

# **Aviation Security Legislation Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The purpose of this Bill is to provide enhanced security measures for New Zealand civil aviation. The Bill will allow New Zealand to support its obligations under the Convention on International Civil Aviation (1944). The Bill also strengthens the legal framework for New Zealand's aviation security system, and contributes to the goals of the New Zealand Transport Strategy, in particular by assisting safety and personal security and assisting economic development.

International aviation security has been significantly upgraded since 11 September 2001. This Bill will enable New Zealand to continue contributing to multilateral efforts to combat terrorism. It will also allow New Zealand to remain in step with international aviation security requirements. It will ensure the continued confidence of trading partners and tourist markets in the security of New Zealand aviation services.

The proposals contained in the Bill will—

- provide aviation security officers with the power, within specified limits, to search for or seize items that may need to be prohibited or restricted from being taken on board an aircraft; and
- enable the screening and searching of people who work in airports; and
- provide a power for aviation security officers to seize potential weapons; and
- provide a power for aviation security officers to search passengers' outer garments; and

- require airlines to deny carriage to passengers who refuse to be searched; and
- enable foreign in-flight security officers to enter, depart from, and transit New Zealand on foreign registered aircraft should Cabinet seek to do so by recommending the relevant provisions of this Bill be brought into effect by Order in Council; and
- enable the deployment of in-flight security officers provided by the New Zealand Police on New Zealand registered aircraft should Cabinet seek to do so by recommending the relevant provisions of this Bill be brought into effect by Order in Council; and
- strengthen provisions for checking the background of people who work in areas critical to aviation security, and provide appropriate natural justice provisions for people whose backgrounds are checked.

To implement these proposals, the Aviation Security Legislation Bill seeks to amend several pieces of legislation, namely, the Arms Act 1983, the Aviation Crimes Act 1972, the Civil Aviation Act 1990, and the Civil Aviation Rules.

The following amendments will come into force on the day after the date of assent:

- background checking; and
- requirements for carriers to deny carriage to passengers who refuse to be screened; and
- the seizure of potential weapons; and
- the power to require the removal of outer garments during passenger searches.

The amendments relating to in-flight security officers will come into force on a date to be appointed by Order in Council. This reflects current government policy that New Zealand will not deploy in-flight security officers, and ensures that any decision to do so is made by Cabinet. The proposals relating to foreign in-flight security officers will be brought into effect by Order in Council should any requests be made by other countries to deploy their in-flight security officers on flights to New Zealand.

The proposal relating to the screening and searching of airport workers will also come into force on a date to be appointed by Order in Council. This is because there are operational arrangements that must be established before the screening and searching of airport workers can be implemented.

## Clause by clause analysis

*Clause 1* relates to the Title. The Bill, which amends several Acts, is designed to be divided into separate amendment Bills at the committee of the whole House stage of the legislative process.

*Clause 2* relates to commencement. *Clauses 1 to 3, 4(3), 5, 6, 9, 10(3), 13, 17(2), 18, 19(1), 21, 22, and 24(1)* come into force on the day after the date on which the Bill receives the Royal assent. The remaining clauses come into force on a date or dates appointed by Order in Council to account for operational matters and to provide flexibility in the implementation of certain provisions regarding in-flight security officers and screening.

### Part 1

#### Amendments to Aviation Crimes Act 1972

*Clause 3* notes that *clauses 4 to 8* amend the Aviation Crimes Act 1972.

*Clause 4* inserts the definitions of **foreign in-flight security officer**, **in-flight security officer**, **security enhanced area**, and **sterile area** into section 2(1).

*Clause 5* amends section 11, which concerns the taking of firearms and explosives on to aircraft. The amendment provides that every person commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, takes or attempts to take a specified item into a sterile area or a security enhanced area.

*Clause 6* replaces section 12, which concerns the search of passengers, baggage, and cargo. The clause provides that certain persons may search passengers, baggage, and cargo. It also extends and clarifies their search powers. If passengers decline to be searched, the relevant carrier must refuse carriage. A carrier is not liable in any civil proceeding for refusing carriage (other than a proceeding in respect of any right that the passenger may have for the recovery of the fare).

*Clause 7* amends section 15, which concerns the powers of aircraft commanders. The amendments clarify that an aircraft commander is required to report to the appropriate authority that an in-flight security officer is to deliver an arrested person to that authority.

*Clause 8* inserts *new sections 15A to 15G*. *New section 15A* provides that the Commissioner of Police may authorise members of the

police to be in-flight security officers. *New section 15B* provides that in-flight security officers may possess, carry, and use firearms, weapons, ammunition, and other equipment on board certain aircraft in certain circumstances. *New section 15C* provides that in-flight security officers may take action or measures reasonably necessary to restore or preserve control of an aircraft. *New section 15D* provides that in-flight security officers may arrest persons in certain circumstances. *New section 15E* provides that in-flight security officers may restrain persons under arrest in certain circumstances. *New section 15F* provides that in-flight security officers may search certain persons and seize items in certain circumstances. *New section 15G* provides that a person assisting an in-flight security officer under *new section 15D, 15E, or 15F* is justified in using force if the person acts in good faith and the force used is necessary and reasonable in the circumstances.

## **Part 2**

### **Amendments to Civil Aviation Act 1990**

*Clause 9* notes that *clauses 10 to 22* amend the Civil Aviation Act 1990.

*Clause 10* inserts the definitions of **foreign in-flight security officer**, **in-flight security officer**, **security enhanced area**, and **sterile area** into section 2.

*Clause 11* amends section 29, which concerns the making of rules relating to safety and security. The amendment provides that rules may be made providing for in-flight safety and security.

*Clause 12* amends section 54, which concerns security area offences. The amendments provide that every person who commits an offence in relation to a security area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000, and that every person who commits an offence in relation to a security enhanced area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000.

*Clause 13* inserts *new section 56A*. *New section 56A* provides that, in relation to a security check, every person who provides information that the person knows is false or misleading in a material particular or who fails to disclose, without reasonable excuse, information that the person knows to be materially relevant is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000.

*Clause 14* amends section 77A, which concerns the powers and duties of the Minister to require screening and searching. The amendments clarify these duties and powers, including the seizure of items, with respect to sterile areas, security areas, and security enhanced areas.

*Clause 15* amends section 77B, which concerns the powers and duties of the Director of Civil Aviation (the **Director**) to require screening and searching. The amendments clarify these duties and powers, including the seizure of items, with respect to sterile areas, security areas, and security enhanced areas.

*Clause 16* inserts *new section 77BA*, which provides that notices published in the *Gazette* in relation to security enhanced areas may not include security sensitive information.

*Clause 17* inserts *new sections 77D to 77I*. *New section 77D* provides that the Director may authorise in-flight security officers to carry and use firearms, weapons, ammunition, or any other equipment on board a New Zealand registered aircraft. *New section 77E* provides that the Director may authorise foreign in-flight security officers who are carrying firearms, weapons, ammunition, or any other equipment to disembark from aircraft, board aircraft, or pass through security areas, security enhanced areas, or sterile areas. *New section 77F* sets out the powers and duties of the Director relating to security checks of certain persons. *New section 77G* provides a mechanism by which to review adverse security check determinations made by the Director. *New sections 77H and 77I* set out related offences and penalties.

*Clause 18* amends section 80(a)(ii), which concerns the functions and duties of the Aviation Security Service. The amendment augments these functions and duties by requiring the Aviation Security Service to carry out searching when required by the Minister or Director.

*Clause 19* inserts *new sections 80B to 80H*. *New section 80B* sets out the power of aviation security officers to search for and seize certain items to be carried on aircraft or into sterile areas. *New section 80C* sets out the powers and duties of aviation security officers relating to security enhanced areas. *New section 80D* provides that the screening and searching powers specified in *new section 80C(1)* require consent to be granted. *New sections 80E and 80F* set out the procedures with respect to persons who refuse to consent to being screened and searched. *New section 80G* sets out the particulars

regarding searches of persons under *new section 80C(1)*. *New section 80H* provides aviation security officers with the power to require drivers to stop vehicles in security enhanced areas for screening or searching.

*Clause 20* amends section 84, which concerns security areas. The amendments provide that the Director may declare that an area within a security area is a security enhanced area. They also provide that, with the exception of embarking and disembarking passengers, no person other than a member of the police on official duties or an aviation security officer on official duties may enter or remain in any security area or security enhanced area unless the person is wearing specified identification and is authorised by the Director or the airport manager or other person having control of the area.

*Clause 21* amends section 85, which concerns the powers of arrest. The amendments provide for the search of an arrested person, the seizure of certain items carried by the arrested person, and the use of force that is necessary and reasonable in the circumstances to arrest a person, search a person, or seize an item.

*Clause 22* amends section 100, which concerns regulation-making powers. The amendments provide for the making of regulations to assist or enhance aviation security.

*Clause 23* sets out consequential amendments to the Arms Act 1983. *Clause 23(2)* inserts the definitions of **foreign in-flight security officer** and **in-flight security officer** into section 2. *Clause 23(3)* amends section 3, which concerns binding the Crown. The amendment provides that nothing in the Act renders unlawful the carriage or possession of firearms (among other things) by any person in the course of that person's duties as an in-flight security officer or a foreign in-flight security officer.

*Clause 24* provides that consequential amendments to the Civil Aviation Rules are set out in the *Schedule*.

## **Regulatory impact and compliance cost statement**

### **Issue 1: security risk items**

#### ***Statement of nature and magnitude of problem and need for government action***

Recent international aviation security events have drawn attention to new groups of items that may need to be prohibited or limited from

being taken on aircraft by passengers or crew. These include components of weapons, such as chemicals and electronic components, and items that are not weapons but that look like or could be used to disguise other items that are weapons, such as a liquid explosive disguised as a sports drink.

These items could be used to directly attack flights within or from New Zealand. Alternatively, another State may prohibit or limit these items from aircraft that will fly over or land in its territory. It is important that New Zealand is able to respond to risks to New Zealand aviation. It is also important that New Zealand can respond to requirements of other countries, to ensure that travel to those countries can continue.

There are 6 types of items that may need to be prohibited from being taken on board an aircraft. The categories of items are—

- dangerous goods; and
- traditional weapons (eg, firearms, explosives, knives, etc); and
- potential weapons (eg, large blunt objects or sharp objects that have an innocent purpose, but that could be used as a weapon); and
- imitation weapons (eg, replica firearms or explosives); and
- components of weapons (eg, chemicals that could be mixed together to create explosives); and
- innocuous items and substances.

Existing legislation clearly prohibits dangerous goods and traditional weapons. It can be argued that the legislation prohibits potential weapons, but there is room to challenge this. It is possible that, if tested in a court, it would not be found to be an offence to take on board items, such as cricket bats or scissors, that could be used as weapons, but that are not weapons in this traditional sense. Imitation weapons, components of weapons, and innocuous items or substances are not prohibited, and cannot be searched for and seized by aviation security officers under existing legislation.

### ***Statement of public policy objectives***

The public policy objectives are to—

- ensure that New Zealand can respond to aviation security threats; and
- ensure that New Zealand can comply with requests from other countries to carry out searching and seizure of certain items,

- so that air travel between New Zealand and those countries can continue; and
- ensure that New Zealand can participate in an international response to a threat to aviation security.

***Statement of feasible options (regulatory and non-regulatory) that may constitute viable means for achieving desired objectives***

**Status quo**

The current system to prevent weapons from being taken on board an aircraft is based on aviation security officers screening and searching crew and passengers before crew and passengers enter the departure lounge and board the aircraft.

Passengers are able to pack any items that may be weapons into their hold-stowed baggage or dispose of the item into a disposal bin located at the screening point. They are also able to voluntarily relinquish their item to an aviation security officer. Domestic passengers can return to the public area of the airport to make other arrangements for their item. Where an item is relinquished to an aviation security officer, it will be passed on to the airline. From 1 October 2005, all airlines operating in New Zealand have been holding items relinquished by passengers for 30 days, so that they can be recovered by passengers.

Sections 11 and 12 of the Aviation Crimes Act 1972, section 80 of the Civil Aviation Act 1990, and Part 140 of the Civil Aviation Rules set out the legislative basis for the searching and screening of passengers.

