

Civil Aviation Amendment Act 2004

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Part 5A

Unruly passenger offences

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Unruly passenger offences

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The Parliament of New Zealand enacts as follows:**1 Title**

- (1) This Act is the Civil Aviation Amendment Act 2004.
- (2) In this Act, the Civil Aviation Act 1990 is called “the principal Act”.

Part 1**Preliminary provisions****2 Commencement**

- (1) Sections 4(1), 6, 7(1) and (2), 8, 9, 10(1), 11, 13, 14(1) to (4) and (6) to (8), 16, 17, 19, 20, 29(1), 29(2), 31, 32, 33(1), and 41(1), and Part 1 of Schedule 1 come into force on a date to be appointed by the Governor-General by Order in Council; and 1 or more Orders in Council may be made appointing different dates for different provisions.
- (2) Section 36 comes into force on the day after the date on which this Act receives the Royal assent.
- (3) The rest of this Act comes into force on 1 June 2004.

Subsection (1) was amended, as from 15 December 2005, by section 3(1) Civil Aviation Amendment Act 2005 (2005 No 94) by substituting the expression “29(1), 29(2)” for the expression “29”.

Subsection (1) was amended, as from 15 December 2005, by section 3(2) Civil Aviation Amendment Act 2005 (2005 No 94) by inserting the words “; and 1 or more Orders in Council may be made appointing different dates for different provisions”.

3 Purpose

The purpose of this Act is to—

- (a) implement the ANZA mutual recognition agreements; and
- (b) deter, and provide penalties for, certain types of unruly behaviour that may occur on an aircraft; and
- (c) amend the principal Act by incorporating, with modifications, the provisions of New Zealand law relating to civil liability for delay suffered by passengers during domestic carriage by air currently located in Part 2 of the Carriage by Air Act 1967; and
- (d) repeal the Carriage by Air Act 1967; and

- (e) amend the principal Act to include a number of miscellaneous changes.

Part 2

Amendments to principal Act and related provisions

4 Interpretation

- (1) Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**ANZA** means Australia New Zealand Aviation

“**ANZA mutual recognition agreements** means the agreements or arrangements specified in regulations made under section 100(1)(ed)

“**Australia** means the Commonwealth of Australia; and, when used in a geographical sense, includes any external territory of Australia

“**Australian AOC with ANZA privileges** has the same meaning as in section 3(1) of the Civil Aviation Act 1988 (Aust)

“**Australian temporary stop notice** has the same meaning as in section 3(1) of the Civil Aviation Act 1988 (Aust)

“**CASA** means—

“(a) the Civil Aviation Safety Authority established by the Civil Aviation Act 1988 (Aust); and

“(b) any successor of that Authority

“**New Zealand AOC with ANZA privileges** has the meaning set out in section 11G

“**New Zealand temporary stop notice** means a notice issued under section 11C(1)”.

- (2) Section 2 of the principal Act is amended by repealing the definition of **dangerous goods**, and substituting the following definition:

“**dangerous goods** means articles or substances that are capable of posing risk to health, safety, property, or the environment and—

“(a) are listed in, or classified in accordance with, the ICAO’s Technical Instructions for the Safe Transport of Dangerous Goods by Air ; or

“(b) have properties that would result in the articles or substances being classified as dangerous goods under the ICAO’s Tech-

tical Instructions for the Safe Transport of Dangerous Goods by Air”.

- (3) Section 2 of the principal Act is amended by adding the following definition:

“**unruly passenger offence** —

“(a) means an offence against Part 5A; and

“(b) includes an offence to which section 65C applies.”

5 Application of Act

Section 4(1) of the principal Act is amended by inserting, after the expression “section 53A”, the words “, Part 5A,”.

6 Grant or renewal of aviation document

Section 9(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

“(ba) in the case of a New Zealand AOC with ANZA privileges,—

“(i) the requirements in section 11G(2) are met; and

“(ii) the applicant meets or will meet the conditions in section 11G(4); and”

7 Criteria for fit and proper person test

- (1) Section 10(1) of the principal Act is amended by adding the following paragraph:

“(g) in the case where a New Zealand AOC with ANZA privileges applies, the person’s compliance with the conditions specified in section 11G(4).”

- (2) Section 10(4)(a) of the principal Act is amended by omitting the words “and (f)”, and substituting the words “(f), and (g)”.

- (3) Section 10 of the principal Act is amended by repealing subsection (7), and substituting the following subsection:

“(7) If the Director determines not to disclose any information in reliance on subsection (6), the Director must inform the person of the fact of non-disclosure and,—

“(a) in the case of non-disclosure to an individual of information about the individual,—

“(i) inform the individual that he or she may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and

- “(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 27(1)(d) of that Act; and
- “(b) in any other case,—
 - “(i) inform the person that the person may seek a review by an Ombudsman of that non-disclosure under the Official Information Act 1982; and
 - “(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 6(d) of that Act.”

8 New Part 1A inserted

The principal Act is amended by inserting, after Part 1, the following Part:

“Part1A

“ANZA mutual recognition

“Preliminary provisions

“11A Purpose

The purpose of this Part is to implement the ANZA mutual recognition agreements.

“Australian AOCs with ANZA privileges

“11B Holder of Australian AOC with ANZA privileges entitled to conduct air operations in New Zealand

- “(1) The holder of an Australian AOC with ANZA privileges may conduct air operations to, from, or within New Zealand if the holder provides the Director with—
 - “(a) a copy of the Australian AOC with ANZA privileges; and
 - “(b) written notice of the following:
 - “(i) the details of all conditions imposed by CASA in relation to the Australian AOC with ANZA privileges; and
 - “(ii) the holder’s Australian—
 - “(A) business address; and

- “(B) telephone number; and
 - “(C) fax number (if any); and
 - “(iii) the holder’s New Zealand—
 - “(A) business address; and
 - “(B) telephone number; and
 - “(C) fax number (if any); and
 - “(iv) the holder’s email address (if any); and
 - “(v) any other prescribed information; and
 - “(c) the holder’s consent in writing to the making of inquiries to, and the exchange of information with, CASA regarding that holder’s civil aviation activities.
- “(2) A holder of an Australian AOC with ANZA privileges must ensure that the Director is advised of every alteration to the Australian AOC with ANZA privileges or to the information provided by the holder to the Director within 7 days of the date on which the alteration is made.

“11C New Zealand temporary stop notice

- “(1) The Director may give the holder of an Australian AOC with ANZA privileges a written temporary stop notice that requires the holder to cease conducting all or any operations in New Zealand for the period (which must not be more than 7 days) specified in the notice.
- “(2) The Director may issue a New Zealand temporary stop notice only if the Director considers that, as a result of the holder conducting all or any air operations in New Zealand, there is a serious risk to civil aviation safety in New Zealand.
- “(3) Immediately on receiving a New Zealand temporary stop notice, the holder must cease conducting the air operations specified in the notice in New Zealand for the period specified in the notice.
- “(4) The Director may not delegate the power to issue or revoke a New Zealand temporary stop notice.
- “(5) The Director may amend or revoke a New Zealand temporary stop notice before the period specified in that notice has expired.
- “(6) The Director must revoke a New Zealand temporary stop notice if the Authority receives notification from CASA of the

Director of CASA' s response to the New Zealand temporary stop notice.

“11D Contents of New Zealand temporary stop notice

- “(1) A New Zealand temporary stop notice must specify—
- “(a) the reasons why the Director considers that there is a serious risk to civil aviation safety in New Zealand; and
 - “(b) the period for which the holder of the Australian AOC with ANZA privileges must cease conducting air operations in New Zealand.
- “(2) Failure to comply with subsection (1) does not invalidate the New Zealand temporary stop notice.

“11E Director to notify CASA about New Zealand temporary stop notice

As soon as practicable after giving a New Zealand temporary stop notice to the holder of an Australian AOC with ANZA privileges, the Director must give CASA a copy of the notice and any other information that CASA may require.

