation participants. This would ensure levies can be made payable by certain groups of services or people who operate within and impose a cost on the system (and benefit from a well-regulated system), but do not hold an aviation document.

***Issue 11: Airline Liability – delay and damaged, lost and delayed baggage***

Disputes Tribunal jurisdiction to hear claims regarding airline liability

128. New Zealand is a signatory to international agreements which dictate the amounts and circumstances for which airlines offering international services are liable for lost, delayed and damaged baggage; and delayed flights. The CA Act gives effect to these agreements in New Zealand law.
129. Liability with respect to domestic services are also covered. However this is limited to damages as a result of airline delay (lost, damaged and delayed baggage are covered by the Contract and Commercial Law Act 2017).
130. It is not clear how a passenger might reasonably exercise their rights for compensation under the provisions of the CA Act, particularly if an airline was to dispute a claim made by an affected passenger. Claims under these provisions are likely to be for small amounts, which would not justify the expense of taking the dispute to a court.
131. The Disputes Tribunal is a relatively quick and inexpensive way to settle cases involving small claims. However, it is not clear that the Tribunal has jurisdiction to hear claims relating to airline liability under the CA Act. Its jurisdiction only extends to claims based on contract, quasi-contract, and enactments specified in the schedule of the Disputes Tribunal Act 1988 (of which the CA Act is not). A small number of claims relating to delay and lost baggage appear to have been heard at the Tribunal, but these seem to have been brought on the contract of carriage between the passenger and the airline.
132. I propose that the Bill make it clear that the Disputes Tribunal has jurisdiction over claims made under civil aviation legislation, for lost, delayed and damaged baggage; and delayed flights. Transport officials have engaged with the Ministry of Business, Innovation and Employment's (MBIE) consumer policy advisors on this issue, they are supportive of this change. The Ministry of Justice also supports the proposal, subject to consultation with the Principal Disputes Referee at or before the Select Committee stage.
133. The CA Act also gives effect to provisions relating to international airline liability for passenger injury and death. I do not consider that the Disputes Tribunal should have jurisdiction over such claims. These claims are different in kind to the generally small financial disputes the Tribunal typically has jurisdiction over.

Clarify the right to bring proceedings for domestic and international carriage and delay

134. The CA Act is currently opaque as to how proceedings are able to be commenced in relation to these provisions. I propose to clarify this by using provisions similar to those in the Fair Trading Act 1986, which provide very similar rights of action in a court or the Disputes Tribunal.

Disclosure of information regarding passenger rights

135. Although it is aware of a few examples, the Ministry of Transport has no data to confirm how often passengers rely on these provisions when making claims for compensation from airlines. Anecdotal evidence suggests that this may be because passengers are not well informed of their rights.
136. Other jurisdictions have addressed this issue through regulations which require airlines to inform passengers of their right to seek compensation. For example, with respect to flight delay and cancellation, the European aviation regulator EASA requires all airlines operating to/from Europe to:
- 136.1. provide all passengers affected by a cancellation or delay of longer than two hours with a written notice setting out the rules for compensation under European regulations.
  - 136.2. display a sign at the check in counter, informing passengers to ask at check-in for text describing passenger rights with regard to compensation and assistance.
137. The CA Act does not provide for similar regulations to be made in New Zealand. This may be an issue, should further policy investigation uncover a need for airlines to take a more active role in disclosing this type of information to passengers. I propose that the Bill contain new regulation making powers to require such information to be disclosed.

***Issue 12: Removing open aviation market licence category***

138. The previous Cabinet decisions simplified the process for licensing New Zealand airlines in cases where there is no limit on the capacity that can be offered on a particular group.
139. This change will effectively remove the difference in process for granting an open aviation market licence and other categories of licence. In light of this, I propose eliminating the separate category of open aviation market licence and amalgamating the provisions relating to New Zealand and foreign airlines.

***Issue 13: Deleting obsolete provisions relating to airport authorities***

140. In the course of the drafting process, and in consultation with the Department of Internal Affairs, the Ministry of Transport has identified that many of the provisions in the AA Act are obsolete.
141. In particular, local authorities, which own a majority of airports in New Zealand, have wide powers of general competence under the Local Government Act 2002, which they did not possess in 1966 when the AA Act was enacted (indeed some provisions in that Act date back to the 1920s).
142. As a consequence, many of the provisions of the AA Act specifically empower local authorities to do things that they are now enabled to do in any case.