Section 11 of the Aviation Crimes Act 1972 creates the offence of taking on board or attempting to take on board an aircraft, without lawful authority or reasonable excuse, any firearm, dangerous or offensive weapon or instrument, any ammunition or any explosive substance or device, or any other injurious substance or device of any kind which could be used to endanger the safety of the aircraft or of persons on board the aircraft.

Section 12 of the Aviation Crimes Act 1972 and section 80 of the Civil Aviation Act 1990 empower aviation security officers to carry out the screening and searching of passengers.

Part 140 of the Civil Aviation Rules requires aviation security officers to ensure that no person enters a sterile area through any screening point without being screened and to ensure that no person



is carrying or in control of any unauthorised article (such as those covered by section 11 of the Aviation Crimes Act 1972).

A power exists in the Civil Aviation Act 1990 for the Minister of Transport (the **Minister**) or Director of Civil Aviation (the **Director**) to direct aviation security officers to undertake screening. The Minister's power to direct is established in section 77A, and the Director's power in section 77B. These powers are not, however, clearly defined, and do not include powers for aviation security officers to seize any items that are found during the screening.

In relation to flights to the United States of America (US), aviation security officers and airlines are relying on passengers voluntarily relinquishing items that the US has prohibited.

*Preferred option: clarification of offences for offensive weapons; creation of a power to seize specified items*

The preferred option is to—

- amend the Aviation Crimes Act 1972 to include an offence of taking or attempting to take onto an aircraft, or into particular areas at an airport or aviation facility, any item that could be used as a weapon, even if the proper use of that item is lawful. This will clarify the existing provisions relating to offensive weapons; and
- create an offence of taking on board an aircraft, or into particular areas at an airport or aviation facility, imitation weapons; and
- create an offence of taking on board an aircraft, or into particular areas at an airport or aviation facility, items or substances that could be the components or ingredients of weapons, with the intention that those items or substances will be used as weapons; and
- extend the powers of the Minister and the Director to direct aviation security officers to search for and seize specified items. The Minister will be able to issue such directions if it is in the national or public interest, or to allow New Zealand to be part of a concerted international response. The Director will be able to issue directions if he or she believes on reasonable grounds that a threat to New Zealand aviation security exists; and
- provide powers to aviation security officers to undertake searching and seizing of items and substances when directed to do so by the Minister or the Director; and

- require the Aviation Security Service, airlines, and airports to be responsible for ensuring that notices are posted in visible public places at airports, advising passengers of the nature of the direction and of the items that may be searched for and seized.

**Statement of net benefit of proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options**

**Government**

This proposal will ensure that there is a clear legal basis for aviation security officers to search for and seize items that need to be prohibited from aircraft.

The power of the Minister to direct aviation security officers to search for and seize specified items, when it is in the national interest to do so, will ensure that New Zealand can comply with international requests, and that international air travel between New Zealand and other countries can continue.

If a significant international terrorist event occurs that requires an immediate and significant increase in searching and screening, the New Zealand Aviation Security Service (**Avsec**) will not be able to immediately increase the aviation security levy to cover costs. In such an event, Avsec may need to rapidly acquire additional staff or equipment. Additional Crown funding may be necessary to meet these requirements.

**Industry**

There will be some compliance costs to airlines as a result of legislating the requirement to hold additional seized items for 30 days. These are dealt with in the Business Compliance Cost Statement.

If an increase in items searched for and seized is required in the medium term, there may be additional costs for Avsec. Currently, Avsec is charging airlines directly for the additional screening carried out as a requirement of the US Government. For short-term directions, Avsec may need to continue this practice of charging airlines directly. For longer-term directions, the aviation security charge may need to be increased to recover these additional costs from airlines.

An increase in the number of items prohibited or limited from being taken into aircraft cabins is likely to result in an increase in checked baggage. This is likely to result in increased baggage handling costs for airports and airlines.

### **Society**

This proposal will provide more clarity for passengers who, at present, are not allowed to take items that may be potential weapons past the screening point. It will also provide greater assurance of the safety and security of air travel.

There will be an increased inconvenience to passengers who, when a direction is issued, will not be able to take certain items on aircraft, or will only be able to take limited quantities of those items.

## *Consultation*

### **Stakeholder consultation**

Key industry groups have been consulted on this proposal, including the Board of Airline Representatives New Zealand (**BARNZ**), Air New Zealand, Qantas, Auckland International Airport, the New Zealand Airports Association (**NZAA**), the Aviation Industry Association of New Zealand (**AIA**), the Council of Trade Unions, the Flight Attendants and Related Services Association, and the Engineering Printing and Manufacturing Union (**EPMU**). All groups were broadly supportive of the proposals.

Some concern was raised by BARNZ, NZAA, and AIA about airlines having to retain low-value items such as drink bottles, so that those items can be returned to passengers. Officials will continue to work with BARNZ, airlines, and airports on practical operational methods of addressing this issue.

NZAA noted that, since additional limits were placed on carry-on baggage following 10 August 2006, global volumes of checked baggage have increased by 30%. Internationally, many airport systems are struggling to process this increased volume, and it will be important not to contribute to the increasing volume of baggage.

EPMU noted the importance of maintaining a separation of purpose for searches (ie, any items unrelated to aviation security found during searches undertaken for aviation security purposes should not have any employment implications for employees).

All groups consulted emphasised the importance of communication and publicity when directions are issued, to ensure implementation of directions occurs as smoothly as possible. Some groups also noted the importance of up-to-date information for employers and employees about requirements of working within particular areas at airports.

### **Government departments/agencies consultation**

The Ministry of Transport, the Ministry of Justice, the New Zealand Police, the Civil Aviation Authority, the Aviation Security Service, the Department of the Prime Minister and Cabinet, the New Zealand Customs Service, the Ministry of Foreign Affairs and Trade, the Ministry of Agriculture and Forestry, the Treasury, the Department of Labour, the New Zealand Defence Force, the Office of Ethnic Affairs, the Ministry of Tourism, the Department of Corrections, the Ministry of Health, the State Services Commission, the Human Rights Commission, the Office of the Privacy Commissioner, the Parliamentary Counsel Office, the New Zealand Security Intelligence Service, and the Ministry of Economic Development have been consulted on this proposal.

### ***Business compliance cost statement***

Domestic and international airlines already operating in New Zealand already incur compliance costs as a result of their agreement with the Aviation Security Service to hold items relinquished to aviation security officers for 30 days. This agreement came into force on 1 October 2005. This proposal will result in some additional items being passed to airlines. Parties likely to be affected are the airlines that operate international flights out of New Zealand and the airlines that operate domestic flights within New Zealand.

Due to the fact that airlines already hold relinquished items for 30 days, the nature and magnitude of any additional compliance costs arising out of this proposal are uncertain. Officials will continue to work to develop operational mechanisms to ensure seized items can be dealt with as efficiently as possible.

## **Issue 2: screening and searching of airport personnel**

### ***Statement of nature and magnitude of problem and need for government action***

Currently, searching and screening systems at New Zealand airports, as provided for in the Civil Aviation Act 1990 and the Aviation Crimes Act 1972, focus on addressing the potential security threats posed by passengers and airline crew attempting to carry onto aircraft items that could be used to commit an act of unlawful interference with an aircraft, such as hijacking, bombing, or sabotage.

In order to maintain aviation security, and limit the ability to carry out unlawful acts, airports operate a sterile area regime, whereby all passengers and crew are screened when entering the restricted area between screening points and aircraft. Items that would pose a risk to aviation security may not be taken into the sterile area and from there into the cabin area of an aircraft. Airport personnel are routinely screened when entering the sterile areas, but are not screened when entering other potentially vulnerable areas at airports, where they might have access to baggage or to in-service aircraft. This provides a gap in security, leaving aircraft and baggage vulnerable to unlawful acts.

The International Civil Aviation Organization (ICAO) is a specialist agency of the United Nations, charged with the administration of the Convention on International Civil Aviation. New Zealand is a contracting State to this convention, and as such is expected to conform to the standards set out in Annex 17 to the Convention (Security: Safeguarding International Civil Aviation Against Acts of Unlawful Interference).

Recognising the risks of a regime under which unscreened personnel have access to baggage and aircraft, ICAO proposed a new standard in amendment 11 to Annex 17 to the Convention on International Civil Aviation, requiring that—

at a minimum, a proportion of persons (other than passengers) being granted access to security restricted areas, together with items carried, are screened at random. The proportion should be determined in accordance with risk assessment carried out by the relevant national authorities.

The new standard became compulsory in July 2006. Under this new standard, New Zealand is expected to extend screening to airport personnel and items entering or already in an airport's security enhanced area. In order for New Zealand to meet this standard, it

will be necessary to amend the legislation to allow for screening and searching of airport personnel, items, and vehicles.

### ***Statement of public policy objectives***

The public policy objectives of this proposal are to—

- ensure the security of New Zealand aviation and international aviation departing from New Zealand; and
- ensure that New Zealand is compliant with its international obligations under the Convention on International Civil Aviation (1944).

### ***Statement of feasible options (regulatory and non-regulatory) that may constitute viable means for achieving desired objectives***

#### **Status quo**

There are currently 3 types of security area at New Zealand airports: the public area of the terminal; the sterile areas such as the departure lounge, where passengers are screened in preparation for boarding an aircraft; and the security area, the non-public area inside the perimeter fence of the airport.

Currently, searching and screening regimes at New Zealand airports focus on addressing the potential threats posed by passengers and airline crew attempting to carry onto aircraft items that could be used to commit an act of unlawful interference with an aircraft, such as hijacking, bombing, or sabotage. Screening and searching of passengers and crew about to board an aircraft occur at the screening area at the entry point to the departure lounge.

Airport personnel who require access to the non-public security area are subject to a background vetting process before being issued with an authority to enter the security areas. This background vetting process aims to identify individuals who may pose a risk to security and ensure that they are not allowed access to security areas. However, there is currently no screening or searching of airport personnel who have access to baggage or to in-service aircraft.

This security regime is not sufficient to meet New Zealand's international aviation security obligations under the new ICAO standard, which became effective in July 2006.

*Preferred option: amend New Zealand's civil aviation legislation*

The preferred option is to amend the Civil Aviation Act 1990 to—

- provide the Director of Civil Aviation with the power to determine which areas of an airport are of particular security concern, and therefore subject to screening and searching; and
- provide the Director of Civil Aviation and the Minister of Transport with the power to direct security providers to undertake screening and searching of airport personnel, items, and vehicles; and
- provide aviation security providers with suitable powers to undertake the screening and searching of people, vehicles, and items; and
- include suitable new offences for individuals who attempt to subvert the screening and searching regime.

The screening and searching regime will be undertaken by Avsec—the Crown entity established as the national provider of aviation security services.

Screening and searching will be done on a risk-management basis. Only a proportion of personnel will be screened, with the proportion being determined by the risk analysis undertaken by the Civil Aviation Authority, in collaboration with New Zealand's security agencies, and allowing for operational factors at each airport.

It is currently anticipated that screening and searching will be done by aviation security officers using hand wands to detect hidden metallic objects, searching items carried by hand, and hand-searching specified areas of vehicles.

Screening and searching will be undertaken with consent. However, personnel who decline to be screened, or decline to have carried items and vehicles screened, will not be allowed to proceed into the area.

The implementation of the proposal is to be determined by the Civil Aviation Authority, in consultation with Avsec and the international aviation industry. This consultation will address—

- the risk-assessment process; and
- how risk assessments are transposed into a level of screening; and
- identification of all practical elements that need to be considered, and strategies for addressing those elements.

Until a process is developed for transposing the risk assessment into a level of screening, it is not possible to provide a final picture of

implementation. Although these details are to be finalised through the process of consultation with the industry, it is currently anticipated that the proportion of screening could be determined on an hours-of-operation basis. For example, if the Director determines that an airport should screen for 30% of the time, then an airport that operates 24 hours a day will need to undertake screening for 8 of those hours, while a smaller airport that is operational for international services for only 4 hours a day would need to undertake slightly more than 1 hour of screening each day.

***Statement of net benefit of proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options***

**Government**

The proposal does not impose any costs on Government, as all costs of providing aviation security are recovered from the airlines on a per-passenger basis.