“AOCs with ANZA privileges

“11F Requirements for AOCs with ANZA privileges

- “(1) Whenever the Director makes a decision under this Act in relation to a New Zealand AOC with ANZA privileges, the Director must take into account all relevant Australian and New Zealand regulatory requirements in relation to New Zealand AOCs with ANZA privileges.
- “(2) In making a decision under this Act in relation to a New Zealand AOC with ANZA privileges, the Director—
- “(a) must, if appropriate, consult CASA; and
 - “(b) may take into account any of the following items that the Director receives from CASA:
 - “(i) advice;
 - “(ii) guidelines;
 - “(iii) recommendations;
 - “(iv) other relevant information.

“11G Grant of New Zealand AOC with ANZA privileges

- “(1) The Director may, in accordance with this Act and any rules made under this Act, grant to an air operator in New Zealand an authorisation (called a New Zealand AOC with ANZA privileges) that will authorise the air operator to conduct air operations to, from, or within Australia.
- “(2) Before the Director may grant a New Zealand AOC with ANZA privileges, the Director must—
- “(a) be satisfied that the air operator will be conducting air operations to, from, or within New Zealand; and
 - “(b) receive from the licensing authority written confirmation that, if the New Zealand AOC with ANZA privileges is issued to the air operator, the licensing authority considers that the air operator will be eligible to conduct air operations in Australia under the air services arrangements in place between Australia and New Zealand; and
 - “(c) be satisfied that the air operator has complied with, or is capable of complying with, all the relevant requirements of the Civil Aviation Act 1988 (Aust) and regulations and civil aviation orders made under that Act that relate to safety; and
 - “(d) consult with CASA.
- “(3) A New Zealand AOC with ANZA privileges may be granted by amending an appropriate existing aviation document or by granting an appropriate new aviation document.
- “(4) A New Zealand AOC with ANZA privileges is subject to the conditions that the holder—
- “(a) must conduct air operations to, from, or within New Zealand; and
 - “(b) must not hold an Australian AOC with ANZA privileges authorising the holder to conduct air operations that are covered by the New Zealand AOC with ANZA privileges; and
 - “(c) must comply with all the requirements of the Civil Aviation Act 1988 (Aust) and regulations and civil aviation orders made under that Act that apply to the holder; and
 - “(d) must undertake the supervision of its management systems from or within New Zealand; and

- “(e) must ensure that the training and supervision of its employees is principally undertaken from or within New Zealand; and
 - “(f) must ensure that the majority of resources associated with the exercise of the privileges of the AOC are situated within New Zealand; and
 - “(g) must ensure that the people who control the exercise of the privileges of the AOC spend the majority of their time in New Zealand.
- “(5) A New Zealand AOC with ANZA privileges may be issued on any other conditions that the Director thinks appropriate.
- “(6) In subsection (2), **licensing authority** has the same meaning as in Part 8A.

“11H Action by Director when CASA gives Australian temporary stop notice to holder of New Zealand AOC with ANZA privileges

- “(1) After the Director receives notification from CASA that CASA has given the holder of a New Zealand AOC with ANZA privileges an Australian temporary stop notice, the Director must—
- “(a) immediately consider the circumstances that gave rise to the giving of the notice; and
 - “(b) decide, as soon as practicable and in accordance with the ANZA mutual recognition agreements, whether he or she should—
 - “(i) suspend in whole or in part the New Zealand AOC with ANZA privileges under section 17; or
 - “(ii) revoke in whole or in part the New Zealand AOC with ANZA privileges under section 18; or
 - “(iii) impose conditions on the New Zealand AOC with ANZA privileges under section 17 or section 18; or
 - “(iv) take any other action in relation to that New Zealand AOC holder.
- “(2) The Director must notify CASA of his or her decision and of any action taken.

“11I Change of country of certification

- “(1) This section applies if the Director believes on reasonable grounds that—
- “(a) it would be in the interests of Australian and New Zealand civil aviation safety for the holder to conduct air operations in the Australian civil aviation system; and
 - “(b) the holder of a New Zealand AOC with ANZA privileges is no longer able to comply with all the conditions specified in section 11G(4).
- “(2) If this section applies, the Director must—
- “(a) consult with CASA; and
 - “(b) notify the holder—
 - “(i) that the Director believes on reasonable grounds that the holder is no longer able to comply with all the conditions specified in section 11G(4); and
 - “(ii) of the grounds for the Director’s belief; and
 - “(c) allow the holder at least 90 days from the date of the Director’s notification under paragraph (b) to refute and comment on the Director’s belief.
- “(3) If, after the process referred to in subsection (2) has been properly completed, the Director is satisfied that, in the interests of Australian and New Zealand civil aviation safety, the holder should no longer exercise ANZA privileges, the Director may—
- “(a) amend the New Zealand AOC with ANZA privileges;
 - “(b) withdraw the privileges attaching to the AOC.
- “(4) Any person in respect of whom a decision is taken under subsection (3) may appeal against that decision to a District Court under section 66.

“11J Delegation of Australian powers relating to Australian AOCs with ANZA privileges to employees of Authority

An employee of the Authority may, subject to any directions from the Director of CASA, perform any function or exercise any power delegated to that employee under the Civil Aviation Act 1988 (Aust) for the purpose of enabling that employee to

perform the function or exercise the power in New Zealand in respect of Australian AOCs with ANZA privileges.”

9 Director may require or carry out safety and security inspections and monitoring

- (1) Section 15(1)(a) of the principal Act is amended by inserting, after the words “aviation document”, the words “or an Australian AOC with ANZA privileges”.
- (2) Section 15 of the principal Act is amended by inserting, after subsection (1), the following subsection:

“(1A) In the case of an Australian AOC with ANZA privileges, the Director may only carry out inspections and monitoring at the request of CASA.”
- (3) Section 15 of the principal Act is amended by inserting, after subsection (2), the following subsection:

“(2A) The Director may, in respect of a holder of a New Zealand AOC with ANZA privileges, carry out in Australia any inspections and monitoring that the Director considers necessary in the interests of civil aviation safety.”

10 Power of Director to suspend aviation document or impose conditions

- (1) Section 17(1) of the principal Act is amended by adding the word “; or” and also by adding the following paragraph:

“(e) in the case of a holder of a New Zealand AOC with ANZA privileges, has received from the Director of CASA a copy of an Australian temporary stop notice given to the holder.”
- (2) Section 17(4) of the principal Act is amended by adding the following paragraph:

“(e) impose permanent conditions under section 18.”
- (3) Section 17(4A) of the principal Act is amended—
 - (a) by inserting, after the words “aviation document”, the words “, or notice of the proposed imposition of permanent conditions,”;
 - (b) by inserting, after the word “document” in the last place where it appears, the words “or to impose permanent conditions on the document”.

11 Power to revoke aviation document or impose conditions

Section 18 of the principal Act is amended by inserting, after subsection (1), the following subsection:

- “(1A) Without limiting subsection (1), the Director may revoke or impose permanent conditions on an aviation document if the Director—
- “(a) has been advised by the Director of CASA that CASA has given the holder of the document an Australian temporary stop notice; and
 - “(b) considers that the revocation or imposition of permanent conditions is necessary in the interests of aviation safety.”

12 Criteria for action taken under section 17 or section 18

Section 19 of the principal Act is amended by repealing subsection (7), and substituting the following subsection:

- “(7) If the Director determines not to disclose any information in reliance on subsection (6), the Director must inform the person of the fact of non-disclosure and,—
- “(a) in the case of non-disclosure to an individual of information about the individual,—
 - “(i) inform the individual that the individual may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and
 - “(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 27(1)(d) of that Act; and
 - “(b) in any other case,—
 - “(i) inform the person that the person may seek a review by an Ombudsman of that non-disclosure under the Official Information Act 1982; and
 - “(ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 6(d) of that Act.”

13 Delegation of Authority's or Director's functions or powers to persons outside Authority

Section 23B of the principal Act is amended by inserting, after subsection (2), the following subsection:

- “(2A) Any function or power that may be delegated under subsection (2) to a person in New Zealand who is not an employee of the Authority may be delegated under that subsection to an officer of CASA for the purpose of enabling that officer to perform the function or exercise the power in Australia in respect of New Zealand AOCs with ANZA privileges.”