143. I propose modernising the airport authority regime by omitting these provisions from the exposure draft. The Ministry of Transport will ask submitters to identify any particular requirements that should be retained, and will include a version of the provisions in a schedule to the commentary document to support this process.

### **Section III: Consultation and release of an exposure draft of the Bill**

144. The Ministry formally consulted with stakeholders in late 2014 on the review of the CA Act and AA Act. This included formal stakeholder meetings around New Zealand and two specific issue-based focus group sessions. The Ministry received 31 written submissions on a wide range of issues in response to the consultation process.
145. Submitters were largely supportive of the proposed changes. However, the decisions made by the previous government have not been communicated to stakeholders following the consultation process.
146. Given the lack of detailed engagement for a significant period of time, the size and complexity of the Bill, and the addition of new policy proposals, I propose releasing an exposure draft of the Bill to ensure proper engagement with the sector. Officials will also hold a number of meetings with stakeholders to test the drafting of the Bill.
147. The Parliamentary Counsel Office, with assistance from the Ministry and the Authority has prepared an exposure draft of the Bill that gives effect to the policy decisions made by the previous government, and the new proposals identified in this paper.
148. The exposure draft will be presented to the sector over a six to eight week engagement process as a comprehensive but not complete version of the Bill. If significant issues arise as a result of this engagement, I will report back to Cabinet before an updated version of the Bill is prepared for introduction to Parliament.
149. The exposure draft of the Bill will be accompanied by a commentary document, a draft of which is attached to this paper.

### **Authorisation to make changes during the drafting process**

150. I seek approval to make changes, consistent with the proposals in this paper, to the draft Bill and commentary document, including changes to:
- 150.1. the arrangement of the Bill and its provisions;
  - 150.2. update and improve consistency within the Bill and with other similar regulatory systems, including framing of offences, liability and penalty levels, in consultation with the Ministry of Justice;
  - 150.3. ensure the legislation is technology neutral and is able to cater for new technology and digital processes; and
  - 150.4. remove or update redundant, confusing, or inconsistent requirements.

## Consultation

151. The following government agencies have been consulted on this paper: the Office of the Privacy Commissioner, the New Zealand Customs Service, the Treasury, MBIE (Immigration, Competition and Consumer, and Health and Safety) Worksafe, the Ministry of Justice, the Civil Aviation Authority, the State Services Commission, New Zealand Police, the New Zealand Defence Force, the Commerce Commission, the Department of Prime Minister and Cabinet, the Ministry of Health, the Ministry for Primary Industries, the Combined Threat Assessment Group and the Department of Internal Affairs.
152. The Treasury and MBIE support most of the recommendations but consider the proposals relating to airline cooperative arrangements should be strengthened by bringing New Zealand into line with international best practice and with the advice of the OECD and the Productivity Commission. The Civil Aviation Bill provides an opportunity to align the regime with the Commerce Act so that before any move to coordinate or merge operations can go ahead, it is subject to a test of whether the arrangements substantially lessen competition, and if they do, whether there are public benefits that outweigh any competitive detriments. This approach aligns with other jurisdictions such as Australia where airline alliances are assessed in a transparent and robust way by expert competition regulators such as the Australian Competition and Consumer Commission. Treasury and MBIE's preferred approach is therefore that the Commerce Commission be granted responsibility for administering airline alliances under the well established frameworks provided by the Commerce Act.
153. The need to take account of New Zealand's broader international interests has been identified as the key reason for the Minister of Transport to retain decision-making rights over authorising airline alliances. The Treasury and MBIE have not seen any evidence that suggests broader international interests are not able to be adequately taken into account by the authorisation process under the Commerce Act. The Commerce Commission routinely assesses both quantified and unquantified impacts as part of forming an overall judgement on whether restrictive trade practices provide net public benefits to New Zealanders. For example, in its recent NZME/Fairfax authorisation decision, the Commerce Commission was able to take into account the qualitative public benefits associated with media plurality. The Commerce Commission's consideration of these wider benefits was upheld on appeal in both the High Court and the Court of Appeal.
154. The Commerce Commission considers that competition law is sufficiently flexible to deal with international air carriage agreements. The amendment proposed represents a missed opportunity to align New Zealand's civil aviation and competition laws with Australia's.