The proposal ensures that New Zealand meets its international obligations as a contracting State to the Convention on International Civil Aviation, and shows that New Zealand is contributing to the international effort to improve aviation security.

The proposal extends further than the strict definition of the ICAO standard in 2 areas—it will extend to vehicles, and will allow screening and searching of items already within the security enhanced area. These additions to the ICAO standard are considered necessary in order for the system to be practically operationalised.

Avsec may need to employ some additional aviation security officers in order to undertake proportional screening. The costs of these staff will be recovered from the airline industry through the international aviation security charge.

**Industry**

This proposal will have impacts for staff of a range of organisations operating at New Zealand's international airports. These organisations will include—

- international airlines, including baggage handling staff and aircraft maintenance staff:
- airport companies:
- catering contractors:



- contractors working on airport buildings or tarmac.

Costs of increases in aviation security will be borne directly by the airline industry, which will be charged on a per-passenger basis.

Government and the airline industry have previously agreed that aviation security services primarily exist for the benefit of the airline industry, and consequently that industry should pay for the costs of those security services. A regulatory regime already exists for the recovery of security service costs.

Initial estimates of the increased costs related to screening and searching of airline personnel are in the region of \$600,000 per annum. The operational details for the implementation of screening and searching of airport personnel will be reached through consultation between the Civil Aviation Authority and the aviation industry, and final costs will not be known until this consultation is complete.

The proposal ensures that the New Zealand aviation industry is seen to meet international security requirements and expectations.

### **Society**

This proposal will increase the security of international flights departing from New Zealand, with the result that passengers on such flights will be safer.

Although it is not a requirement of the proposal, it is likely that the additional costs of providing aviation security will be passed on by airlines to airline passengers.

## ***Consultation***

### **Stakeholder consultation**

The Ministry of Transport released a public consultation document in April 2005 outlining the proposed new ICAO standard. Consultation meetings were held in Auckland, Wellington, and Christchurch. Nineteen submissions were received from key stakeholders, including BARNZ, Air New Zealand, Qantas, each of Auckland, Wellington, and Christchurch International Airports, Airways Corporation of New Zealand Limited, and key unions.

Submitters noted that any proposals should be cognisant of the impact increased costs may have on the industry, and emphasised the need for any proposals to have minimal cost implications.

Submissions from union groups noted the importance of ensuring that the proposals developed adhere to the requirements of the New Zealand Bill of Rights Act 1990.

The operational details for the implementation of screening and searching of airport personnel will be reached through consultation between the Civil Aviation Authority and the aviation industry.

### **Government departments/agencies consultation**

Consultation has been undertaken with the Civil Aviation Authority, Avsec, the Ministry of Justice, the New Zealand Police, the New Zealand Customs Service, the Ministry of Agriculture and Forestry, the Ministry of Foreign Affairs and Trade, the Ministry of Economic Development, the Treasury, the Parliamentary Counsel Office, and the Human Rights Commission during the preparation of this proposal. Members of the Officials Committee for Domestic and External Security Co-ordination were also given the opportunity to comment on this proposal in December 2005/January 2006, and no substantive comments were made.

## **Issue 3: potential weapons**

### ***Statement of nature and magnitude of problem and need for government action***

Potential weapons are items that could be used to inflict an injury (eg, knives, scissors, firearms, etc), and so pose a security risk because they could be used in hijacking an aircraft. Potential weapons include bladed or pointed items, blunt items, toxic substances, and explosives. The carriage of potential weapons in the cabin of aircraft poses a significant risk to the safety and security of passengers and crew.

Passengers and crew are screened for potential weapons by aviation security officers before boarding. Aviation security officers are required to prevent potential weapons from being taken into the cabin of an aircraft and into the sterile area of airports. The sterile area is the area between the screening point and the aircraft (also known as the gate lounge or departure area). In terms of meeting the security requirement of keeping potential weapons out of the cabin of aircraft, the sterile area essentially becomes an extension of the aircraft. Aviation security officers already have (under section 80A of the Civil Aviation Act 1990) the power to seize and destroy

dangerous goods, which are items that are innately hazardous (eg, fireworks, oil-based paints, some aerosols, and ammunition).

Although it is an offence to carry, or attempt to carry, a potential weapon into the cabin of an aircraft without lawful authority or reasonable excuse (under section 11 of the Aviation Crimes Act 1972) and aviation security officers are legally required to prevent potential weapons being taken into the cabin of aircraft, they are not able to seize potential weapons in order to achieve this. They rely on passengers relinquishing items discovered during screening. This creates confusion for passengers who do not have to relinquish their item to an aviation security officer, but who cannot pass through the screening point with it.

In addition, while it is an offence to carry, or attempt to carry, a potential weapon onto an aircraft, it is not an offence to take such an item into the sterile area. This creates a security risk and a legal loophole whereby a passenger found with a potential weapon in the sterile area cannot necessarily be proved to be trying to board the aircraft with the item.

Without a seizure power, the legal basis on which passengers' property is taken by aviation security officers and passed to a third party (ie, the airline) is unclear.

### ***Statement of public policy objectives***

The public policy objectives are to ensure—

- New Zealand has an aviation security system that gives the public confidence that every reasonable measure has been taken to ensure their security; and
- the confidence of our international trading partners and tourists in New Zealand's aviation security.

### ***Statement of feasible options (regulatory and non-regulatory) that may constitute viable means for achieving desired objectives***

#### **Status quo**

The current system to prevent potential weapons from being taken on board an aircraft is based on aviation security officers screening and searching crew and passengers prior to them entering the sterile area and boarding the aircraft. The sterile area is defined by Part 1 of the Civil Aviation Rules as the area between the screening point and the aircraft.

Passengers are able to pack any items that may be potential weapons into their hold-stowed baggage or dispose of an item into a disposal bin located at the screening point. They are also able to voluntarily relinquish an item to an aviation security officer, and domestic passengers can return to the public area of the airport to make other arrangements for an item. Where an item is relinquished to an aviation security officer, it will be passed on to the airline. Airlines have agreed to hold items for 30 days.

Sections 11 and 12 of the Aviation Crimes Act 1972, section 80 of the Civil Aviation Act 1990, and Part 140 of the Civil Aviation Rules set out the legislative basis for the searching and screening of passengers.

Section 11 of the Aviation Crimes Act 1972 creates the offence of taking on board, or attempting to take on board, an aircraft without lawful authority or reasonable excuse any firearm, dangerous or offensive weapon or instrument, any ammunition or any explosive substance or device, or any other injurious substance or device of any kind that could be used to endanger the safety of the aircraft or of persons on board the aircraft.

Section 12 of the Aviation Crimes Act 1972 and section 80 of the Civil Aviation Act 1990 empower aviation security officers to carry out the screening and searching of passengers.

Part 140 of the Civil Aviation Rules requires aviation security officers to ensure that no person enters a sterile area through any screening point without being screened and to ensure that no person is carrying or in control of any unauthorised article (such as those covered by section 11 of the Aviation Crimes Act 1972).

From 1 October 2005, all airlines operating in New Zealand have been holding potential weapons seized by aviation security officers for 30 days so they can be reclaimed by passengers.

*Preferred option: creation of an offence and power to seize potential weapons*

The preferred option is to provide aviation security officers with the power to seize items discovered at the screening point or in the sterile area so that they can determine if the item is a potential weapon. The seizure power would also enable aviation security officers to pass the item to the New Zealand Police, if required, or to the passenger's airline.

The airline would be required to hold the item for 30 days. The new legislation would also provide for the disposal of items. There will be appropriate safeguards for passengers, such as making records of the details of the seizure and giving a copy of that record to the passenger, and provisions for these procedures will be included in the new legislation. In addition, a new offence of taking or attempting to take a potential weapon into the sterile area without lawful authority or reasonable excuse will be created.

The preferred option will also include adding the definition of sterile area found in Part 1 of the Civil Aviation Rules to primary legislation.

***Statement of net benefit of proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options***

**Government**

This proposal will provide aviation security officers with a more efficient means to ensure that potential weapons are not taken on board aircraft and into the sterile area. The preferred option, a power to seize, will also provide a solid legal basis for aviation security officers to determine if an item detected at the screening point is a potential weapon. There will not be any additional costs to government associated with this proposal. The Aviation Security Service will absorb any additional cost involved in administering the system within existing baselines.

**Industry**

There will be some compliance costs to airlines as a result of legislating the requirement to hold seized items for 30 days. These are dealt with in the business compliance cost statement.

**Society**

This proposal will provide more clarity for passengers who, at present, are not allowed to take items that may be potential weapons past the screening point but who do not have to hand an item over to an aviation security officer.

### *Consultation*

The Civil Aviation Authority and Avsec consulted with airlines prior to introducing the new regime to better manage potential weapons in October 2005.

#### **Government departments/agencies consultation**

The Civil Aviation Authority, Avsec, the Ministry of Justice, the Ministry of Economic Development, the Ministry of Agriculture and Forestry, the Treasury, the Department of the Prime Minister and Cabinet, the Ministry of Foreign Affairs and Trade, the New Zealand Customs Service, the Department of Labour (Immigration New Zealand), the Human Rights Commission, the Parliamentary Counsel Office, and the New Zealand Police have been consulted in the preparation of this proposal.

Members of the Officials Committee for Domestic and External Security Co-ordination were given the opportunity to comment on this proposal in December 2005/January 2006, and no substantive comments were received.

#### ***Business compliance cost statement***

Domestic and international airlines operating in New Zealand already incur compliance costs as a result of their agreement with Avsec to hold items taken by aviation security officers for 30 days. This agreement came into force on 1 October 2005.

Since airlines already hold relinquished items for 30 days, the nature and magnitude of any additional compliance costs arising out of this proposal are uncertain (although they are unlikely to be large). As a result, no steps to minimise compliance costs can be taken at this time.

Parties likely to be affected are the airlines that operate international flights out of New Zealand and the airlines that operate domestic flights within New Zealand, where those flights are subject to passenger security screening. These airlines will be required by law to hold seized items for 30 days. There are 21 airlines operating international flights from New Zealand, and 2 domestic carriers who will be subject to this requirement.

#### **Issue 4: in-flight security officers**

##### ***Statement of nature and magnitude of problem and need for government action***

Following the terrorist attacks in the US on 11 September 2001, where more than 3 000 people died, most countries around the world have implemented a number of initiatives to improve aviation security.

The deployment of in-flight security officers (**IFSOs**) is not New Zealand Government policy. New Zealand law does not allow for the discharge of weapons on board an aircraft in the event of a security incident.

New Zealand needs to have an effective and efficient process to respond to a request made by other states to deploy armed IFSOs on New Zealand airlines. The absence of such a process could lead to ongoing flight cancellations. Air New Zealand could sustain a loss of revenue associated with cancelling flights occasionally, but if a directive from another State's regulatory body necessitated a continuing cancellation policy, its presence in those markets and its financial position could be severely affected.

Given an ongoing international focus on tighter security measures, New Zealand needs to consider how it should address any potential requirements for the deployment and reception of foreign armed IFSOs.

##### ***Statement of public policy objective***

The key public policy objective is to have a civil aviation system that assists aviation safety and personal security, in particular through development of cost-effective procedures for maintaining the safe flow of air traffic while addressing requests from foreign States to heighten security by the deployment of armed IFSOs.

##### ***Statement of feasible options that may constitute viable means for achieving desired objective***

*Should New Zealand develop an IFSO capability?*

##### **Status quo**

Currently, in the event of a request from another State to deploy IFSOs, additional ground-based security measures would be put in place, or the flight would be cancelled if the risk assessment justified such action or if the other State did not accept the additional security

measures. It is not appropriate to maintain the status quo because it does not achieve the policy objectives.

*Option 1: develop an IFSO capability*

This option involves developing either a contingent or full-time IFSO capability to be deployed on New Zealand registered aircraft operating internationally. Under this option, the Arms Act 1983, the Aviation Crimes Act 1972, the Civil Aviation Act 1990, and the Civil Aviation Rules would be amended to enable New Zealand IFSOs to operate on board New Zealand aircraft. The contingent capability option was rejected because it would provide a very limited response to a specific threat without providing the deterrent effect of a full-time deployment. The full-time capability option was rejected because of the high cost and the difficulty in quantifying the effectiveness of such a programme.