14 General power of entry

- (1) Section 24(1) of the principal Act is amended by inserting, after the words “rules made under this Act”, the words “or for the purpose of the ANZA mutual recognition agreements”.
- (2) Section 24 of the principal Act is amended by inserting, after subsection (1), the following subsection:
- “(1A) In the case of an Australian AOC with ANZA privileges, the power conferred by subsection (1) may only be exercised at the request of CASA.”
- (3) Section 24(2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(ab) in the case of an Australian AOC with ANZA privileges, a breach of the Civil Aviation 1988 (Aust) or of regulations or orders made under that Act is being, or is about to be, committed; or”
- (4) Section 24(2)(b) of the principal Act is amended by inserting, after the word “document”, the words “or Australian AOC with ANZA privileges”.
- (5) Section 24(3) of the principal Act is amended by inserting, after the word “authorised”, the words “to have access to or”.
- (6) Section 24(3)(a) of the principal Act is amended by inserting, after the word “Act”, the words “or, in the case of an Australian AOC with ANZA privileges, under Australian law”.
- (7) Section 24(3) of the principal Act is amended by repealing paragraph (b), and substituting the following paragraph:
- “(b) must, if a document is surrendered under paragraph (a), orally inform the relevant aviation document holders or, if

applicable, the relevant Australian AOC with ANZA privileges holder, as soon as practicable, and in writing that the document has been surrendered.”

- (8) Section 24(6) of the principal Act is amended by adding the word “; and” and the following paragraph:
- “(c) in the case of an Australian AOC with ANZA privileges, that the power is being exercised at the request of CASA.”

15 Interpretation

Section 27A(1) of the principal Act is amended by repealing the definition of **medical certificate**, and substituting the following definition:

“**medical certificate** means a medical certificate—

- “(a) issued by the Director under this Part to an applicant or licence holder; or
- “(b) recognised by the Director under the rules”.

16 Power of Minister to make ordinary rules

Section 28(1) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:

- “(ab) to allow for the mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements:”.

17 Rules relating to general matters

Section 30 of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

- “(ca) to provide for the privileges of an air operator certificate to include conducting air operations in Australia:”.

18 Procedures relating to rules

- (1) Section 32(1) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) set out fully the requirements of the rule, except where certain information is, under section 36, incorporated in the rule by reference.”

- (2) Section 32(2) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) set out fully the requirements of the rule, except where certain information is, under section 36, incorporated in the rule by reference.”

19 Matters to be taken into account in making rules

Section 33(2) of the principal Act is amended by repealing paragraph (g), and substituting the following paragraph:

“(g) the international circumstances in respect of—
“(i) aviation safety and security; and
“(ii) mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements:”.

20 New sections 46D and 46E inserted

The principal Act is amended by inserting, after section 46C, the following sections:

“46D Failure to provide information to Director relating to Australian AOCs with ANZA privileges

“(1) Every person commits an offence who conducts an air operation in New Zealand while in breach of section 11B(1) or (2).

“(2) Every person who commits an offence against subsection (1) is liable,—

“(a) in the case of an individual, to a fine not exceeding \$5,000; or

“(b) in the case of a body corporate, to a fine not exceeding \$25,000.

“46E Failure to cease conducting air operations in New Zealand

“(1) Every person commits an offence who fails to comply with section 11C(3).

“(2) Every person who commits an offence against subsection (1) is liable,—

“(a) in the case of an individual, to a fine not exceeding \$10,000; or

“(b) in the case of a body corporate, to a fine not exceeding \$100,000.”

21 Communicating false information or failing to disclose information relevant to granting or holding of aviation document

Section 49(2) of the principal Act is amended by—

- (a) omitting from paragraph (a) the expression “\$5,000”, and substituting the expression “\$10,000”;
- (b) omitting from paragraph (b) the expression “\$30,000”, and substituting the expression “\$50,000”.

22 Carrying on scheduled international air service without licence or contrary to licence

Section 49A(2) of the principal Act is amended by—

- (a) omitting from paragraph (a) the expression “\$5,000”, and substituting the expression “\$10,000”;
- (b) omitting from paragraph (b) the expression “\$30,000”, and substituting the expression “\$50,000”.

23 Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence

Section 49B(2) of the principal Act is amended by—

- (a) omitting from paragraph (a) the expression “\$3,000”, and substituting the expression “\$6,000”;
- (b) omitting from paragraph (b) the expression “\$15,000”, and substituting the expression “\$30,000”.

24 Failure to notify accident or incident

Section 52B of the principal Act is amended by repealing subsection (2), and substituting the following subsection:

- “(2) Every pilot-in-command or operator who commits an offence against subsection (1) is liable,—
- “(a) in the case of an individual, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued; or
 - “(b) in the case of a body corporate, to a fine not exceeding \$50,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.”

25 Failure to provide identifying information

Section 52C(2) of the principal Act is amended by—

- (a) omitting from paragraph (a) the expression “\$5,000”, and substituting the expression “\$10,000”;
- (b) omitting from paragraph (b) the expression “\$30,000”, and substituting the expression “\$50,000”.

26 Infringement offences

- (1) Section 57(1) of the principal Act is amended by adding the words “or an offence against a provision specified in section 65Q(2)”.
- (2) Section 57(2) of the principal Act is amended by omitting the word “Where”, and substituting the words “Subject to section 65P, if”.

27 Offences to be punishable on summary conviction

Section 65(1) of the principal Act is amended by omitting the words “of this Act”, and substituting the words “and Part 5A”.

28 New Part 5A inserted

The principal Act is amended by inserting, after Part 5, the following Part:

“Part 5A**“Unruly passenger offences***“Preliminary provisions***“65A Application of this Part**

- “(1) This Part applies to any unruly passenger offence committed—
 - “(a) on an aircraft in New Zealand, regardless of the nationality of the aircraft;
 - “(b) outside New Zealand on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is New Zealand.
- “(2) For the purposes of this Part, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.

- “(3) Despite subsection (2), in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.
- “(4) A person authorised by the Director to exercise a power or function under this Part must carry a warrant of authority issued by the Director that specifies—
- “(a) the name of, and the office or offices held by, that person; and
 - “(b) the powers and functions that the person is authorised to exercise under this Part.
- “(5) A member of the police may exercise all or any of the powers and functions that may be conferred on a person authorised by the Director under this Part.
- “(6) For the purposes of this Part, **person authorised by the Director** includes (but is not limited to) an aviation security officer authorised by the Director.

“**65B Liability for offences against this Part despite extraterritoriality**

Any person who commits an act or omission on an aircraft in flight outside New Zealand that would be an offence against this Part if it occurred within New Zealand is, subject to this Act, liable as if the act or omission had occurred in New Zealand.

“**65C Liability for offences under Summary Offences Act 1981 despite extraterritoriality**

- “(1) Any person who commits an act or omission on an aircraft in flight outside New Zealand that would, if it occurred in New Zealand, be an offence against sections 3 (disorderly behaviour), 7 (fighting in public place), 9 (common assault), 11 (wilful damage), or 27 (indecent exposure) of the Summary Offences Act 1981, is liable under that Act as if the act or omission had occurred in New Zealand.

“(2) To avoid doubt, any person who commits an act or omission on an aircraft that would be an offence against sections 3 (disorderly behaviour), 7 (fighting in public place), or 27 (indecent exposure) of the Summary Offences Act 1981 is liable under that Act as if the reference to public place in any of those provisions includes an aircraft.

“**65D Foreign aircraft outside New Zealand**

“(1) An infringement notice may be issued, or proceedings commenced, for an unruly passenger offence committed on a foreign aircraft outside New Zealand if—

“(a) the pilot-in-command—

“(i) makes a request in the prescribed form to the Director or a person authorised by the Director to issue an infringement notice or to commence proceedings; and

“(ii) provides an undertaking in the prescribed form that he or she (or the operator of the aircraft) has not made or will not make a similar request to the authorities of any other state; and

“(b) in the case of proceedings, the Attorney-General consents.

“(2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody, or released on bail before the Attorney-General decides whether or not to consent to proceedings.