## Financial implications

155. There are no financial implications.

### Human rights implications

156. My officials have been working with the Ministry of Justice to ensure that Bill of Rights concerns are appropriately addressed in the Bill.
157. The Bill will undergo a Bill of Rights vet before introduction.

### Legislative implications

158. The proposals outlined above will be included in a Civil Aviation Bill. [REDACTED]

Withheld to maintain the constitutional conventions which protect the confidentiality of advice tendered by Ministers of the Crown and officials.

### Regulatory Impact Analysis

159. The Regulatory Impact Analysis (RIAs) requirements apply to the proposals in this paper. Four RIAs were prepared by the Ministry prior to Cabinet decisions in 2016, and remain relevant to the policy identified in section I of this paper.
160. The Regulatory Quality Team at the Treasury has determined that the following new regulatory decisions sought in this paper (Section II) are exempt from the requirement to provide an Impact Assessment as they have only minor impacts on businesses, individuals or not-for profit entities:
  - 160.1. Definition of accident to include unmanned aircraft
  - 160.2. Amendments to pilot-in-command provisions to allow for unmanned aircraft
  - 160.3. Offence provisions relating to the Levies Order
  - 160.4. Addition of 'airlines' to the list of organisations permitted to provide aviation security services
  - 160.5. Amendment to make it an offence to harm or obstruct an aviation security office or aviation security dog
  - 160.6. Technical adjustment to provide clarity around procedure and accountability requirements for transport instruments
  - 160.7. Replacing 'consent' requirements in section 79A of the Civil Aviation Act 1990 with 'consult'
  - 160.8. Infringement offence for being found in a security area without being screened, or without authorisation
  - 160.9. Minor changes relating to levies.
161. One new RIA has been prepared by the Ministry relating to the national security proposal. The Regulatory Quality Team at the Ministry of Transport has reviewed the RIA "Options to address national security risks in the civil aviation system" produced by the Ministry of Transport and dated 23 November 2018. The review team considers that it **partially meets** the Quality Assurance criteria.

162. The RIA clearly sets out criteria and these have been thoroughly applied to the options in a way that makes it clear why certain options have been recommended. However, the impact analysis is constrained by the fact that the costs for the various options (both for government agencies and the affected sector participants) have been described in relative terms, but have not been quantified. The panel understands that this information cannot be obtained because there is considerable uncertainty around whether and when any interventions will be applied, and if they are, their likely scale and impact.

### Gender implications

163. There are no gender implications.

### Disability perspective

164. There are no disability implications.

### Publicity

165. On the release of the exposure draft, I intend to direct the Ministry to publish on its website this Cabinet paper and the previous Cabinet paper on policy decisions related to the Bill, with redactions where appropriate.
166. In conjunction with the release of these Cabinet papers, the Ministry also intends to publish, where appropriate, the regulatory impact statements accompanying this Cabinet paper in accordance with the Official Information Act 1982.
167. A summary of submissions in response to the consultation on the exposure draft of the Bill will also be released after consultation.
168. All documents will be reviewed for consistency with the Official Information Act 1982 prior to publication.

### Recommendations

The Minister of Transport recommends that the Committee:

1. **note** that the proposals in this paper are the result of a review of the Civil Aviation Act 1990 and Airport Authorities Act 1966 completed in 2014
2. **note** that the Civil Aviation Bill will also incorporate legislative changes arising from the following Cabinet decisions:
  - 2.1. to reduce the risk of alcohol and drug impairment in the commercial aviation sector [CAB-16-MIN-0020 refers]; and
  - 2.2. improve aviation security as proposed in the Domestic Aviation Security Review [NSC-16-MIN 0001 refers].

**Section I: Confirmation of, or amendment to, policy decisions made by the previous government**

3. **note** the previous government agreed a number of changes in 2016 to be reflected in the Civil Aviation Bill covering aviation security and safety issues, and aviation economic regulation matters
4. **note** that I am not recommending any significant changes to the previous government's decisions, except for:
  - 4.1. decisions relating to national security
  - 4.2. minor changes relating to the protections of safety information 'Just Culture' policy.