*Option 2: do not develop an IFSO capability but seek deployment of armed IFSOs on board New Zealand registered aircraft by State seeking such protection*

Under this option, the Arms Act 1983, the Aviation Crimes Act 1972, the Civil Aviation Act 1990, and the Civil Aviation Rules would be amended to allow foreign armed IFSOs to be deployed on New Zealand registered aircraft by the State seeking such protection. This option was rejected because of the legal and operational complexities of allowing armed foreign nationals to operate under New Zealand law on board a New Zealand registered aircraft.

*Preferred option: do not develop an IFSO capability but future-proof legislation to allow for the deployment of New Zealand IFSOs*

This option involves a package of regulatory and non-regulatory measures as follows:

- the status quo would remain in place. In addition, officials will continue to work with other States to clarify, as much as possible, the protocols and procedures to put into practice alternative security measures to obviate the need to deploy IFSOs;
- the Arms Act 1983, the Aviation Crimes Act 1972, the Civil Aviation Act 1990, and the Civil Aviation Rules would be amended, together with any consequential amendments to other legislation, to allow New Zealand IFSOs to operate on



New Zealand registered aircraft should it be considered desirable in the future.

*Foreign IFSOs on flights transiting, arriving in, or departing from New Zealand*

**Status quo**

Currently foreign armed IFSOs deployed on board their State's registered aircraft cannot arrive legally in New Zealand. It is not appropriate to maintain the status quo because it does not achieve the policy objective.

*Preferred option: allow foreign armed IFSOs on their State's flights transiting, arriving in, or departing from New Zealand*

The preferred option is to amend the Arms Act 1983, the Aviation Crimes Act 1972, the Civil Aviation Act 1990, and the Civil Aviation Rules to allow foreign armed IFSOs to operate on their State's flights transiting, arriving in, or departing from New Zealand international airports. The exchange of firearms would take place as close as possible to the air-bridge.

***Statement of net benefit of proposal, including total regulatory costs and benefits of proposal, and other feasible options***

**Government**

The proposal to not deploy armed IFSOs on New Zealand registered aircraft travelling internationally does not impose any additional ongoing costs on the Crown. Additional one-off funding would only be needed if New Zealand faced an ongoing heightened security situation. These costs cannot be quantified now as they would be dependent on the type of security threat. The proposal to make the required legislative changes to allow armed IFSOs to be deployed on New Zealand registered aircraft recognises the ongoing focus on tighter security around the world and the possibility that, in the event of a significant change in the aviation security environment, the Government may need to quickly reconsider its policy in line with its commitments under the New Zealand Transport Strategy's objective of assisting safety and personal security.

The proposal to allow foreign armed IFSOs to operate into or from New Zealand recognises the Government's international obligations

to consider requests from other states for special measures to meet a particular threat. Costs could arise, but this will not be known until operating requirements and the assessment criteria for foreign IFSO programmes are finalised. A further regulatory impact and compliance cost statement will be developed at that time.

### **Aviation industry**

The airline industry will not face any costs with the proposal not to deploy armed IFSOs on New Zealand airlines.

### **Society**

The travelling public will benefit from the substantial security benefit additional security measures provide at times of heightened security.

### ***Consultation***

An interdepartmental working group led by the Ministry of Transport considered the issues related to IFSOs. Officials from the Ministry of Transport, the Ministry of Justice, the Department of the Prime Minister and Cabinet, the New Zealand Police, the Civil Aviation Authority, Avsec and the Ministry of Foreign Affairs and Trade were represented on the working group and their views were incorporated into the Cabinet paper. The Officials Committee for Domestic and External Security Co-ordination has also discussed the issue and reviewed the Cabinet paper. The following government departments were also consulted: the New Zealand Customs Service, the Ministry of Tourism, the Treasury, the Ministry of Agriculture and Forestry, and the Department of Labour (Immigration New Zealand).

Air New Zealand was consulted on the issues raised in the Cabinet paper. There were no concerns with the preferred option. Wider consultation with industry was not possible because of the confidential nature of the material discussed.

### **Issue 5: aviation security—background checking**

#### ***Statement of nature and magnitude of problem and need for government action***

New Zealand needs to be confident that people working in areas that are critical to aviation security do not pose a security threat. ICAO

has in place 2 standards relevant to this proposal. The first standard requires background checking of airport and airline workers who have unescorted access to security areas, to ensure that they do not pose a risk to aviation security. The second standard requires the application of security controls to cargo carried on international passenger flights.

In New Zealand, background checks for airport workers are currently undertaken by the Director through an administrative process for issuing airport identity cards.

This process allows New Zealand to meet the first ICAO standard. It is, however, out of step with New Zealand's legal framework, as the power of the Director to undertake background checks is implied rather than expressly stated in legislation. There are also no formal natural justice mechanisms accompanying that implied power. Currently, applicants are provided with an informal opportunity to comment on information received during their background checks if that information is likely to lead to an adverse decision.

Further, as the Civil Aviation Act 1990 has precedence over Part 19 of the Civil Aviation Rules, it is currently technically possible for a person to access the security area unescorted and without an airport identity card, and without having undergone a background check, as long as that person is authorised under section 84 of the Civil Aviation Act 1990.

New Zealand is not fully compliant with the ICAO standard relating to cargo carried on international passenger flights, which requires background checking of some air cargo staff. The existing background checking regime cannot be used for these checks, because that implied power is linked to issuing airport identity cards. Because air cargo facilities are often located away from airports, staff do not require airport identity cards.

Approximately 21 000 people currently hold airport identity cards, and have had background checks approved.

### ***Statement of public policy objectives***

The public policy objectives of this proposal are to—

- ensure the security of New Zealand aviation and international aviation departing from New Zealand; and
- ensure procedures surrounding background checks are legally robust, transparent, fair, and applied consistently, and meet natural justice requirements; and

- ensure that New Zealand is able to comply with its obligations under the Convention on International Civil Aviation.

***Statement of feasible options (regulatory and non-regulatory) that may constitute viable means for achieving desired objectives***

**Status quo**

New Zealand's civil aviation sector is regulated under the Civil Aviation Act 1990, the Aviation Crimes Act 1972, and the Civil Aviation Rules.

Currently, New Zealand complies with the ICAO standard requiring background checks for people who are granted unescorted access to security areas of an airport, under Part 19 of the Civil Aviation Rules. The Director conducts background checks of applicants, with their consent, before issuing an airport identity card.

When conducting a background check, the Director seeks criminal records of applicants through the courts and a recommendation on a security clearance from the New Zealand Security Intelligence Service (NZSIS). The Director may also seek information from the New Zealand Customs Service, the Department of Labour (Immigration New Zealand), and the New Zealand Police.

The current system includes an informal natural justice mechanism, whereby applicants are invited to comment on any information provided about them if that information is likely to lead to an adverse decision.

New Zealand is currently unable to fully comply with the standard for security of cargo carried on international passenger flights. Cabinet has previously agreed that New Zealand will meet this standard through proposed Part 109 of the Civil Aviation Rules.

In practice, the power of the Director to issue airport identity cards and undertake background checks is delegated to Avsec.

Airport identity cards are renewed every 3 years. Employers of applicants for airport identity cards are charged to cover the costs of undertaking checks and producing cards. This charge is currently set at \$40. This charge is reviewed and amended when necessary in order to cover changes in costs.

The status quo is not preferred, as it does not meet the public policy objectives.

*Preferred option: amend New Zealand's civil aviation legislation*

The preferred option is to amend the Civil Aviation Act 1990 to provide an express power to conduct background checks, to provide a natural justice mechanism when those background checks are undertaken, and to specify that the background check power is to be used only when required under the Civil Aviation Rules.

**Power to conduct background checks**

The Director of Civil Aviation will be provided with an express power to conduct background checks of personnel in security-critical areas of the aviation sector. As is current practice, the power to conduct background checks will be delegated to Avsec.

When undertaking background checks, the Director will have the power to seek and receive any information that he or she sees fit, consider information gained from any source, and have regard for and give any weight to that information that he or she sees fit. Under the proposal, the legislation will specifically note that the Director may seek and receive advice on applicants from NZSIS in accordance with the functions of NZSIS under section 4(1)(bb) of the New Zealand Security Intelligence Service Act 1969. NZSIS will provide a recommendation to the Director, but not the information that led NZSIS to make that recommendation.

As is current practice when background checks are carried out, a recommendation will be sought from NZSIS, criminal records will be sought through the courts, and information may be sought from the New Zealand Police, the New Zealand Customs Service, and the Department of Labour (Immigration New Zealand).

The Director will also have the ability to revoke or suspend an approved background check if new information comes to light or if the Director believes that a person poses a threat to aviation security. When the Director proposes to revoke a background check based on new information, the Director must follow the natural justice mechanism described below. The Director will also have the power to suspend the person's access to secure areas of airports and suspend authorisation of staff in air cargo facilities until the final decision has been made.

**Circumstances where a background check will be required**

The Director's power to conduct background checks will be limited to circumstances where background checks are required for security

purposes under the Civil Aviation Rules. For the Director to undertake a background check, that check would need to be prescribed by a Civil Aviation Rule. At this stage, rules requiring background checks to be carried out will be: Part 19 of the Civil Aviation Rules, relating to airport identity cards, and the proposed Part 109 of the Civil Aviation Rules, relating to regulated air cargo agents.

Additionally, section 84 of the Civil Aviation Act 1990 and Civil Aviation Rule 19.357 will be amended to make clear that no person may enter or remain in any security area, unless authorised by the Director, the airport manager, or another person having control of that area, and, when required by the Civil Aviation Rules, in possession of an airport identity card.

### **Natural justice mechanism**

This proposal establishes a natural justice regime to provide appropriate rights to people who are required to undergo background checks.

When the Director receives unclassified information that indicates a person may pose a potential security risk, the Director must initiate the proposed adverse decision mechanism.

When the Director declines an application based on a recommendation received from NZSIS, the Director must then advise applicants of their right to complain to the Inspector-General of Intelligence and Security, in accordance with section 11(1)(b) of the Inspector-General of Intelligence and Security Act 1996.

Background checks of some applicants may reveal potential security risks as a result of both a recommendation from NZSIS to the Director and unclassified information from any other source. In these cases, the Director will first consider any submissions from the applicant about the unclassified information. If, after considering the submissions, the Director decides that the unclassified information does not adversely affect the person's security check, the Director will rely solely on the recommendation of NZSIS. The Director will decline the application and advise the applicant of his or her right to complain to the Inspector-General of Intelligence and Security. If, however, the Director decides that the unclassified information in itself provides sufficient reason for making an adverse determination, the Director may decide to rely solely on the unclassified information and not on the recommendation from NZSIS. In this case, the Director will decline the application and need take no

further action. If the Director decides to continue to rely on both the unclassified information and the NZSIS recommendation, the Director must decline the application and advise the applicant of his or her right to complain to the Inspector-General of Intelligence and Security.

The right to seek a judicial review of the decision will continue.

***Statement of net benefit of proposal, including total regulatory costs (administrative, compliance, and economic costs) and benefits (including non-quantifiable benefits) of proposal, and other feasible options***

**Government**

The proposal does not impose any costs on Government, as all costs of providing aviation security are recovered from airlines on a per-passenger basis.

The system outlined ensures that New Zealand meets its international obligations to conduct background checking of airport personnel.

Legislative changes will allow the finalisation of the proposed Part 109 of the Civil Aviation Rules, which, once promulgated, will allow New Zealand to meet its international obligations relating to security of cargo carried on passenger aircraft.

These measures will show that New Zealand is contributing internationally to improve aviation security.

**Industry**

Amending the legislation to make explicit the Director's power to conduct background checks will not have a significant impact on industry, as the regime currently exists under an implied power.

The proposals for a natural justice mechanism effectively formalise the informal process that is currently in place, so increases in costs are expected to be nil or minimal. There may be a small increase in administration required by Avsec as a result of formalising the natural justice mechanism. Any increase in costs would be passed on to employers through the charge for airport identity cards.