“(3) Despite subsection (1)(b), proceedings for an unruly passenger offence committed on a foreign aircraft outside of New Zealand may be commenced without the Attorney-General’s consent if—

“(a) a copy of the infringement notice is filed under section 65S(1); or

“(b) the defendant requests a hearing in respect of the infringement offence to which the infringement notice relates.

“(4) In any proceedings for an offence under this Part, the pilot-in-command’s request and undertaking, if made in the prescribed form or forms, are—

“(a) admissible in evidence; and

“(b) in the absence of proof to the contrary, sufficient evidence of the matters stated in the form or forms.

“65E Proceedings for offences

- “(1) Subject to section 65Q(2), the offences specified in this Part (except sections 65F and 65G(1)(d)) are triable summarily.
- “(2) The offences specified in sections 65F and 65G(1)(d) are triable on indictment.
- “(3) Despite anything to the contrary in the Summary Proceedings Act 1957, any information for an offence referred to in subsection (1) may be laid at any time within 12 months after the date of the offence.
- “(4) Subject to section 65C, nothing in this Part affects the liability of any person under any other enactment.

“Unruly passenger offences

“65F Strict liability for acts endangering safety

- “(1) A person commits an offence who acts in a manner that endangers an aircraft or any person in an aircraft.
- “(2) Every person who commits an offence against subsection (1) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

“65G Disruptive conduct towards crew member

- “(1) Every person commits an offence who, while in an aircraft,—
- “(a) uses any threatening, offensive, or insulting words towards a crew member; or
 - “(b) behaves in a threatening, offensive, insulting, or disorderly manner towards a crew member; or
 - “(c) behaves in a manner that interferes with the performance by a crew member of his or her duties; or
 - “(d) intentionally interferes with the performance by a crew member of his or her duties.
- “(2) Every person who commits an offence against subsection (1)(a) or (b) or (c) is liable to a fine not exceeding \$5,000.
- “(3) Every person who commits an offence against subsection (1)(d) is liable to imprisonment for a term not exceeding 2 years or a fine not exceeding \$10,000.

“(4) It is a defence in a prosecution under subsection (1)(a) for using offensive or insulting words if the defendant proves that he or she had reasonable grounds to believe that his or her words would not be overheard by a crew member.

“**65H Interference with aircraft**

“(1) Every person commits an offence who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors.

“(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$10,000.

“**65I Intoxicated persons on aircraft**

“(1) Every person (except a person under medical care) commits an offence who—

“(a) is intoxicated and boards an aircraft; or

“(b) becomes intoxicated on an aircraft.

“(2) Every person who commits an offence against—

“(a) subsection (1)(a) is liable to a fine not exceeding \$5,000:

“(b) subsection (1)(b) is liable to a fine not exceeding \$3,000.

“(3) For the purposes of this section, a person is intoxicated if the pilot-in-command (or senior flight attendant authorised by the pilot-in-command for this purpose) has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to—

“(a) be incapable of properly looking after himself or herself; or

“(b) actively present a hazard to the aircraft or to persons on the aircraft; or

“(c) offend against the good order and discipline required on an aircraft.

“(4) For the purposes of this section, **person under medical care** means a person who—

“(a) is under the supervision of an attendant; and

“(b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

“65J Non-compliance with commands given by pilot-in-command

- “(1) Every person commits an offence who fails to comply with any commands given to the person directly by the pilot-in-command, or indirectly by the pilot-in-command through a crew member, in accordance with his or her duties under section 13 or the rules.
- “(2) Despite section 28(6), every person who commits an offence against subsection (1) is liable to a fine not exceeding \$5,000.

“65K Offensive behaviour or words

- “(1) Every person commits an offence who, on any aircraft,—
- “(a) behaves in a threatening, offensive, insulting, or disorderly manner; or
 - “(b) uses threatening, offensive, or insulting words.
- “(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.
- “(3) It is a defence in a prosecution under subsection (1)(b) for using offensive or insulting words if the defendant proves that he or she had reasonable grounds to believe that his or her words would not be overheard.

“65L Portable electronic devices not to be operated

- “(1) Every person commits an offence who operates a portable electronic device on board an aircraft in breach of the rules.
- “(2) Despite section 28(6), every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

“65M Non-compliance with seating and seatbelt instructions

- “(1) Every person commits an offence who fails to comply with an instruction given by a crew member, passenger information signs, or placards to—
- “(a) occupy a seat or berth; and
 - “(b) fasten and keep fastened about the person any installed safety belt or safety harness.
- “(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

“65N No smoking

- “(1) Every person commits an offence who smokes—
- “(a) when instructed not to smoke by a crew member, passenger information signs, or placards; or
 - “(b) while on any aircraft that is carrying passengers for hire or reward on any internal flight; or
 - “(c) in contravention of section 96A(6).
- “(2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.
- “(3) In subsection (1), **to smoke** has the meaning set out in section 96A(1).

“65O Dangerous goods

- “(1) Every person commits an offence who, in breach of the rules, carries or causes to be carried on an aircraft any dangerous goods.
- “(2) Despite section 28(6), every person who commits an offence against subsection (1) is liable to a fine not exceeding \$2,500.

“65P Procedure for certain unruly passenger offences

- “(1) If any offence specified in section 65Q(2) is alleged to have been committed by any person (in this section, the **defendant**), the pilot-in-command of the aircraft at the time of the alleged offence may, by any available means, notify, or cause to be notified,—
- “(a) the Director; or
 - “(b) a person authorised by the Director.
- “(2) If the Director or a person authorised by the Director has reason to believe that a defendant has committed any offence specified in section 65Q(2),—
- “(a) the defendant may be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or
 - “(b) the Director or the person authorised by the Director may issue an infringement notice in respect of the alleged offence.
- “(3) If the Director or a person authorised by the Director has reasonable cause to suspect that a person has committed any offence specified in section 65G(1)(a) to (c) or section 65H or

section 65J or section 65K or section 65Q(2), he or she may require the person to give his or her full name, address, and date of birth.

- “(4) If the Director or the person authorised by the Director has reasonable grounds to suppose that any details provided under subsection (3) are false or misleading, he or she may require the person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.
- “(5) If the person, without reasonable excuse, refuses or fails to comply with a request under subsection (3) or subsection (4), and persists in that refusal or failure after being warned by the Director or a person authorised by the Director that he or she may be arrested for committing an offence by that refusal or failure, a member of the police may arrest that person without warrant.
- “(6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse,—
- “(a) refuses or fails to comply with a request under subsection (3) or subsection (4); or
 - “(b) gives details that are false or misleading in a material respect to the Director or a person authorised by the Director in response to such a request.
- “(7) Evidence produced by the defendant to the Director or the person authorised by the Director under subsection (4) must be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.
- “(8) The Director or a person authorised by the Director—
- “(a) may deliver an infringement notice (or a copy of it) to the defendant personally; or
 - “(b) may send it (or a copy of it) to the defendant by post addressed to the defendant’s last known place of residence or business.

“65Q Form of infringement notice

- “(1) An infringement notice under section 65P must be in the prescribed form, and must specify—

- “(a) enough details to inform the defendant fairly of the time, place, and nature of the offence alleged; and
 - “(b) the amount of the infringement fee specified in respect of that offence in subsection (2); and
 - “(c) where the fee may be paid; and
 - “(d) the time within which the fee may be paid; and
 - “(e) how and where payment may be made under section 65R; and
 - “(f) a summary of how the provisions of section 21(10) of the Summary Proceedings Act 1957 apply to the offence alleged; and
 - “(g) that the defendant has a right to request a hearing; and
 - “(h) a statement of the consequences if the defendant neither pays the fee nor requests a hearing; and
 - “(i) any other particulars as are prescribed by regulations made under this Act.
- “(2) The infringement fee is,—
- “(a) in the case of an offence against section 65I(1)(a), \$1,000;
 - “(b) in the case of an offence against section 65I(1)(b), \$600;
 - “(c) in the case of an offence against section 65L, \$500;
 - “(d) in the case of an offence against section 65M, \$500;
 - “(e) in the case of an offence against section 65N, \$500;
 - “(f) in the case of an offence against section 65O, \$500.

