

CIVIL AVIATION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Civil Aviation Act 1990 and makes other provisions with respect to civil aviation in New Zealand.

Clause 1 relates to the Short Title.

Clause 2 amends section 66 of the principal Act, which relates to appeals to the District Court against various decisions made under the principal Act. The amendments are of a minor drafting nature and are necessary to make the section consistent with the language used in other sections of the principal Act.

Clause 3 rectifies incorrect cross references in section 100 (1) of the principal Act.

Clause 4 repeals section 103 of the principal Act, which continues in force the Civil Aviation Regulations 1953 (reprinted: S.R. 1980/88) and the Civil Aviation (Security) Regulations 1989 (S.R. 1989/385).

Clause 5 contains transitional provisions to continue in force and amend the Civil Aviation Regulations 1953 and the Civil Aviation (Security) Regulations 1989. The clause will expire after 3 years (as provided in *clause 9*) and the regulations will be replaced by ordinary rules made by the Minister of Transport under sections 28 to 30 of the principal Act.

Subclause (1) continues in force the 2 sets of regulations.

Subclause (2) continues in force all existing tertiary legislation made under the Civil Aviation Regulations 1953 (such as NOTAM's and CASO's) and enables such legislation to be amended by the Minister of Transport.

Subclause (3) enables the 2 sets of regulations to be amended or revoked in whole or in part. The amendments can provide for any purpose for which ordinary rules may be made under sections 28 to 30 of the principal Act, such as safety and security within the civil aviation system, and the certification of personnel.

Subclause (4) provides that such regulations must be made in accordance with section 33 of the principal Act, as if they were ordinary rules under that Act. Section 33 sets out matters to be taken into account when ordinary rules are being made under the principal Act, such as the requirement to be consistent with the relevant standards of ICAO.

Clause 6 enables the Secretary for Transport to delegate, to persons employed in the Ministry of Transport and to other persons, functions and powers that are

conferred or imposed on the Secretary by the Civil Aviation Regulations 1953 or the Civil Aviation (Security) Regulations 1989.

At present, there is some doubt as to whether section 22 or section 23 of the Civil Aviation Act 1990 enables the Secretary for Transport to delegate his or her functions or powers under the Civil Aviation Regulations 1953 or the Civil Aviation (Security) Regulations 1989 to employees of the Ministry of Transport or to persons outside the Ministry. In the case of delegations to employees, the Secretary could probably rely on section 41 of the State Sector Act 1988, although even that authority is not as clear as it could be. The clause provides clear authority for both kinds of delegation and expires after 3 years (as provided in *clause 9*).

Clause 7 provides for refunds to be made in respect of fees and charges paid under the Civil Aviation Charges Regulations 1990 (S.R. 1990/121). The Civil Aviation Charges Regulations 1991 (S.R. 1991/25) reduced most of the 1990 civil aviation fees and charges by 15 percent and the purpose of the clause is to authorise and require the Secretary for Transport to refund that portion to persons who paid in full the 1990 fees and charges.

Clause 8 corrects an oversight in section 2 of the Transport Accident Investigation Commission Act 1990 by inserting in that section a definition of the term "Convention". The term refers to the Chicago Convention of 1944.

Clause 9 provides that *clauses 5 and 6* expire 3 years after the commencement of the Bill. The effect of this provision is that the regulations continued in force by or made under *clause 5*, and the delegations in force under *clause 6*, will cease to have effect when that period of 3 years expires.

The following exceptions are made to the expiry provision:

- (a) Tertiary legislation made under regulation 8A of the Civil Aviation Regulations 1953 will continue in force until revoked by the Minister of Transport:
 - (b) Anything being done under an instrument of delegation, but not completed when that instrument expires by virtue of this clause, can be completed.
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Hon. W. Rob Storey

CIVIL AVIATION AMENDMENT

ANALYSIS

Title	6. Delegation of functions and powers under civil aviation regulations
1. Short Title	7. Refund of part of fees and charges paid under Civil Aviation Charges Regulations 1990
2. Appeal to District Court	8. Amendment to Transport Accident Investigation Commission Act 1990
3. Regulations	9. Expiry of sections 5 and 6
4. Repeal	
5. Transitional provisions relating to civil aviation regulations	

A BILL INTITULED

An Act to amend the Civil Aviation Act 1990, and to make other provisions with respect to civil aviation

BE IT ENACTED by the Parliament of New Zealand as follows:

5 **1. Short Title**—This Act may be cited as the Civil Aviation Amendment Act 1991, and shall be read together with and deemed part of the Civil Aviation Act 1990* (hereinafter referred to as the principal Act).

10 **2. Appeal to District Court**—Section 66 of the principal Act is hereby amended—

(a) By inserting in paragraph (c), after the word “grant”, the words “or renew”;

15 (b) By omitting from paragraph (g) the words “conditions or restrictions”, and substituting the words “prohibitions or conditions”.