The volume of approved background checks that require subsequent review is expected to be minimal.

Officials estimate that extending background checks to regulated air cargo agents under proposed Part 109 of the Civil Aviation Rules

affects approximately 50 air cargo agent firms. On this basis, a minimum of 500 additional background checks may initially be required. Until the new Part 109 is in place and the degree to which existing air cargo agents determine they wish to become part of the system is firmly identified, a more accurate figure cannot be provided. A regulatory impact statement and business compliance cost statement will be prepared separately for the new Part 109.

There are no compliance costs to industry arising from this proposal.

### **Society**

There will not be a significant impact on the public, since the proposal formalises processes that are already in place.

## *Consultation*

### **Stakeholder consultation**

The Ministry of Transport released a public consultation document in April 2005 outlining, among other things, the proposal to improve the airport identity card system. Consultation meetings were held in Auckland, Wellington, and Christchurch. Nineteen submissions were received from key stakeholders, including BARNZ, Air New Zealand, Qantas, each of Auckland, Wellington, and Christchurch International Airports, Airways Corporation of New Zealand Limited, and key unions. The general response was supportive.

Stakeholders noted a need for suitable natural justice mechanisms, to be mindful of the requirements of the New Zealand Bill of Rights Act 1990, and the impact on aviation security levies. These issues were taken into consideration during the development of these proposals and in discussions with other relevant agencies.

The proposal includes suitable natural justice mechanisms, and is consistent with the New Zealand Bill of Rights Act 1990. The proposal is not anticipated to affect the aviation security levies, as it formalises processes that are already in place.

### **Government departments/agencies consultation**

Consultation has been undertaken with the Civil Aviation Authority, Avsec, the Ministry of Justice, NZSIS, the Ministry of Economic



Development, the Treasury, the New Zealand Police, the Department of Labour (Immigration New Zealand), the New Zealand Customs Service, and the Parliamentary Counsel Office during the preparation of this proposal. The Officials Committee for Domestic and External Security Co-ordination has also been consulted.

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*Hon Harry Duynhoven*

# **Aviation Security Legislation Bill**

Government Bill

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

**1 Title**

This Act is the Aviation Security Legislation Act **2007**.

**2 Commencement**

- (1) **Sections 1 to 3, 4(3), 5, 6, 9, 10(3), 13, 17(2), 18, 19(1), 21, 22, and 24(1)** come into force on the day after the date on which this Act receives the Royal assent. 5
- (2) The rest of this Act comes 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 bringing different provisions into force on different dates. 10

**Part 1**

**Amendments to Aviation Crimes Act 1972**

**3 Principal Act amended**

**Sections 4 to 8** amend the Aviation Crimes Act 1972.

**4 Interpretation** 15

- (1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:  
“**foreign in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990  
“**in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990”. 20
- (2) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:  
“**security enhanced area** has the same meaning as in section 2 of the Civil Aviation Act 1990”. 25
- (3) Section 2(1) is amended by inserting the following definition in its appropriate alphabetical order:  
“**sterile area** has the same meaning as in section 2 of the Civil Aviation Act 1990”. 30
- (4) Section 2 is amended by adding the following subsection: 30

- “(4) For the purposes of this Act, 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.”
- 5 Taking firearms, explosives, etc, on to aircraft** 5
- (1) The heading to section 11 is amended by adding “**or into sterile area or security enhanced area**”.
- (2) Section 11(1) is amended by adding “; or” and the following paragraph:
- “(e) an imitation of an item specified in paragraphs (a) to (d).” 10
- (3) Section 11 is amended by inserting the following subsections after subsection (1):
- “(1A) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, takes, or attempts to take, into a sterile area or a security enhanced area an item specified in subsection (1). 15
- “(1B) Every person commits an offence and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who— 20
- “(a) has the intention of causing bodily injury or of doing any act that would constitute a crime under section 3, 4, 5, or 5A; and
- “(b) takes on board an aircraft or into a sterile area or a security enhanced area an item or substance that is capable of causing bodily injury or of endangering the safety of an aircraft or an airport when combined with another item or substance.” 25
- (4) Section 11 is amended by adding the following subsection: 30
- “(3) For the purposes of this section, **dangerous or offensive weapon** means any item or substance capable of being used to endanger the safety of an aircraft or cause bodily injury.”
- 6 New section 12 substituted** 35
- Section 12 is repealed and the following section substituted:
- “12 Search of passengers, baggage, and cargo**
- “(1) Any member of the police, any aviation security officer, any Customs officer, or any employee or agent of the carrier

- authorised by the carrier for the purpose may, with the consent of the passenger, search a passenger and the passenger's baggage for the purpose of detecting any item that could pose a threat to aviation safety and security (including, but not limited to, any item specified in section 11(1)), before the passenger boards any aircraft in New Zealand pursuant to a contract providing for the carriage of the passenger by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere). 5
- “(2) If the passenger declines to allow himself or herself or his or her baggage to be searched, the carrier must refuse to carry— 10  
“(a) the passenger;  
“(b) his or her baggage.
- “(3) A carrier is not liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part of the fare, by reason of the fact that the carrier has refused to carry a passenger who has declined to allow himself or herself or his or her baggage to be searched. 15
- “(4) With respect to a search made under **subsection (1)**,— 20  
“(a) by an employee or agent of the carrier authorised by the carrier for the purpose, the passenger must not be required to remove any article of clothing (other than a coat or similar article) for the purpose of being searched: 25  
“(b) by a member of the police, an aviation security officer, or a Customs officer, the passenger must, if directed to do so,—  
“(i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the passenger is wearing to enable the search to be carried out, except where the passenger has no other clothing, or only underclothing, under the outer clothing: 30  
“(ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories: 35  
“(iii) allow a member of the police, an aviation security officer, or a Customs officer to carry out a rub-down search: 40

- “(c) by a member of the police, an aviation security officer, a Customs officer, or an employee or agent of the carrier authorised by the carrier for the purpose, a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device. 5
- “(5) Any aviation security officer, or any employee or agent of the carrier authorised by the carrier for the purpose, may examine any cargo before the cargo is loaded onto any aircraft in New Zealand pursuant to a contract providing for the carriage of the cargo by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere). 10
- “(6) For the purposes of this section, **rubdown search**—
- “(a) means a search of a clothed person in which the person conducting the search may do all or any of the following: 15
- “(i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person: 20
- “(ii) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:
- “(iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely: 25
- “(A) open his or her mouth:
- “(B) display the palms of his or her hands:
- “(C) display the soles of his or her feet:
- “(D) lift or rub his or her hair; and 30
- “(b) includes the authority to search—
- “(i) any item carried by, or in the possession of, the person; and
- “(ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and 35
- “(iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search.”

## 7 Powers of aircraft commander

- (1) Section 15(6) is amended by omitting “of this section” and substituting “or to enable an in-flight security officer to deliver a person under **section 15D(4)**”.
- (2) Section 15(7) is amended by omitting “of this section” and substituting “or intends to enable an in-flight security officer to deliver a person under **section 15D(4)**”.

## 8 New sections 15A to 15G inserted

The following sections are inserted after section 15:

### “15A Commissioner of Police may authorise members of police to be in-flight security officers

- “(1) The Commissioner of Police may authorise any member of the police to be an in-flight security officer.
- “(2) When providing authorisation under **subsection (1)**, the Commissioner of Police must have regard to the views of the Director of Civil Aviation.

### “15B In-flight security officers may possess, carry, and use firearms, weapons, ammunition, and other equipment on board certain aircraft in certain circumstances

Despite section 11, an in-flight security officer may, on board an aircraft operated by an operator certified under Part 119 of the Civil Aviation Rules, possess, carry, and use a firearm, weapon, ammunition, or other equipment that the Director of Civil Aviation has approved under **section 77D of the Civil Aviation Act 1990** if—

- “(a) the officer is on duty; and
- “(b) the aircraft is in flight.

### “15C In-flight security officers may take action or measures reasonably necessary to restore or preserve control of aircraft

Without limiting the powers of the commander of an aircraft (or a person authorised by the commander) under section 15, an in-flight security officer may take all measures reasonably necessary to restore control of an aircraft to the commander or to preserve the commander’s control of the aircraft (including, but not limited to, the use of force or assistance that is necessary and reasonable in the circumstances).



**“15D In-flight security officers may arrest persons in certain circumstances**

- “(1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed or is committing an offence under this Act, the in-flight security officer may arrest the person— 5
- “(a) without a warrant;
- “(b) with the use of force or assistance that is necessary and reasonable in the circumstances.
- “(2) Despite **subsection (1)**, an in-flight security officer may not arrest a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable. 10
- “(3) If an in-flight security officer arrests a person without the prior approval of the commander of an aircraft, the in-flight security officer must— 15
- “(a) inform the commander of the arrest as soon as practicable; and
- “(b) seek the commander’s approval to keep the person under arrest.
- “(4) An in-flight security officer who arrests a person under this section must, as soon as practicable, deliver the person to a— 20
- “(a) member of the police, if the arrested person is in New Zealand; or
- “(b) person exercising the functions corresponding to those of a member of the police, if the arrested person is in a country, other than New Zealand, that is a party to the Tokyo Convention. 25
- “(5) To avoid doubt, nothing in this section limits the justifications for the use of force under sections 39, 40, 41, and 48 of the Crimes Act 1961. 30

**“15E In-flight security officers may restrain persons under arrest in certain circumstances**

- “(1) An in-flight security officer may, with the use of force or assistance that is necessary and reasonable in the circumstances, restrain a person arrested under **section 15D** until the person is delivered as required under **section 15D(4)**. 35
- “(2) Despite **subsection (1)**, an in-flight security officer may not restrain a person without the prior approval of the commander of an aircraft unless—
- “(a) seeking prior approval is not practicable; or 40

- “(b) the in-flight security officer has reasonable grounds to believe that the person must be restrained immediately to protect the safety of the aircraft or persons or property on the aircraft.
- “(3) If an in-flight security officer restrains a person without the prior approval of the commander of an aircraft, the in-flight security officer must— 5
- “(a) inform the commander of the restraint as soon as practicable; and
- “(b) seek the commander’s approval to keep the person under restraint. 10

**“15F In-flight security officers may search certain persons and seize items in certain circumstances**

- “(1) If an in-flight security officer reasonably suspects that a person on board an aircraft has committed, is committing, or is likely to commit an offence under this Act, the in-flight security officer may, with the use of force or assistance that is reasonably necessary in the circumstances,— 15
- “(a) search—
- “(i) the person: 20
- “(ii) any property on board the aircraft; and
- “(b) take possession of any item that has been or may be used to commit an offence under this Act.
- “(2) Despite **subsection (1)**, an in-flight security officer may not search a person without the prior approval of the commander of an aircraft unless seeking prior approval is not practicable. 25
- “(3) If an in-flight security officer searches a person without the prior approval of the commander of an aircraft, the in-flight security officer must inform the commander of the search as soon as practicable. 30

**“15G Circumstances in which person assisting in-flight security officer may use force**

A person assisting an in-flight security officer under **section 15D, 15E, or 15F** is justified in using force if—

- “(a) the person acts in good faith; and 35
- “(b) the force used is necessary and reasonable in the circumstances.”

## Part 2 Amendments to Civil Aviation Act 1990

### 9 Principal Act amended

**Sections 10 to 22** amend the Civil Aviation Act 1990.

### 10 Interpretation 5

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

“**foreign in-flight security officer** means an enforcement officer or authorised person from a country other than New Zealand who is— 10

“(a) authorised to act on an aircraft that is in flight by the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted; and

“(b) subject to an in-flight security officer arrangement or agreement between New Zealand and the State that has issued the air operating certificate (or its equivalent) under which the air operation is conducted 15

“**in-flight security officer** means a member of the police authorised under **section 15A of the Aviation Crimes Act 1972**”. 20

- (2) Section 2 is amended by inserting the following definition in its appropriate alphabetical order:

“**security enhanced area** means an area that the Director has declared to be a security enhanced area under **section 84(1A)**”.

- (3) Section 2 is amended by inserting the following definition in its appropriate alphabetical order: 25

“**sterile area** means the area at an aerodrome, between the passenger inspection and screening station and the aircraft, into which access is strictly controlled”.