“65R Payment of fees

- “(1) If an infringement notice under section 65P (or a copy of it) is served by delivering it to the defendant on arrival at an international airport for an offence on an international flight, the defendant may choose to pay immediately the infringement fee in the manner specified in the notice.
- “(2) All infringement fees received in respect of an infringement notice under section 65P, whether immediately after service or later, must be paid into the Crown Bank Account.

“65S Filing of notices

- “(1) The Director or a person authorised by the Director may file in a District Court a copy of the infringement notice under section

65P after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if—

- “(a) the infringement fee for the offence has not by then been paid to the Director as specified in the notice; and
 - “(b) the Director has not by then received at the address specified in the notice a notice requesting a hearing in respect of that offence.
- “(2) The copy of the infringement notice filed under subsection (1) must have recorded on it the date and method of service on the defendant.
- “(3) If an infringement notice under section 65P has been issued and served, the Summary Proceedings Act 1957 applies as if that notice were a reminder notice served under section 21(2) of that Act, and the provisions of that Act apply, with all necessary modifications, to the alleged offence as if—
- “(a) the reference in section 21(1)(b) to filing a copy of a reminder notice under the section were a reference to filing a copy of the infringement notice under subsection (1) of this section; and
 - “(b) subsection (1) of this section were in the place of section 21(3); and
 - “(c) the reference in section 21(3A) to a copy of a reminder notice not having been filed under section 21(3) were a reference to a copy of the infringement notice not having been filed under subsection (1) of this section; and
 - “(d) the reference in section 21(5) to a copy of a reminder notice filed under section 21(3) were a reference to a copy of the infringement notice filed under subsection (1) of this section; and
 - “(e) the reference in section 21(6)(b) and (10)(a) to a period of 28 days after the service of a reminder notice were a reference to the period of 14 days after the service of the infringement notice; and
 - “(f) the references to reminder notices in the definition of defendant in sections 2 and 78B, and in any other relevant provisions of that Act, were references to the infringement notice.

- “(4) Despite section 203(1) of the Summary Proceedings Act 1957, an infringement notice under section 65P may be issued and served on a Sunday.
- “(5) For the purpose of subsection (1), an infringement notice sent by post is deemed to have been served on the defendant when it was posted.

“65T Savings

- “(1) Nothing in this Part applies to any—
- “(a) proceedings commenced before the commencement of this Act; or
 - “(b) cause of action that arose before the commencement of this Act; or
 - “(c) act or omission that occurred before the commencement of this Act.
- “(2) All proceedings commenced under any other enactment for an offence committed before the commencement of this Part may be continued and completed under that other enactment as if this Part had not come into force.”

29 Appeal to District Court

- (1) Section 66(5) of the principal Act is amended by adding the following paragraphs:
- “(e) concerning the issue of a medical certificate under section 27B (other than a decision under subsection (5)(b) of that section):
 - “(f) to impose or amend conditions, restrictions, or endorsements on a medical certificate under section 27I(7)(a):
 - “(g) to disqualify a licence holder under section 27I(7)(c):
 - “(h) to revoke a medical certificate under section 27I(7)(d) and (11):
 - “(i) concerning the implementation of the results of a report by the convener under section 27L or section 27M.”
- (2) Section 66(5) of the principal Act is amended by adding the following paragraph:
- “(j) to amend an AOC with ANZA privileges or withdraw those privileges under section 11I(3).”

Section 29 was substituted, as from 15 December 2005, by section 4 Civil Aviation Amendment Act 2005 (2005 No 94).

- 30 Civil Aviation Authority of New Zealand established**
Section 72A(2) of the principal Act is amended by omitting the words “who shall be New Zealand citizens or permanent residents of New Zealand”.
- 31 Functions of Authority**
Section 72B(2) of the principal Act is amended by adding the following paragraph:
“(j) to enter into technical or operational arrangements, or both, with civil aviation authorities of other countries.”
- 32 Director of Civil Aviation**
Section 72I of the principal Act is amended by inserting, after subsection (3C), the following subsection:
“(3D) The Director may enter into arrangements with CASA for the purpose of giving effect to the ANZA mutual recognition agreements.”
- 33 Civil Aviation Registry**
(1) Section 74(2) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
“(ab) every Australian AOC with ANZA privileges:”
(2) Section 74 of the principal Act is amended by adding the following subsection:
“(4) Subsection (3) is subject to the Privacy Act 1993.”
- 34 Powers and duties of Minister to require screening**
Section 77A of the principal Act is amended by inserting, after subsection (5), the following subsection:
“(5A) A direction is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.”
- 35 Powers and duties of Director to require screening**
Section 77B of the principal Act is amended by inserting, after subsection (5), the following subsection:
“(5A) A direction is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.”

36 Functions and duties of Aviation Security Service

Section 80 of the principal Act is amended by inserting, after paragraph (e), the following paragraph:

- “(ea) to provide security support services to the police when requested by the Commissioner of Police, but only subject to the following conditions:
- “(i) the Commissioner of Police is satisfied that the provision of those services to the New Zealand Police is necessary to enable the New Zealand Police to carry out its security duties; and
 - “(ii) the Aviation Security Service is satisfied that the provision of those services to the New Zealand Police will not compromise aviation security:”.

37 New Part 9B inserted

The principal Act is amended by inserting, after Part 9A, the following Part:

“Part9B**“Domestic carriage by air****“91U Interpretation**

- “(1) In this Part, unless the context otherwise requires,—
- “**actual carrier** means a person, other than the contracting carrier, who—
 - “(a) performs the whole or part of the carriage contracted for by the contracting carrier with the authority of the contracting carrier; but
 - “(b) is not, in relation to that carriage, a successive carrier
 - “**aeroplane** means a power-driven heavier-than-air aircraft deriving its lift in flight chiefly from aerodynamic reactions on surfaces that remain fixed under given conditions of flight
 - “**carrier** includes a contracting carrier and an actual carrier
 - “**contract** includes an arrangement made without consideration
 - “**contracting carrier** —
 - “(a) means a person who, as a principal, makes a contract for carriage with a passenger, or with a person acting on behalf of the passenger; and
 - “(b) includes a successive carrier

“**international carriage**, in relation to carriage by air, means carriage in which, according to the contract between the parties, the place of departure and the place of destination, whether or not there is a break in the carriage or a transshipment, are—

“(a) within the territories of 2 countries; or

“(b) within the territory of a single country if there is an agreed stopping place within the territory of another country

“**passenger** means a person carried under a contract for carriage other than a person—

“(a) assigned by the carrier for duty as a member of the crew of the aeroplane; or

“(b) carried for the sole purpose of receiving or giving instruction in the control or navigation of an aeroplane in flight

“**successive carrier** means a person who performs part of the carriage if the carriage—

“(a) is performed by 2 or more persons in successive stages; and

“(b) has been regarded by the parties as a single operation, whether it has been agreed on by a single contract or by 2 or more contracts.

“(2) If any question arises as to whether or not an actual carrier has authority from a contracting carrier to perform any carriage, that authority is, in the absence of proof to the contrary, to be presumed.

“Compare: 1967 No 151 s 18

“91V Application of this Part

“(1) This Part applies to any carriage by air (other than international carriage) in which, according to the contract between the parties,—

“(a) the place of departure and the place of destination are both in New Zealand; and

“(b) there is no agreed stopping place outside New Zealand.

“(2) Subsection (1) applies even if—

“(a) the aeroplane in which the carriage takes place is at the same time engaged in international carriage; or

“(b) the contract for the carriage of any passenger is made without consideration.

“(3) This section applies subject to section 91W.

“Compare: 1967 No 151 s 19(1)

“91W Exclusions

“(1) This Part does not apply to any carriage by air by an aeroplane while it is being used solely for military purposes by the Armed Forces.

“(2) This Part does not apply to any carriage by air on a single flight in respect of which, according to the contract between the parties, the place of departure and the intended place of destination are the same.