*Authorisation regime for airline cooperative arrangements*

5. **agree** that in determining whether an airline cooperative agreement is in the public interest the Minister shall take into account the main and additional purposes of the Act
6. **agree** to the inclusion of minor or technical matters that may arise during the consultation process, including to provide interface provisions between the civil aviation legislation and the Commerce Act 1986, if required

*Ensuring issues of national security are appropriately considered*

7. **agree** that the Civil Aviation Bill include measures to enable the risks to New Zealand's national security that may arise from the civil aviation system to be mitigated as follows:
  - 7.1. empowering the Minister, on the basis of national security concerns, to issue a notice:
    - 7.1.1. preventing entry of an operator or operation into the civil aviation system
    - 7.1.2. removing any operator or operation from the civil aviation system
    - 7.1.3. imposing conditions on any operator or operation.
  - 7.2. enabling the Minister to create civil aviation rules prescribing when an application for the issue or renewal of an aviation document is subject to national security considerations

*National security as part of the fit and proper assessment*

8. **note** that when Cabinet made policy decisions in October 2016 [NSC-16-MIN-0001 refers], it asked officials from both the Ministry of Transport and the New Zealand Security Intelligence Service to consider whether national security should be something the Director must consider as part of the fit and proper test, and the cost of doing so, before reporting back to Cabinet



9. **note** that officials from the Ministry of Transport and the New Zealand Security Intelligence Service consider that such an amendment would be of limited benefit and would impose significant costs
10. **note** that officials consider existing aviation security requirements and controls, together with the proposed national security considerations as set out above, appropriately address the national security risks from the civil aviation system
11. [REDACTED]
12. **agree** that, at this stage, it is not necessary to include a national security criterion as part of the fit and proper test, unless further work reveals that this is necessary
13. **note** the Civil Aviation Bill contains provisions that state that enforcement and/or administrative action should not be taken by the Director of Civil Aviation in respect of infringements of Civil Aviation Act, or rules and regulations made under it, which come to the Civil Aviation Authority's attention through an incident report filed under the Authority's incident reporting system
14. **note** that these protections do not apply if the Director of Civil Aviation considers it in the public interest to take enforcement action, and in the interest of aviation safety to take administrative action, and when these interests outweigh the safety benefits of full, accurate and timely incident reporting
15. **agree** the Bill includes provisions which prevent the use of incident or accident reports in criminal proceedings against the individual who provided the report
16. **agree** the Bill include a confidentiality provision, modelled off similar provisions in the Health and Safety at Work Act 2015, which dictates under what circumstances the Authority may publish or disclose information it obtains or gains access to as part functions and powers

## Section II: New policy decisions requiring agreement

### *Issue 1: Definition of accident to include unmanned aircraft (drones)*

17. **agree** to include a definition of accident in the Civil Aviation Bill that is consistent with Annex 13 to the Convention on International Civil Aviation, which includes unmanned aircraft
18. **agree** that the Civil Aviation Bill require notification of an accident involving unmanned aircraft, where required to do so by Civil Aviation Rules made under the Act

### *Issue 2: Amendments to pilot-in-command provisions to allow for unmanned aircraft (drones)*

19. **agree** that the Civil Aviation Bill ensure that in the absence of a pilot, the duties, powers and responsibilities of the pilot-in-command fall to the operator of the aircraft

*Issue 3: Detention, seizure and destruction of drones*

20. **agree** that the commentary document includes a section that seeks stakeholder views on options to provide law enforcement agencies with powers necessary to detain, seize or destroy drones

*Issue 4: Offence provisions relating to the Civil Aviation (Safety) Levies Order 2002*

21. **agree** that the Civil Aviation Bill include offences for:
- 21.1. failure to keep or maintain records as required by a levy order;
  - 21.2. failure to submit an activity order as required by a levy order; and
  - 21.3. knowingly providing an activity return that is false or misleading.