### 11 Rules relating to safety and security 30

Section 29 is amended by adding the following paragraph:

“(e) rules providing for in-flight safety and security, including, but not limited to, the following:

“(i) the possession, carriage, and use of an item, being a firearm, weapon, ammunition, or any other equipment, by an in-flight security officer on 35

board an aircraft operated by an operator certified under Part 119 of the Civil Aviation Rules:

- “(ii) the carriage of an item, being a firearm, weapon, ammunition, or any other equipment, by a foreign in-flight security officer while entering, transiting, or departing from New Zealand.” 5

## 12 Security area offences

- (1) The heading to section 54 is amended by inserting “**and security enhanced area**” after “**area**”.
- (2) Section 54(1) is amended by inserting “or security enhanced area” after “security area” in each place where it appears. 10
- (3) Section 54 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) Every person who commits an offence under subsection (1) in relation to a— 15
- “(a) security area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000;
- “(b) security enhanced area is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$5,000.” 20

## 13 New section 56A inserted

The following section is inserted after section 56:

### “56A Security check offences

- “(1) Every person commits an offence who, in relation to a security check of that person,— 25
- “(a) provides information that the person knows is false or misleading in a material particular; or
- “(b) fails to disclose, without reasonable excuse, information that the person knows to be materially relevant.
- “(2) Every person who commits an offence under **subsection (1)** is 30
- liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000.”

## 14 Powers and duties of Minister to require screening

- (1) The heading to section 77A is amended by adding “, **searching, and seizing**”. 35
- (2) Section 77A is amended by repealing subsection (1) and substituting the following subsections:

- “(1) The Minister may, if necessary to improve or enhance aviation security to enable New Zealand to be part of a concerted international response to a threat to aviation security, or if the Minister considers it is in the public interest or national interest to do so, direct an aviation security provider, by notice in the *Gazette*,— 5
- “(a) to screen—
- “(i) any person boarding an aircraft:
- “(ii) any thing to be carried on an aircraft:
- “(iii) any person or item— 10
- “(A) before the person or item enters a sterile area:
- “(B) present in a sterile area:
- “(iv) any person, item, or vehicle— 15
- “(A) before the person, item, or vehicle enters a security enhanced area:
- “(B) present in a security enhanced area:
- “(v) any unattended item or vehicle in a security enhanced area:
- “(b) if necessary, to undertake reasonable searches of— 20
- “(i) any person boarding an aircraft:
- “(ii) any thing to be carried on an aircraft:
- “(iii) any (as specified in the *Gazette* notice)— 25
- “(A) aircraft or class of aircraft:
- “(B) aerodrome or class of aerodrome:
- “(C) navigation installation or class of navigation installation:
- “(iv) any person or item— 30
- “(A) before the person or item enters a sterile area:
- “(B) present in a sterile area:
- “(v) any person, item, or vehicle—
- “(A) before the person, item, or vehicle enters a security enhanced area:
- “(B) present in a security enhanced area: 35
- “(vi) any unattended item or vehicle in a security enhanced area:
- “(c) to seize any item specified in the *Gazette* notice if the aviation security provider has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item to be carried on an aircraft. 40

- “(1A) An aviation security provider directed under **subsection (1)** must screen and search for any item specified in the *Gazette* notice.”
- (3) Section 77A(2) is amended by omitting “, to determine whether or not the direction is necessary to improve or enhance aviation security to enable New Zealand to be part of a concerted international response to a threat to aviation security,”. 5
- (4) Section 77A(2)(b) is amended by omitting “appropriate,” and substituting “appropriate and practical, other ministers,”. 10

## 15 Powers and duties of Director to require screening

- (1) The heading to section 77B is amended by adding “, **searching, and seizing**”.
- (2) Section 77B is amended by repealing subsection (1) and substituting the following subsections: 15
- “(1) The Director may, if he or she believes on reasonable grounds that a security risk exists, direct an aviation security provider, by notice in the *Gazette*,—
- “(a) to screen—
- “(i) any person boarding an aircraft: 20
- “(ii) any thing to be carried on an aircraft:
- “(iii) any person or item—
- “(A) before the person or item enters a sterile area:
- “(B) present in a sterile area: 25
- “(iv) any person, item, or vehicle—
- “(A) before the person, item, or vehicle enters a security enhanced area:
- “(B) present in a security enhanced area:
- “(v) any unattended item or vehicle in a security enhanced area: 30
- “(b) if necessary, to undertake reasonable searches of—
- “(i) any person boarding an aircraft:
- “(ii) any thing to be carried on an aircraft:
- “(iii) any (as specified in the *Gazette* notice)— 35
- “(A) aircraft or class of aircraft:
- “(B) aerodrome or class of aerodrome:
- “(C) navigation installation or class of navigation installation:
- “(iv) any person, item, or vehicle— 40

- “(A) before the person, item, or vehicle enters a sterile area:
- “(B) present in a sterile area:
- “(v) any person, item, or vehicle—
- “(A) before the person, item, or vehicle enters a security enhanced area: 5
- “(B) present in a security enhanced area:
- “(vi) any unattended item or vehicle in a security enhanced area:
- “(c) seize any item specified in the *Gazette* notice if the aviation security provider has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item to be carried on an aircraft. 10
- “(1A) An aviation security provider directed under **subsection (1)** must screen and search for any item specified in the *Gazette* notice.” 15
- (3) Section 77B(2) is amended by inserting “and practical” after “appropriate”.
- 16 New section 77BA inserted**
- The following section is inserted after section 77B: 20
- “77BA Certain *Gazette* notices may not include security sensitive information**
- “(1) A notice to be published in the *Gazette* under **section 77A(1) or 77B(1)** in relation to security enhanced areas may not include security sensitive information. 25
- “(2) For the purposes of this section, **security sensitive information** means information that would prejudice the national security interests of New Zealand if disclosed.”
- 17 New sections 77D to 77I inserted**
- (1) The following sections are inserted in their appropriate alpha-numeric order: 30
- “77D Director may approve firearms, weapons, ammunition, and other equipment for carriage and use by in-flight security officers**
- The Director may approve firearms, weapons, ammunition, and other equipment for carriage and use on board an aircraft by an in-flight security officer. 35

**“77E Foreign in-flight security officers**

- “(1) Despite section 11 of the Aviation Crimes Act 1972, the Director may, in consultation with the Commissioner of Police and other affected parties that the Director considers appropriate, and in accordance with any rules made under this Act, authorise a foreign in-flight security officer who is, or a class of foreign in-flight security officers who are, accompanied by a member of the police and is or are carrying an item, being a firearm, weapon, ammunition, or any other equipment, to—
- “(a) disembark from an aircraft:
  - “(b) board an aircraft:
  - “(c) pass through a—
    - “(i) security area:
    - “(ii) security enhanced area:
    - “(iii) sterile area.
- “(2) To avoid doubt, the authorisation of a foreign in-flight security officer by the—
- “(a) Director is not an aviation document:
  - “(b) State that has issued the air operating certificate (or its equivalent) for the aircraft operator only applies while the aircraft is in flight.”

- (2) The following sections are inserted in their appropriate alphanumeric order:

**“77F Powers and duties of Director relating to security checks**

- “(1) The Director may carry out a security check of a person who falls within a category of persons specified in the rules as requiring a security check if—
- “(a) the security check is for the purpose of determining whether the person poses a threat to aviation security; and
  - “(b) the person consents.
- “(2) If a person refuses consent to a security check under **subsection (1)**, the person may not be granted any authorisation under the rules if the rules require a favourable security check determination.
- “(3) The Director may grant a favourable security check determination if the Director decides that the person has undergone an alternative security check that is acceptable to the Director.



- “(4) For the purpose of determining whether a person poses a threat to aviation security, the Director may—
- “(a) seek and receive any information that the Director considers relevant, including (but not limited to) a recommendation made by the New Zealand Security Intelligence Service under section 4(1)(bb) of the New Zealand Security Intelligence Service Act 1969; and
  - “(b) give weight to any component of the information as the Director considers appropriate in the circumstances.
- “(5) If the Director determines that a person does not pose a threat to aviation security, the Director must advise the person of the favourable security check determination.
- “(6) The Director may reconsider any previous security check determination that the Director has made if—
- “(a) new information is made available; or
  - “(b) the Director has reason to believe that the person may pose a threat to aviation security.
- “(7) If the Director proposes to reconsider any previous security check determination, the Director must—
- “(a) advise the person to whom the security check determination relates that the Director is reconsidering that determination; and
  - “(b) complete the reconsideration of that determination within 20 working days of advising the person under **paragraph (a)**; and
  - “(c) if the reconsideration results in an adverse security check determination or a proposed adverse security check determination, initiate the review process set out in **section 77G**; and
  - “(d) if a favourable security check determination is required for any previous authorisation granted to the person under the rules, withdraw that authorisation for—
    - “(i) the period of the reconsideration; and
    - “(ii) any subsequent review period under **section 77G**; and
  - “(e) if a favourable security check determination is required for any previous authorisation granted to the person by any other entity, require that entity to withdraw the authorisation for—
    - “(i) the period of the reconsideration; and
    - “(ii) any subsequent review period under **section 77G**.

“(8) Nothing in this section limits the power of the Director to grant an exemption under section 37.

**“77G Review procedures for security check determinations**

- “(1) If the Director makes an adverse security check determination with respect to a New Zealand person based on a recommendation made by the New Zealand Security Intelligence Service under section 4(1)(bb) of the New Zealand Security Intelligence Service Act 1969, the Director must advise the New Zealand person that the person may lodge a complaint with the Inspector-General of Intelligence and Security. 5
- “(2) If the Director proposes to make an adverse security check determination with respect to a person based on information other than a recommendation made by the New Zealand Security Intelligence Service, the Director must— 10
- “(a) advise the person of the proposed determination and the reasons for the proposed determination; and 15
- “(b) give the person written notice that, within 20 working days of the date of the notice, the person may— 20
- “(i) seek legal advice or assistance with respect to the proposed determination: 20
- “(ii) respond to, comment on, or make submissions on the proposed determination: 20
- “(iii) provide new information relevant to the proposed determination; and 20
- “(c) give the person notice of the date on which the proposed determination will, unless the Director decides otherwise, be made (which must be a date that is as soon as practicable after the expiry of the 20-working-day period referred to in **paragraph (b)**); and 25
- “(d) consider any response, comment, submission, or new information that the person provides along with the information on which the proposed determination was made; and 30
- “(e) make a final determination and inform the person and any other affected party of,— 35
- “(i) in the case of the person, the final determination and the reasons for the final determination; and 35
- “(ii) in the case of any other affected party, the final determination but not the reasons for the final determination. 40

- “(3) If the Director proposes to make an adverse security check determination based on a recommendation made by the New Zealand Security Intelligence Service and on information other than that recommendation, the Director must—
- “(a) first follow the procedure set out in **subsection (2)** with respect to the information other than the recommendation; and 5
  - “(b) then follow the procedure set out in **subsection (1)** with respect to the recommendation if—
    - “(i) the Director is satisfied that the information other than the recommendation is no longer sufficient to support an adverse security check determination; and 10
    - “(ii) the person is a New Zealand person. 15
- “(4) If the Director makes a final adverse security check determination, the Director must— 15
- “(a) revoke any authorisation granted to the person by the Director under the rules, if a favourable security check determination is required under the rules for the authorisation; and 20
  - “(b) require any other entity to revoke any authorisation granted to the person, if a favourable security check determination is required under the rules for the authorisation. 25
- “(5) For the purposes of this section,— 25
- “**Inspector-General of Intelligence and Security** means the person holding office under section 5 of the Inspector-General of Intelligence and Security Act 1996
- “**New Zealand person** has the same meaning as in section 2(1) of the Inspector-General of Intelligence and Security Act 1996. 30
- “**77H Offence to carry out activity while authorisation withdrawn or after authorisation revoked**
- “(1) Every person commits an offence who carries out an activity that requires an authorisation— 35
- “(a) during a period when that authorisation has been withdrawn under **section 77F(7)(d) or (e)**; or
  - “(b) if that authorisation has been revoked under **section 77G(4)**.