“Compare: 1967 No 151 s 19(3), (4)

“91X Provisions if carriage performed by actual carrier—

“(1) If the whole or any part of any carriage to which this Part applies is performed by an actual carrier,—

“(a) both the contracting carrier and the actual carrier are subject to any liability imposed by this Part as follows:

“(i) the contracting carrier is liable in respect of the whole of the carriage contemplated in the contract between the contracting carrier and the passenger; and

“(ii) the actual carrier is liable solely in respect of the carriage that the actual carrier performs:

“(b) the acts and omissions of the actual carrier, and of the actual carrier’s servants and agents acting within the scope of their employment, must, in relation to the carriage performed by the actual carrier, be treated as also those of the contracting carrier:

“(c) the acts and omissions of the contracting carrier, and of the contracting carrier’s servants and agents acting within the scope of their employment, must, in relation to the carriage performed by the actual carrier, be treated as also those of the actual carrier:

“(d) any special agreement under which the contracting carrier assumes obligations not imposed by this Part, or any

waiver of rights conferred by this Part, does not affect the actual carrier unless agreed to by the actual carrier.

- “(2) An act or omission specified in subsection (1)(c) does not subject the actual carrier to liability exceeding the limits specified in section 91ZC.

“Compare: 1967 No 151 s 20

“91Y Provisions if carriage performed by successive carriers

If carriage is performed or is to be performed by successive carriers, the contracting carrier who is liable is the successive carrier who performed or was to perform the carriage where the delay occurred.

“Compare: 1967 No 151 s 21

“91Z Liability of carrier in respect of delay

- “(1) A carrier is liable for damage caused by delay in the carriage of passengers.

- “(2) Despite subsection (1), a carrier is not liable for damage caused by delay if the carrier proves that the delay—

“(a) arose by reason of—

“(i) meteorological conditions; or

“(ii) compliance with instructions, advice, or information given by an air traffic control service; or

“(iii) obedience to orders or directions given by a lawful authority; or

“(b) was made necessary by force majeure; or

“(c) was necessary for the purpose of saving or attempting to save life.

“Compare: 1967 No 151 s 25

“91ZA Avoidance of liability

The carrier is not liable under this Part if the carrier proves that—

“(a) the carrier, or the carrier’s servants or agents, had taken all necessary measures to avoid the damage; or

“(b) it was not possible for the carrier, or the carrier’s servants or agents, to have taken those measures.

“Compare: 1967 No 151 s 26

“91ZB Contributory negligence

If the carrier proves that the damage was caused, or contributed to, by the negligence of the passenger, the court may, in accordance with the Contributory Negligence Act 1947, exonerate the carrier wholly or partly from liability.

“Compare: 1967 No 151 s 27

“91ZC Limitation of liability

“(1) The liability of the carrier in respect of damage caused by delay is limited to the lesser of—

- “(a) the amount of damage proved to have been sustained as a result of the delay; or
- “(b) an amount representing 10 times the sum paid for the carriage.

“(2) Despite subsection (1), the carrier may, by special contract, increase the amount of the carrier’s liability under that subsection.

“(3) This Part does not affect any rule of law relating to remoteness of damage.

“Compare: 1967 No 151 s 28

“91ZD Contracting out

“(1) A provision in a contract of carriage or in any bylaws made by a carrier purporting to relieve the carrier of liability, or to fix a lower limit than the appropriate limit of liability referred to in section 91ZC, has no effect.

“(2) The invalidity under subsection (1) of a provision in a contract of carriage or in any bylaws does not, by itself, make any other provision of that contract or those bylaws invalid.

“Compare: 1967 No 151 1967 No 151 s 30

“91ZE Wilful or reckless misconduct

“(1) The limits of liability referred to in section 91ZC do not apply if it is proved that the damage resulted from an act or omission of the carrier done—

- “(a) with intent to cause damage; or
- “(b) recklessly and with knowledge that damage would probably result.

- “(2) The limits of liability referred to in section 91ZC do not apply if it is proved that the damage resulted from an act or omission of the carrier’s servants or agents done—
- “(a) with intent to cause damage; or
 - “(b) recklessly and with knowledge that damage would probably result; and
 - “(c) while the servant or agent was acting within the scope of that servant’s or agent’s employment.

“Compare: 1967 No 151 1967 No 151 s 31

“91ZF Servants or agents of carrier

- “(1) If an action in respect of any damage is brought against a servant or agent of a carrier, and the servant or agent proves that the servant or agent acted within the scope of the servant’s or agent’s employment or authority, the servant or agent is entitled to rely on the limits of liability, if any, that the carrier would be entitled to invoke under section 91ZC in an action against the carrier in respect of that damage.
- “(2) Subsection (1) does not apply if it is proved that the damage resulted from an act or omission of the servant or agent done—
- “(a) with intent to cause damage or recklessly; and
 - “(b) with knowledge that damage would probably result.

“Compare: 1967 No 151 s 32

“91ZG Aggregation of damages

The aggregate of the amounts recoverable from the carriers, and from their servants or agents acting within the scope of their employment who are jointly and severally subject to liability under this Part, must not exceed the limits referred to in section 91ZC.

“Compare: 1967 No 151 s 33

“91ZH Aggregate liability

The limitations referred to in section 91ZC apply to the aggregate liability of a carrier, or a servant or agent of a carrier acting within the scope of the servant’s or agent’s employment, in all proceedings that are brought against the carrier or servant or agent under the law of New Zealand, together with any pro-

ceedings brought against the carrier or servant or agent outside New Zealand.

“Compare: 1967 No 151 s 34

“91ZI Just and equitable orders and awards

“(1) A court before which proceedings are brought to enforce a liability that is limited by this Part may, at any stage of the proceedings, make any order that appears to the court to be just and equitable in view of—

“(a) the provisions of this Part; and

“(b) any other proceedings that have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part.

“(2) Without limiting subsection (1), a court before which proceedings are brought to enforce a liability that is limited by this Part may, if the liability is, or may be, enforceable in other proceedings in New Zealand or elsewhere,—

“(a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or

“(b) make any part of its award conditional on the result of any other proceedings.

“Compare: 1967 No 151 s 35

“91ZJ Tortfeasors

“(1) The limitations on liability referred to in section 91ZC apply if—

“(a) proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor; and

“(b) the tortfeasor from whom contribution is sought is the carrier, or a servant or agent of the carrier.

“(2) Proceedings to which subsection (1) applies may not be brought by a tortfeasor to obtain a contribution from another tortfeasor after 2 years from the time when judgment is obtained against the tortfeasor seeking to obtain the contribution.

“(3) This Part does not affect proceedings brought against any tortfeasor (other than the carrier or its servant or agent).

“Compare: 1967 No 151 s 36

“91ZK Relationship between carriers

This Part does not—

- “(a) prevent a carrier from entering into special contractual arrangements with another carrier; or
- “(b) affect the rights and obligations of the carriers between themselves.

“Compare: 1967 No 151 s 37

“91ZL Limitation of actions

- “(1) An action may not be brought under this Part against a carrier, or a servant or agent of a carrier acting within the scope of his or her employment, after 2 years from the later of the following dates:
 - “(a) the date of the arrival of the aeroplane at the destination; or
 - “(b) if the aeroplane did not arrive at the destination,—
 - “(i) the date on which the aeroplane ought to have arrived at the destination; or
 - “(ii) the date on which the carriage stopped.
- “(2) Despite subsection (1), application may be made to the court, after giving notice to the intended defendant, for leave to bring an action at any time within 6 years after the date on which the cause of action accrued as provided in subsection (1).
- “(3) On application under subsection (2), the court may grant leave accordingly if it considers that it is just to do so and if it considers that—
 - “(a) the delay in bringing the action was caused by—
 - “(i) mistake of fact; or
 - “(ii) mistake of any matter of law other than the provisions of this subsection; or
 - “(iii) any other reasonable cause; or
 - “(b) the intended defendant was not materially prejudiced in the defendant’s defence or otherwise by the delay.
- “(4) If the court grants leave under subsection (3), that leave may be subject to such conditions (if any) that the court thinks just to impose.
- “(5) This section applies subject to the special provisions relating to tortfeasors in section 91ZJ.