*Issue 5: Addition of 'airlines' to the list of organisations permitted to provide aviation security services*

22. **agree** that in order to enable future flexibility in the delivery of regulated aviation security services, the Civil Aviation Bill include 'airlines' as a third authorised provider of regulated aviation security services

*Issue 6: Replacing 'consent' requirements in section 79A of the Civil Aviation Act 1990 with 'consult'*

23. **agree** that the Civil Aviation Bill requires the Minister to consult with a relevant aviation document holder and the Director of Civil Aviation before a notice is issued specifying that only the Aviation Security Service can provide aviation security services at a security designated aerodrome or installation

*Issue 7: Assaulting an Aviation Security Officer and killing, injuring or obstructing an Aviation Security Service dog*

24. **agree** that the Civil Aviation Bill establish specific offences, consistent with similar offences found in other regulatory regimes, for:
- 24.1. assaulting an Aviation Security Officer
  - 24.2. killing or injuring a dog used by the Aviation Security Service
  - 24.3. obstructing a dog used by the Aviation Security Service.

*Issue 8: Infringement offence for being found in a security area without being screened, or without authorisation*

25. **agree** that the Civil Aviation Bill create an infringement offence for being found in a security area without being screened, or without authorisation

*Issue 9: Transport instruments*

26. **agree** that the Civil Aviation Bill create an additional power for the Director of Civil Aviation to make “transport instruments” pursuant to Civil Aviation Rules and regulations

*Issue 10: Minor changes relating to levies*

27. **agree** that the Civil Aviation Bill:
- 27.1. provide for the ability for levy regulations to prescribe the basis on which the levy is to be calculated, in addition to the ability to set a levy rate
  - 27.2. omit the requirement that levy orders must be confirmed by the House of Representatives (while preserving the disallowance process)
  - 27.3. omit the requirement that the Minister must be satisfied that the Civil Aviation Authority’s income from other sources is not or will not be sufficient to enable it to perform its functions under the Act without the imposition of a levy at the rate recommended
  - 27.4. expand the levy making power to allow levies to be imposed on aviation participants

*Issue 11: Airline liability*

28. **agree** that the Civil Aviation Bill:
- 28.1. make clear that the Disputes Tribunal has jurisdiction over claims made under civil aviation legislation, for lost, delayed and damaged baggage; and delayed flights
  - 28.2. **agree** that the Civil Aviation Bill clarify how proceedings may be brought under provisions relating to airline liability for delay; and damaged, lost and delayed baggage
  - 28.3. **agree** that the Civil Aviation Bill includes new regulation making powers that can require the disclosure of information regarding passenger rights

*Issue 12: Simplification of licensing provisions*

29. **agree** that the Civil Aviation Bill
- 29.1. omit reference to a separate category of open aviation market licence
  - 29.2. amalgamate provisions relating to issuing licences to New Zealand and foreign airlines

*Issue 13: Modernise airport authorities regime*

30. **agree** that the Civil Aviation Bill omit provisions that are outdated or obsolete in light of the Local Government Act 2002 and other legislation