- “(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$5,000.
- “77I Offence to fail to comply with Director’s requirement to withdraw or revoke authorisation**
- “(1) Every person commits an offence who fails, without reasonable excuse, to comply with the Director’s requirement to— 5  
 “(a) withdraw an authorisation under **section 77F(7)(e)**; or  
 “(b) revoke an authorisation under **section 77G(4)(b)**.
- “(2) Every person who commits an offence against **subsection (1)** is liable on summary conviction to a fine not exceeding \$10,000.” 10
- 18 Functions and duties of Aviation Security Service**  
 Section 80(a)(ii) is amended by inserting “or reasonable searches” after “screening”.
- 19 New sections 80B to 80H inserted** 15
- (1) The following section is inserted in its appropriate alphanumeric order:
- “80B Power of aviation security officers to search for and seize certain items to be carried on aircraft or into sterile areas** 20
- “(1) Without limiting section 80(a) and (ab) of this Act or section 12(1) of the Aviation Crimes Act 1972, an aviation security officer may, for the purpose of detecting any item specified in a direction given under **section 77A(1) or 77B(1)**, screen or search any person, item, or vehicle— 25  
 “(a) before the person, item, or vehicle enters a sterile area:  
 “(b) present in a sterile area.
- “(2) If an item specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction under **section 77A(1) or 77B(1)** is detected, and an aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item to be carried on an aircraft or into a sterile area, the aviation security officer may seize and detain the item for the purpose of determining whether there is lawful authority or reasonable excuse for the item to be carried on an aircraft or into a sterile area. 30 35

- “(3) If the aviation security officer determines that the item may be lawfully carried into, or remain in, an aircraft or a sterile area, the aviation security officer must,—
- “(a) if practicable, return the item to the person from whom it was seized; or 5
  - “(b) if impracticable to return the item to the person from whom it was seized, deliver the item to the carrier of the aircraft that the person boarded or intended to board when the item was seized.
- “(4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item to be carried on an aircraft or into a sterile area, the aviation security officer— 10
- “(a) must make a record of the relevant details of the seizure; and 15
  - “(b) may detain the item until it is delivered to a member of the police or the carrier.
- “(5) If an item is delivered to a carrier, the carrier must hold the item for 30 days for the purpose of providing the person from whom the item was seized an opportunity to claim the item. 20
- “(6) If the person from whom the item was seized does not claim the item before the expiry of the 30-day holding period, the carrier may dispose of the item.
- “(7) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item.” 25
- (2) The following sections are inserted in their appropriate alphanumeric order:
- “80C Powers and duties of aviation security officers relating to security enhanced areas 30**
- “(1) Without limiting section 80(a) and (ab), an aviation security officer may, for the purpose of detecting any item specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction given under **section 77A(1) or 77B(1)**, screen or search any person, item, or vehicle— 35
- “(a) before the person, item, or vehicle enters a security enhanced area:
  - “(b) present in a security enhanced area.

- “(2) If an item specified in **section 11(1)** of the Aviation Crimes Act 1972 or a direction under **section 77A(1) or 77B(1)** is detected under **subsection (1)** or **section 12** of the Aviation Crimes Act 1972, and the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item to be carried into or remain in the security enhanced area, the aviation security officer may seize and detain the item for the purpose of determining whether there is lawful authority or reasonable excuse for the item to be carried into or remain in the security enhanced area. 5 10
- “(3) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item to be carried into or remain in the security enhanced area, the aviation security officer—
- “(a) must— 15
- “(i) detain the item until it is delivered to a member of the police or, if the Director agrees, destroyed or otherwise disposed of; or
- “(ii) deny entry into the security enhanced area to any person in possession of the item; or 20
- “(iii) direct the person in possession of the item to leave the security enhanced area, with or without—
- “(A) the item;
- “(B) any vehicle used to transport the item; and 25
- “(b) must make a record of the item and the person from whom the item was seized (if any).
- “(4) If the aviation security officer determines that the item may be lawfully carried into or remain in the security enhanced area, the aviation security officer must, if practicable, return the item to the person from whom the item was seized. 30
- “(5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item. 35

**“80D Consent to be screened or searched**

- “(1) The powers specified in **section 80C(1)** may only be exercised with respect to—
- “(i) a person to be screened or searched with the consent of the person: 40

- “(ii) an item or vehicle to be screened or searched with the consent of the person in control of the item or vehicle.
- “(2) To avoid doubt, an item or vehicle may be screened or searched without consent if it is unattended.
- “**80E Persons who refuse to consent to be screened or searched** 5
- “(1) If a person refuses to consent to the screening or searching under **section 80C(1)**, an aviation security officer may—
- “(a) deny that person entry into the security enhanced area:
- “(b) require that person to— 10
- “(i) leave the security enhanced area:
- “(ii) remove any items or vehicles in their control from the security enhanced area.
- “(2) An aviation security officer may—
- “(a) prevent a person from entering a security enhanced area if the person is denied entry: 15
- “(b) remove a person from a security enhanced area if the person is required to leave.
- “(3) An aviation security officer may detain a person who—
- “(a) refuses to leave when required to leave (or attempts to enter when denied entry) and persists in his or her refusal (or attempt) after being warned that he or she commits an offence by not complying: 20
- “(b) refuses to be screened or searched if the aviation security officer has reasonable grounds to suspect that— 25
- “(i) an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be committed, whether by that person or by any other person; or
- “(ii) a search of the person refusing to consent is likely to disclose evidence that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed, whether by that person or any other person. 30
- “(4) A person detained under **subsection (3)** must be delivered to a member of the police as soon as practicable. 35
- “(5) An aviation security officer, or any person assisting an aviation security officer, may use the force or assistance that is necessary and reasonable in the circumstances to—
- “(a) prevent a person from entering a security enhanced area under **subsection (2)(a)**: 40

“(b) remove a person from a security enhanced area under **subsection (2)(b)**:

“(c) detain a person under **subsection (3)**.

Compare: 2004 No 16 s 54

- “80F Searches of persons refusing consent to be searched** 5
- “(1) If a person refuses to consent to the screening or searching under **section 80C(1)**, a member of the police may, without a warrant, search the person and the person’s items or vehicle, and may detain the person for the purposes of the search, and may take possession of any item found in the course of the search that is specified in **section 11(1)** of the Aviation Crimes Act 1972, if the member of the police has reasonable grounds to suspect that— 10
- “(a) an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be committed, whether by that person or by any other person; or 15
- “(b) a search of the person refusing to consent is likely to disclose evidence that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed, whether by that person or any other person. 20
- “(2) The refusal of a person to consent to the searching of his or her person, or items or a vehicle in the person’s control, does not of itself constitute reasonable grounds for suspecting that an offence against the Aviation Crimes Act 1972 has been, is being, or is likely to be, committed. 25
- “(3) A member of the police exercising the power of search under **subsection (1)** must, before the search is conducted, and on any subsequent request,—
- “(a) provide evidence of his or her identity to the person to be searched; and 30
- “(b) inform the person to be searched that the search is authorised under this section; and
- “(c) if not in uniform, provide evidence, if asked, that he or she is a member of the police to the person to be searched. 35
- “(4) If a member of the police exercises the power of search under **subsection (1)**, he or she must, within 3 days after the day on



which he or she exercises the power, furnish to the Commissioner of Police a written report on the exercise of the power and the circumstances in which it came to be exercised.

Compare: 2004 No 16 s 55

- “80G Searches of persons** 5
- “(1) With respect to a search made under **section 80C(1)**,—
- “(a) a person must, if directed to do so by an aviation security officer,—
- “(i) remove, raise, lower, or open any outer clothing, including (but not limited to) any coat, jacket, jumper, cardigan, or similar article that the person is wearing to enable the search to be carried out, except where the person has no other clothing, or only underclothing, under the outer clothing: 10
- “(ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories: 15
- “(iii) allow an aviation security officer to carry out a rubdown search: 20
- “(b) a female may only be searched by a female unless the search is made by means of a mechanical or electrical or electronic or other similar device.
- “(2) For the purposes of this section, **rubdown search**—
- “(a) means a search of a clothed person in which the person conducting the search may do all or any of the following: 25
- “(i) run or pat his or her hand over the body of the person being searched, whether outside or inside the clothing (other than any underclothing) of that person: 30
- “(ii) insert his or her hand inside any pocket or pouch in the clothing (other than any underclothing) of the person being searched:
- “(iii) for the purpose of permitting a visual inspection, require the person being searched to do all or any of the following, namely: 35

- “(A) open his or her mouth:  
“(B) display the palms of his or her hands:  
“(C) display the soles of his or her feet:  
“(D) lift or rub his or her hair; and  
“(b) includes the authority to search— 5  
“(i) any item carried by, or in the possession of, the person; and  
“(ii) any outer clothing removed, raised, lowered, or opened for the purposes of the search; and  
“(iii) any head covering, gloves, or footwear (including socks or stockings) removed for the purposes of the search. 10
- “80H Power to require drivers to stop vehicles in security enhanced areas for screening or searching**
- “(1) An aviation security officer who is in uniform, or wearing a distinctive cap, hat, or helmet, with a badge of authority affixed to it, may signal or request the driver of a vehicle in a security enhanced area to stop the vehicle as soon as is practicable for the purpose of screening or searching the vehicle, and items and persons in the vehicle. 15 20
- “(2) The driver of a vehicle that is stopped by an aviation security officer must remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and items and persons in the vehicle.
- “(3) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000, who, without lawful authority or reasonable excuse, fails to— 25  
“(a) stop a vehicle in a security enhanced area as soon as is practicable when required to do by an aviation security officer; or 30  
“(b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any items and any persons in the vehicle.
- Compare: 1998 No 110 s 114”
- 20 Security areas** 35
- (1) The heading to section 84 is amended by adding “**and security enhanced areas**”.
- (2) Section 84(1) is amended by omitting “thereof” and substituting “of the area”.

- (3) Section 84 is amended by inserting the following subsection after subsection (1):
- “(1A) The Director may declare, by appropriate notification, that an area within a security area is a security enhanced area.”
- (4) Section 84 is amended by repealing subsection (2) and substituting the following subsection: 5
- “(2) No person other than a member of the police on official duties or an aviation security officer on official duties may enter or remain in any security area or security enhanced area unless the person is— 10
- “(a) wearing an airport identity card issued under the rules (or other identity document approved by the Director under the rules) and worn in accordance with the rules; and
- “(b) authorised by the Director or the airport manager or other person having control of the area.” 15
- (5) Section 84(3) is amended by inserting “or security enhanced area” after “security area” in each place where it appears.
- (6) Section 84(4) is amended by omitting “aviation security area” and substituting “security area or security enhanced area”. 20
- (7) Section 84(5) is amended by inserting “or security enhanced area” after “security area” in each place where it appears.
- (8) Section 84 is amended by repealing subsection (7) and substituting the following subsections:
- “(7) Despite **subsection (2)**, a passenger embarking or disembarking directly through a gateway or thoroughfare in an airport approved for that purpose by the airport manager may pass through a security area or security enhanced area forming part of the gateway or thoroughfare without an airport identity card. 25 30
- “(8) Despite **subsection (2)**, a person allowed under the rules may pass through a security area or security enhanced area without an airport identity card.”
- 21 Powers of arrest**
- (1) The heading to section 85 is amended by adding “**and seizure of items**”. 35
- (2) Section 85(1)(a) is amended by inserting “5A,” after “5,”.
- (3) Section 85 is amended by inserting the following subsections after subsection (1):