3. Regulations—Section 100 (1) of the principal Act is hereby amended—

*1990, No. 98

- (a) By omitting from paragraph (d) the expression “paragraph (c)”, and substituting the expression “paragraph (b)”;
- (b) By omitting from paragraph (e) the expression “paragraph (d)”, and substituting the expression “paragraph (c)”.

4. Repeal—Section 103 of the principal Act is hereby repealed.

5. Transitional provisions relating to civil aviation regulations—(1) The Civil Aviation Regulations 1953 and the Civil Aviation (Security) Regulations 1989 shall continue in force as if section 103 of the principal Act had not been repealed by **section 4** of this Act.

(2) All orders, notices, requirements, circulars, and other publications issued under regulation 8A of the Civil Aviation Regulations 1953 and in force immediately before the commencement of this section,—

- (a) Shall continue in force; but
 (b) May be amended or revoked by the Minister.

(3) Subject to **subsection (4)** of this section, the Governor-General may from time to time, by Order in Council, make regulations for the following purposes:

- (a) Amending the Civil Aviation Regulations 1953 or the Civil Aviation (Security) Regulations 1989, or both, by providing for any purpose for which an ordinary rule may be made under any of sections 28 to 30 of the principal Act;
- (b) Revoking the Civil Aviation Regulations 1953 or the Civil Aviation (Security) Regulations 1989, or both, in whole or in part.

(4) Section 33 of the principal Act (which relates to matters to be taken into account in the making of rules) shall apply to regulations made under **subsection (3) (a)** of this section as if the regulations were ordinary rules under that Act.

6. Delegation of functions and powers under civil aviation regulations—(1) Subject to **subsection (2)** of this section, the Secretary may from time to time, either generally or particularly, delegate to such persons as he or she specifies any of his or her functions or powers under any regulations continued in force by, or made under, **section 5** of this Act.

(2) The Secretary shall not delegate any function or power under this section to any person or any class of persons not

employed in the State services (within the meaning of the State Sector Act 1988), except with the consent in writing of the Minister.

5 (3) Subject to any general or special directions given or conditions imposed by the Secretary, any person to whom any functions or powers are delegated under this section may perform those functions and exercise those powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this section and not by
10 delegation.

(4) The Secretary may delegate any function or power under this section to a specified person or class of persons or to the holder or holders for the time being of a specified office or class of office.

15 (5) Every delegation under this section shall be given for a specific period or indefinitely but in either case shall be revocable at will and no such delegation shall prevent the exercise of any power or the performance of any function by the Secretary.

20 (6) Every delegation under this section shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Secretary by whom it was made may have ceased to hold office, and shall continue to have effect as if it was made by the person for the time being holding office as Secretary.

25 (7) Every person purporting to act under any delegation under this section shall, when reasonably requested, produce evidence of his or her authority to do so.

7. Refund of part of fees and charges paid under Civil Aviation Charges Regulations 1990—(1) Subject to subsection
30 (2) of this section, the Secretary shall, without further authority than this subsection, refund to every person who has paid any fee or charge payable under the Civil Aviation Charges Regulations 1990 the difference between—

35 (a) The amount of that fee or charge under those regulations; and

(b) The amount of the corresponding fee or charge under the Civil Aviation Charges Regulations 1991.

(2) No refund shall be payable under subsection (1) of this section in respect of any fee or charge not paid in accordance
40 with the Civil Aviation Charges Regulations 1990.

8. Amendment to Transport Accident Investigation Commission Act 1990—Section 2 of the Transport Accident Investigation Commission Act 1990 is hereby amended by

inserting, after the definition of the term “Commission”, the following definition:

“‘Convention’—

“(a) Means the Convention on International Civil Aviation signed on behalf of the Government of New Zealand in Chicago on the 7th day of December 1944; and 5

“(b) Includes—

“(i) Any amendment to the Convention which has entered into force under Article 94 (a) of the Convention and has been ratified by New Zealand; and 10

“(ii) Any Annex or amendment thereto accepted under Article 90 of the Convention; and

“(iii) The international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organisation pursuant to Article 37 of the Convention:”. 15

9. Expiry of sections 5 and 6—(1) Sections 5 and 6 of this Act shall expire with the close of the period of 3 years commencing on the date on which this Act comes into force, and shall, as from the close of that period, be deemed to have been repealed. 20

(2) The regulations continued in force by, or made under, section 5 of this Act, and all instruments of delegation in force under section 6 of this Act, shall expire with the close of the period specified in subsection (1) of this section, and shall, as from the close of that period, be deemed to have been revoked. 25

(3) Notwithstanding subsections (1) and (2) of this section,— 30

(a) All orders, notices, requirements, circulars, and other publications continued in force by section 5 of this Act shall, on and after the expiry of the Civil Aviation Regulations 1953, continue in force until revoked by the Minister, as if subsections (1) and (2) of this section had not been enacted: 35

(b) Every act, matter, or thing commenced pursuant to an instrument of delegation in force under section 6 of this Act, but not completed on the expiry of that instrument, may be completed as if that instrument had not expired. 40