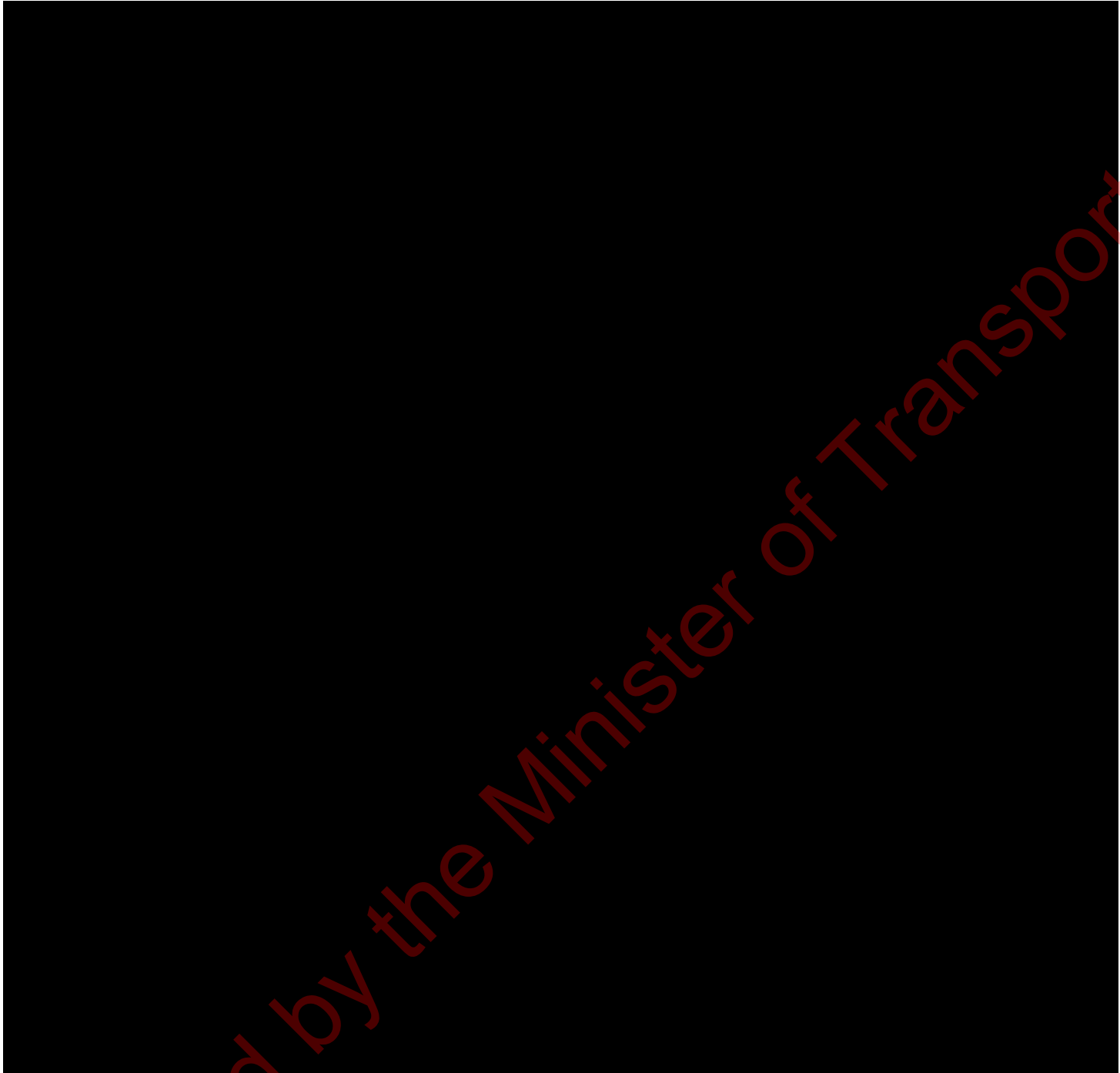
**Section III: Consultation and release of an exposure draft of the Bill**

31. **agree** to the release of an exposure draft of the Civil Aviation Bill and an accompanying commentary document to ensure proper engagement with the sector
32. **agree** that minor or technical changes may be made to the exposure draft and commentary document prior to release
33. **authorise** the Minister to approve changes, consistent with policy decisions, to the Civil Aviation Bill including changes to:
  - 33.1. the arrangement of the Bill and its provisions;
  - 33.2. improve consistency within the Bill and with other equivalent legislation, including framing of offences, liability and penalty levels, in consultation with the Ministry of Justice;
  - 33.3. ensure the legislation is technology neutral and is able to cater for new technology and digital processes; and
  - 33.4. remove or update redundant, confusing or inconsistent requirements
34. **agree** to release, at the appropriate time, following a review for consistency with the Official Information Act 1982:
  - 34.1. this and the previous Cabinet paper on the policy decisions reflected in the Civil Aviation Bill;
  - 34.2. any analysis of submissions developed as part of the public consultation on the exposure draft of the Civil Aviation Bill
35. **note** that if any significant issue arises during the consultation on the exposure draft, I will report back to Cabinet before finalising the Bill for introduction
36. **authorise**, subject to paragraph 33, the Minister of Transport to make decisions that are consistent with the decisions in this paper, provided that these decisions are confirmed when the Bill is considered for introduction

### **Legislative implications**

37. **invite** the Minister of Transport to issue drafting instructions to the Parliamentary Counsel Office to give effect to the relevant recommendations above, including any necessary consequential amendments (including to Civil Aviation Rules), savings and transitional provisions.

Hon Phil Twyford  
**Minister of Transport**



Withheld, as release of this information is likely to prejudice the security of New Zealand.

**APPENDIX Two: 2016 Cabinet paper**

Released by the Minister of Transport