- “(1A) An aviation security officer may—
- “(a) search a person arrested under subsection (1):
  - “(b) seize any item that may be evidence of an offence against an enactment specified in subsection (1), if the officer has reasonable grounds to believe that—
    - “(i) the person has an item hidden or in clear view on or about his or her person that is evidence of an offence against an enactment specified in subsection (1); and
    - “(ii) the item poses a threat to the safety of the officer or any other person; and
    - “(iii) immediate action is necessary to address the threat.
- “(1B) An aviation security officer may use the force or assistance that is necessary and reasonable in the circumstances to—
- “(a) arrest a person under subsection (1):
  - “(b) search a person under **subsection (1A)**:
  - “(c) seize an item under **subsection (1A)**.
- “(1C) To avoid doubt, an aviation security officer may search a person under this section whether or not an aviation security officer has previously searched the person under another section of this Act or under the Aviation Crimes Act 1972.
- “(1D) An aviation security officer who undertakes a search under this section must, within 3 working days of the search, give the Director a written report of the search, the circumstances in which it was conducted, and the matters that gave rise to the reasonable grounds to believe required by **subsection (1A)(b)**.”
- (4) Section 85(3) is amended by inserting “, and any item he or she seizes,” after “arrests”.
- (5) Section 85 is amended by adding the following subsection:
- “(4) An aviation security officer may seize an item in the possession of a person that the aviation security officer arrests if the aviation security officer has reasonable grounds to believe that the item is evidence of an offence against an enactment specified in subsection (1).”
- 22 Regulations**
- (1) Section 100(1) is amended by inserting the following paragraph after paragraph (ed):
- “(ee) assisting or enhancing aviation security, including (but not limited to)—

- “(i) any security-related matter for which rules may be made under section 28 or 29;
- “(ii) the revocation, substitution, or amendment of any security-related rules made under section 28 or 29:” 5
- (2) Section 100 is amended by adding the following subsection:
- “(3) To the extent that a rule is inconsistent with a regulation made under **subsection (1)(ee)**, the rule is subject to the regulation.”
- 23 Consequential amendments to Arms Act 1983**
- (1) This section consequentially amends the Arms Act 1983. 10
- (2) Section 2 is amended by inserting the following definitions in their appropriate alphabetical order:
- “**foreign in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990
- “**in-flight security officer** has the same meaning as in section 2 of the Civil Aviation Act 1990”. 15
- (3) Section 3(2)(a) is amended by adding “; or” and the following subparagraph:
- “(viii) an in-flight security officer or a foreign in-flight security officer:” 20
- 24 Consequential amendments to Civil Aviation Rules**
- (1) This section consequentially amends the Civil Aviation Rules.
- (2) The Civil Aviation Rules specified in **Part 1 of the Schedule** are amended in the manner indicated in that Part of the Schedule.
- (3) The Civil Aviation Rules specified in **Part 2 of the Schedule** are amended in the manner indicated in that Part of the Schedule. 25
- (4) The Civil Aviation Rules specified in **Part 3 of the Schedule** are amended in the manner indicated in that Part of the Schedule.
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## Schedule s 24

### Consequential amendments to Civil Aviation Rules

#### Part 1

Rules amended on day after date on which Act receives  
Royal assent 5

#### Rule 1.1

Definition of **sterile area**: repeal.

#### Rule 19.357(a)

Revoke and substitute:

- “(a) The Director may issue or approve an airport identity card or other identity document in accordance with this rule if— 10
- “(1) the Director has, in accordance with the Act, made a favourable security check determination of the person who has applied for the card or document; or
- “(2) the Director has decided that the person has undergone an alternative security check that is acceptable to the Director.” 15

#### Rule 19.357

Add:

- “(h) The security checks referred to in **19.357(a)(1) and (2)** are not required if the person making an application for an identity card is issued with a temporary identity card approved by the Director that entitles the person to enter and remain in a security area when escorted by a person issued with an airport identity card in accordance with the security check process referred to in **19.357(a)(1) and (2)**. 20
- 25

#### Rule 140

Appendix A.5(a)(3): omit “may” and substitute “must”.

#### Part 2

Rules amended when specified by Order in Council 30

#### Rule 1.1

Insert in its appropriate alphabetical order:

“**security enhanced area** means an area that the Director has declared to be a security enhanced area under section 84 of the Act:” 35

## Part 2—continued

**Rule 19.355(1)**

Insert “, security enhanced area,” after “security area”.

**Rule 19.355(2)**

Insert “, security enhanced area,” after “security area”.

**Rule 19.357(b)**

5

Insert “or security enhanced area” after “security area”.

**Rule 19.357(d)**

Insert “or security enhanced area” after “security area”.

**Rule 19.357(e)**

Insert “or security enhanced area” after “security area”.

10

**Rule 19.357(g)(3)**

Insert “or security enhanced area” after “security area”.

**Rule 19.357(g)(4)**

Insert “or security enhanced area” after “security area”.

**Rule 19.357(h)**

15

Insert “or security enhanced area” after “security area”.

**Rule 108.53(b)(4)**

Insert “or security enhanced area” after “security area”.

**Rule 108.55(b)(4)**

Insert “or security enhanced area” after “security area”.

20

**Rule 139.203(a)**

Insert “or security enhanced area” after “security area”.

**Rule 139.203(b)(1)**

Insert “or security enhanced areas” after “security areas”.

**Rule 139.203(b)(2)**

25

Omit “the security area or security areas” and substitute “any security area or security enhanced area”.

**Rule 139.203(c)**

Omit “the security area or security areas” and substitute “any security area or security enhanced area”.

30

**Rule 139.203(d)**

Insert after subparagraph (4):

Part 2—*continued*

“(4A) when considered necessary by the Minister or the Director, provide areas at their aerodrome for the screening and searching of persons, items, and vehicles entering and within security enhanced areas.”

- Rule 139.203(d)(11)** 5
- Insert “or security enhanced areas” after “security areas”.
- Rule 139.205(1)**
- Insert “and under **139.203(d)(4A)**” after “baggage”).
- Rule 140.3**
- Insert in its appropriate alphabetical order: 10
- “**security enhanced area screening point** means an area provided by an aerodrome operator under **139.203(d)(4A)** for carrying out screening and searching in relation to a security enhanced area or a point in a security enhanced area where screening and searching is undertaken.” 15
- Rule 140.11(a)(1)**
- Add:
- “(iv) screening and searching of any person, item, or vehicle that is present in, or about to enter, a security enhanced area as required by the Minister or Director, subject to the requirement that the specific manner or methodology in which screening will be applied must be approved by the Director; and” 20
- Rule 140** 25
- Appendix A.11(a): insert “and, as appropriate, each security enhanced area screening point” after “point”.
- Appendix A.11(b): omit “The” and substitute “In relation to each screening point, the”.
- Appendix A.11: add: 30
- “(c) In relation to each security enhanced area screening point that has a procedure under paragraph (a), the certificate holder must, if appropriate, include in that procedure any of the items listed in paragraph (b).”



Part 2—*continued*

- Appendix A.12(b)(4): insert “or security enhanced area” after “security area”.
- Appendix A.12(b)(5): insert “and security enhanced areas” after “security areas”.
- Appendix A.12(b)(6): insert “and security enhanced areas” after “security areas”. 5
- Appendix A.12(b)(7): insert “or security enhanced area” after “security area”.
- Appendix A.12(b)(8)(iii): insert “and security enhanced area signs” after “signs”. 10
- Appendix A.14(1): insert “or security enhanced areas” after “security areas”.
- Appendix A.14(2): insert “or security enhanced area” after “security area”.
- Appendix A.16(c): insert “or security enhanced area” after “security area”. 15
- Appendix A.19: insert “or security enhanced areas” after “security areas”.
- Appendix A.24: add:
- “(k) The certificate holder must, when vehicle search testing is being carried out, ensure that the examiner— 20
- “(1) conceals the standard test piece in any part of the vehicle; and
- “(2) determines whether the aviation security officer being tested locates the standard test piece.” 25
- Appendix A: add:
- “A.25 Security enhanced areas**
- “Security enhanced area screening point and equipment*
- “(a) The certificate holder must ensure— 30
- “(1) that persons, items, and vehicles entering, or within, a security enhanced area may be screened or searched according to the specific manner or methodology approved by the Director; and

Part 2—*continued*

- “(2) that, when conducting screening or searching with respect to persons entering, or within, a security enhanced area, persons, including items and vehicles associated with them, are screened and searched as required by the Minister or the Director; and 5
- “(3) sufficient personnel and equipment are available to carry out screening and searching in accordance with the specific manner or methodology approved by the Director; and
- “(4) its aviation security officers are instructed in the use of standard test pieces to ensure that they can competently check the screening equipment; and 10
- “(5) any screening apparatus used at a security enhanced area screening point is tested in a manner acceptable to the Director. 15
- “Screening of persons, items, and vehicles*
- “(b) When undertaking screening, the certificate holder must—
- “(1) at each point where screening and searching is undertaken and prior to their entering the security enhanced area, inform all persons about to undergo screening, by notice posted at each screening point, that— 20
- “(i) screening of any person or any item or vehicle in the person’s control is only undertaken with the consent of that person; and
- “(ii) any person refusing to be screened will be denied entry beyond that point; and 25
- “(2) if undertaking screening within the security enhanced area,—
- “(i) inform all persons about to undergo screening that screening of the person or any item or vehicle in the person’s control is only undertaken with the consent of that person; and 30
- “(ii) any person refusing to be screened will be required to leave the security enhanced area; and 35
- “(3) according to the specific manner or methodology approved by the Director, ensure that a record is made of—
- “(i) the method of screening:

Part 2—*continued*

- “(ii) the time taken for screening as required by the Minister or the Director:
- “(iii) the number of people, items, and vehicles screened; and
- “(4) if an unauthorised article is found, ensure that a record is made of— 5
- “(i) the names of the officers carrying out the search; and
- “(ii) any unauthorised articles found; and
- “(iii) any disposal action taken. 10
- “(c) While screening is in progress, the certificate holder must—
- “(1) ensure that its aviation security officers, when screening any person, item, or vehicle, ensure that the person is not carrying or in control of any unauthorised article; and 15
- “(2) ensure that its aviation security officers refuse entry to a security enhanced area if a person is found to be in control of an unauthorised article; and
- “(3) ensure that its aviation security officers require a person to leave a security enhanced area if that person is found to be in control of an unauthorised article; and 20
- “(4) carry out tests or checks, and record the results of those tests or checks, to confirm— 25
- “(i) the thoroughness of any screening, within each 28-day cycle; and
- “(ii) the proficiency of each aviation security officer carrying out the screenings, within each 150-day cycle, in accordance with the recurrent testing provisions under A.24. 30
- “*Hand search of items*
- “(d) The certificate holder must ensure that, if there is any cause to suspect any item contains an explosive device or a suspected explosive device has been discovered, its aviation security officers comply with the procedure required by A.11(b)(5). 35
- “(e) The certificate holder must carry out tests or checks, and record the results of those tests or checks, to confirm—

Part 2—*continued*

- “(1) the thoroughness of any hand search, within each 28-day cycle; and
- “(2) the proficiency of each aviation security officer carrying out hand searches, within each 150-day cycle, in accordance with the recurrent testing provisions under A.24.” 5

## Part 3

## Rules amended when specified by Order in Council

**Rule 91.9(a)**

Insert “provided by statute for in-flight security officers and foreign in-flight security officers and” after “Except as”. 10

**Rule 91.9(b)**

Insert “by statute for in-flight security officers and foreign in-flight security officers and” after “provided”.

**Rule 91.9(d)(2)(ii)**

Omit “persons.” and substitute “persons; or”. 15

**Rule 91.9(d)**

Add:

- “(3) in an aircraft by an in-flight security officer—
- “(i) in the course of that officer’s duty; and 20
- “(ii) as approved by the Director under **section 77D of the Act.**”
- “(4) in an aircraft by a foreign in-flight security officer in the course of that officer’s duty.

**Rule 92.1**

Add:

- “(d) This Part does not apply to the carriage or use of ammunition by an in-flight security officer or a foreign in-flight security officer.” 25

**Rule 108.53(b)(8)**

Insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “all passengers”. 30

**Rule 108.55(b)(12)**

Part 3—*continued*

Insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “all passengers”.

**Rule 108.55(b)**

Add “; and” and also the following subparagraph: 5

“(19) the deployment of in-flight security officers and foreign in-flight security officers as appropriate will be facilitated.”

**Rule 108.55**

Add: 10

“(f) The procedures required by **paragraph (b)(19)** must include evidence of consultation with the Commissioner of Police which is acceptable to the Director.”

**Rule 140**

Appendix A.4(1): insert “(other than in-flight security officers authorised by the Commissioner of Police and foreign in-flight security officers authorised by the Director)” after “person”. 15