“Compare: 1967 No 151 s 39

“91ZM Combined carriage

If a contract of carriage made with an air carrier provides for the carriage to be performed partly by air and partly by a mode of carriage other than by air, this Part applies only to the carriage by air.

“Compare: 1967 No 151 s 40”.

38 Minister may prohibit smoking on international air routes

Section 96A(1) of the principal Act is amended by omitting from the definition of **to smoke** the word “tobacco”.

39 Regulations

- (1) Section 100(1)(d) of the principal Act is amended—
 - (a) by omitting from subparagraph (i) the expression “\$5,000”, and substituting the expression “\$10,000”;
 - (b) by omitting from subparagraph (ii) the expression “\$30,000”, and substituting the expression “\$50,000”.
- (2) Section 100(1) of the principal Act is amended by inserting, after paragraph (ec), the following paragraph:

“(ed) specifying, for the purposes of Part 1A, the agreements or arrangements between the Governments of Australia and New Zealand regarding mutual recognition of aviation-related certification.”.

40 Repeals

- (1) Sections 96B(3) and (5) and 96C to 96F of the principal Act are repealed.
- (2) The Carriage by Air Act 1967 is repealed.

41 Consequential amendments

- (1) The Civil Aviation Rules are amended in the manner set out in Part 1 of Schedule 1 as from the date of commencement specified in, or appointed under, section 2(1).
- (2) The Civil Aviation Rules are amended in the manner set out in Part 2 of Schedule 1 as from the date of commencement specified in section 2(2).
- (3) The Acts specified in Schedule 2 are amended in the manner set out in that schedule.

- (4) Schedule 1 of the Civil Aviation (Offences) Regulations 1997 (SR 1997/56) is amended by—
- (a) revoking the item relating to rule 19.7(b):
 - (b) revoking the item relating to rule 91.5(b):
 - (c) revoking the item relating to rule 91.5(c):
 - (d) omitting from the item relating to rule 91.7(a) the words “Person shall not operate”, and “operator”, and substituting the word “Operator”:
 - (e) omitting from the third column of the item relating to rule 91.7(a) the expression “1,250”, and substituting the expression “2,500”:
 - (f) omitting from the fourth column of the item relating to rule 91.7(a) the expression “7,500”, and substituting the expression “15,000”:
 - (g) omitting from the item relating to rule 91.11 the words “interfere with crew member or”:
 - (h) omit from the third column of the item relating to rule 91.11 the expression “5,000” and substitute the expression “10,000”:
 - (i) omit from the fourth column of the item relating to rule 91.11 the expression “30,000” and substitute the expression “50,000”:
 - (j) omitting from the third column of the item relating to rule 92.13 the expression “625”:
 - (k) omit from the fourth column of the item relating to rule 92.13 the expression “3,750” and substitute the expression “15,000”:
 - (l) omitting from the fifth column of the item relating to rule 92.13 the expression “250”:
 - (m) omit from the sixth column of the item relating to rule 92.13 the expression “1,500” and substitute the expression “6,000”.
- (5) The Civil Aviation (Offences) Regulations 1997 (SR 1997/56) are amended by—
- (a) adding the Schedule 3 set out in Schedule 3, and
 - (b) inserting in clause 5, after the words “Schedule 2”, the words “, and every infringement notice under section

65P of the Act must be in the form set out in Schedule 3”.

s 41(1), (2)

Schedule 1
Consequential amendments to Civil Aviation Rules

1

Amendments coming into force on a date
appointed by Order in Council

Rule 1.1

Insert, in their appropriate alphabetical order:

“**Australian AOC with ANZA privileges** has the same meaning as in section 3(1) of the Civil Aviation Act 1988 (Aust)

“**New Zealand AOC with ANZA privileges** has the meaning set out in section 11G of the Act”.

Rule 1.3

Insert, after the abbreviation **AMSL**, the following abbreviation:

“**ANZA** means Australia New Zealand Aviation”.

Rule 19.15

Add the following paragraph:

“(d) Nothing in paragraph (a) or paragraph (b) applies to aircraft engaged in air operations conducted in New Zealand under an Australian AOC with ANZA privileges.”

Rule 19.201

Add the following paragraph:

“(c) The conditions and requirements prescribed in 19.205 and 19.207 do not apply to air operations conducted in New Zealand under an Australian AOC with ANZA privileges.”

1—*continued*

Rule 91.1

Add the following paragraph:

“(e) The following rules do not apply in the case of air operations conducted in New Zealand under an Australian AOC with ANZA privileges:

“(1) 91.111(1):

“(2) 91.112:

“(3) 91.115:

“(4) 91.121:

“(5) 91.123:

“(6) 91.201(1)(i):

“(7) 91.201(3):

“(8) 91.205:

“(9) 91.207:

“(10) 91.209:

“(11) 91.211:

“(12) 91.213:

“(13) 91.215:

“(14) 91.221:

“(15) 91.401:

“(16) 91.501:

“(17) 91.503:

“(18) 91.505:

“(19) 91.507:

“(20) 91.509:

“(21) 91.511:

“(22) 91.513:

“(23) 91.515:

“(24) 91.517:

“(25) 91.519:

“(26) 91.521:

“(27) 91.523:

“(28) 91.525:

“(29) 91.527:

“(30) 91.529:

“(31) 91.531:

“(32) 91.533:

1—*continued*

- “(33) 91.537:
- “(34) 91.539:
- “(35) 91.543:
- “(36) 91.545:
- “(37) 91.707:”

Rule 108.1

Omit the words “and Part 129” and substitute the words “, Part 129, and for operations conducted under an Australian AOC with ANZA privileges”.

New rule 108.63

Insert, after rule 108.61:

“108.63 Air security programme required

The holder of an Australian AOC with ANZA privileges must establish and implement an air operator security programme that meets the relevant requirements of this Part.”

Rule 119.1

Revoke and substitute the following rule:

“119.1 Purpose

- (a) This Part prescribes requirements for the certification and continuing operations of persons domiciled in New Zealand conducting air operations under Parts 121, 125, and 135.
- “(b) This Part does not apply to the holder of an Australian AOC with ANZA privileges.”

Rule 119.11

Omit paragraph (a) and substitute the following paragraph:

- “(a) An applicant is entitled to an airline air operator certificate if the Director is satisfied that, in accordance with section 9 of the Act,—
 - “(1) the applicant meets the applicable requirements of sub-part B; and

1—*continued*

- “(2) the applicant, where the applicant is a natural person, and the applicant’s senior persons required by 119.51(a)(1) and (2) are fit and proper persons; and
- “(3) the granting of the certificate is not contrary to the interests of aviation safety; and
- “(4) in the case of a New Zealand AOC with ANZA privileges, the airline operations to, from, or within Australia will be conducted using—
 - “(i) in the case of passenger operations, aircraft with a capacity of more than 30 passenger seats, or a maximum certificated take-off weight of more than 15,000 kg; and
 - “(ii) in the case of cargo or combined cargo and passenger operations, aircraft with a maximum certificated take-off weight of more than 15,000 kg or a maximum payload capacity of more than 3,410 kg.”

Rule 119.15(b)

Add the words “; and” and the following paragraph:

- “(9) where applicable, the authorisations and limitations for routes and areas of air operations conducted in Australia by a holder of a New Zealand AOC with ANZA privileges.”

New rule 121.15

Insert, after rule 121.13:

“121.15 Applicability to air operations conducted under an Australian AOC with ANZA privileges

The following rules do not apply in the case of air operations conducted in New Zealand under an Australian AOC with ANZA privileges:

- “(1) 121.79:
- “(2) 121.81:
- “(3) 121.83:
- “(4) 121.89:
- “(5) 121.91(b):
- “(6) 121.91(c):

1—*continued*

- “(7) 121.93:
- “(8) 121.803:
- “(9) 121.805.”

Rule 129.3

Revoke the definition of **foreign air transport** operation and substitute the following definition:

“**foreign air transport operation** means an air transport operation conducted by a person not domiciled in New Zealand that is—

- “(a) to or from New Zealand; or
- “(b) within New Zealand as part of an air operation to or from New Zealand.”

Rule 129.5

Revoke this rule and substitute the following rule:

“129.5 Requirement for certificate

- (a) No person shall perform an operation to which this Part applies except under the authority of, and in accordance with, a foreign air operator certificate issued under this Part.
- “(b) The requirements in paragraph (a) do not apply to air operations conducted in New Zealand under an Australian AOC with ANZA privileges.”

2

Amendments coming into force on 1 June
2004

Rule 1.1

Revoke the definition of **dangerous goods** and substitute:

“**dangerous goods** means articles or substances that are capable of posing risk to health, safety, property, or the environment and—

- “(a) are listed in, or classified in accordance with, the ICAO’s Technical Instructions for the Safe Transport of Dangerous Goods by Air ; or

2—continued

“(b) have properties that would result in the articles or substances being classified as dangerous goods under the ICAO’s Technical Instructions for the Safe Transport of Dangerous Goods by Air.”

Rule 19.7

Revoke paragraph (b).

Rule 91.5

Revoke paragraphs (a) and (b).

Rule 91.7(b)

Omit the words “New Zealand registered”.

Rule 91.11

Revoke and substitute:

“91.11 Prohibition against interference with aircraft and aviation facilities

A person must not tamper or interfere with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors, or with fixed or mobile equipment used for the operation or navigation of any aircraft.”

Rule 108.53(b)(5)

Insert, before the word “cargo”, the word “baggage”.

Rule 108.53(b)(8)

Omit the words “and baggage” in both places where they appear and substitute in each case the words “, crew, and baggage”.

Omit the words “an aviation security organisation certificate issued under Part 140” and substitute the words “an aviation security service certificate issued in accordance with Part 140”.

Insert, before the word “Director”, the words “Minister or the”.

2—continued

Rule 108.55(b)(12)

Omit the words “a passenger” and substitute the words “passenger, crew”.

Omit the words “an aviation security organisation certificate issued under Part 140” and substitute the words “an aviation security service certificate issued in accordance with Part 140”.

Schedule 2

s 41(3)

Consequential amendments to other Acts

Aviation Crimes Act 1972 (1972 No 137)

Insert in section 2(1), after **aviation security officer**:

“**carrier and contract** in relation to any contract of carriage, have the same meanings as in section 91U of the Civil Aviation Act 1990, whether the contract of carriage is for international carriage or domestic carriage; and **passenger** includes a person who has reported to a servant or agent of the carrier for the purpose of going on board an aircraft pursuant to a contract to carry him or her as a passenger”.

Insert, in section 2(1), after the definition of **ordinarily resident in New Zealand**, the following definition:

“**passenger** means a person carried under a contract for carriage other than a person—

- “(a) assigned by the carrier for duty as a member of the crew of the aircraft; or
- “(b) carried for the sole purpose of receiving or giving instruction in the control or navigation of aircraft in flight”.

Repeal the definition of **baggage, cargo, carrier, contract, and passenger** in section 2(1).

Civil Aviation Amendment Act 2002 (2002 No 15)

[Repealed]

The item relating to the Civil Aviation Amendment Act 2002 was repealed, as from 1 December 2004, by section 12(1) Civil Aviation Amendment Act (No 2) 2004 (2004 No 95). See section 13 of that Act for the transitional provisions relating to rules.

Crimes Act 1961 (1961 No 43)

Insert in sections 8(7) and 400(2), after the expression “1994”, the words “or Part 5A of the Civil Aviation Act 1990”.

Goods and Services Tax Act 1985 (1985 No 141)

Omit from section 11A(1)(b) the words “the Carriage by Air Act 1967”, and substitute the words “that Act”.

Judicature Act 1908 (1908 No 89)

Omit from rules 219(j) and 223 in Schedule 2 the words “the Carriage by Air Act 1967, or Part 9A” and substitute in each case the words “Part 9A or Part 9B”.

Smoke-free Environments Act 1990 (1990 No 108)

Repeal section 8(2).

Repeal section 17(9).

Schedule 3 s 41(5)
**New Schedule 3 added to Civil Aviation
 (Offences) Regulations 1997**

Schedule 3 r 5
Unruly passenger infringement notice

Section 65P, Civil Aviation Act 1990

Notice number:

Date of notice:

Enforcement authority: The Director of Civil Aviation

Issued by: *[full name, being a person authorised by the Director]*

This notice is issued to the person described below (who is referred to as the **defendant**) in respect of the alleged offence described below.

Details of defendant

Name:

Address:

Occupation: Passport number and country of issue (if
Date of birth: applicable):

Details of alleged offence

Date: Time: **Day of week:**

Place: S M T W T F S

Aircraft nationality and registration:

Offence description	Infringement fee payable
1.	\$
2.	\$
3.	\$

Service details

Method of service:

Personal service Registered or ordinary post

Served by: *[full name]* On: *[date]*

Payment of infringement fee

The infringement fee may be paid (not later than 14 days after service of this notice) at the following address, either in person or by sending it by post:

[address where fee may be paid].

Cheques or money orders should be made payable to the Civil Aviation Authority of New Zealand and should be crossed and marked "Not Negotiable". An official receipt will be issued following payment.

Schedule 3—*continued*

If this notice has been served on you on arrival at a port that has been approved under the Biosecurity Act 1993 for an offence on an international flight, you may choose to pay the infringement fee immediately. Payment may be made at the MAF Collections Booth located in the arrivals area of the International Terminal Building in New Zealand currency, or by EFTPOS or approved credit cards. An official receipt will be issued following payment.

Important: The notes printed on the back of this notice set out important information.

1 Defences

You have a defence against any proceedings for the offence alleged in this notice if you can prove that the infringement fee has been paid to the enforcement authority, either---

- (a) at the address for payment shown on the front of this notice before or within 14 days after you have been served with this notice; or
- (b) by immediate payment (if you were served with this notice at a port that has been approved under the Biosecurity Act 1993 for an offence on an international flight).

Note that late payment, or payment at any other address, will not be a defence.

2 Right to request hearing

You have the right to request a hearing. A request for a hearing must be made in writing, be signed by you, and be delivered to the address specified on the front of this notice before or within 14 days after you have been served with this notice.

- If you request a hearing, you may deny liability for the offence, or admit liability and make submissions as to penalty or any other matter.
- If you deny liability for the offence, the enforcement authority will serve you with a notice of hearing setting out the place and time at which the matter will be heard by the Court (unless the enforcement authority decides not to start court proceedings).

Note that, if the Court finds you guilty of the offence, costs will be imposed in addition to any fine.

If you admit liability for the offence but want the Court to consider your submissions, you should, in your request for a hearing,—

- (a) admit the offence; and
- (b) set out the written submissions you wish to be considered by the Court.

Schedule 3—*continued*

The enforcement authority will then file your letter with the Court (unless the enforcement authority decides not to commence court proceedings). There will be no oral hearing before the Court if you follow this course of action.

Note that costs will be imposed in addition to any fine.

3 Consequences of taking no action

If, within 14 days after being served with this notice, you have not paid the infringement fee and the enforcement authority has not received a request for a hearing, you will become liable to pay costs **in addition** to the infringement fee (unless the enforcement authority decides not to commence court proceedings against you).

4 Questions and other correspondence

When writing or making payment, please include—

- (a) the date of the infringement notice; and
- (b) the infringement notice number; and
- (c) the identifying number of each alleged offence and the course of action you are taking in respect of the alleged offence(s); and
- (d) your address for replies.

Further details of your rights and obligations are set out in sections 65P, 65Q, 65R, 65S, and 65T of the Civil Aviation Act 1990 and section 21 of the Summary Proceedings Act 1957.

Note that all queries and all correspondence regarding this notice must be directed to the enforcement authority at the address shown.

Legislative history

1 July 2003	Introduction (Bill 64–1)
29 July 2003	First reading and referral to Transport and Industrial Relations Committee
10 November 2003	Reported from Transport and Industrial Relations Committee (Bill 64–2)
19 February 2004	Second reading
3)18 March 2004 24, 25	Third reading
February, 2 March 2004	
Committee of the whole House	
(Bill 64	
