

Civil Aviation Amendment Bill (No 2)

Government Bill

Explanatory note

General policy statement

The purpose of this Bill is to enhance aviation safety by making better provision for the regulation of medical certification. The Civil Aviation Act 1990 provides the statutory framework for regulating aviation safety. Rules made under the Act contain more detailed legislative requirements. The powers and responsibilities of the Director are central to the Act and the rules.

There are problems for aviation medical certification under the present legislation. Although the Director is responsible for ensuring that only medically fit persons are able to fly, the Director has no actual legislative role in the medical certification system, apart from being empowered to conduct special medical assessments under the rules.

The present legislation has proved to be seriously deficient because the Director has insufficient powers. Aviation safety could be compromised if the present highly decentralised system continues.

The Bill will rectify this problem by empowering the Director to—

- designate aviation medical examiners, monitor their performance, and revoke designations in the case of poor performance:
- carry out assessments of reports related to medical certification:
- issue, suspend, and revoke medical certificates:
- require aviation licence holders, such as pilots and air traffic controllers, to undertake examinations and tests related to

medical certification, if it is necessary in the interests of safety:

- issue directives to examiners on aviation medical matters.

The Bill will also validate previous decisions of the Director relating to medical certification.

Clause by clause analysis

Clause 1 relates to the Title of the Bill. The principal Act amended by this Bill is the Civil Aviation Act 1990.

Clause 2 relates to the commencement of the Bill.

Clause 3 specifies the purpose of the Bill. The purpose of the Bill is to amend the principal Act to enhance the safety of civil aviation by improving the regulation of medical certification, and to validate existing medical certificates and certification decisions.

Clause 4 inserts a *new Part 2A* into the principal Act, which sets out rules governing the issue of medical certificates, and validates existing medical certificates and certification decisions.

Clause 5 amends the principal Act by inserting a new offence provision. Every person who exercises any privilege that requires a person to hold a medical certificate commits an offence if that person does not hold a current medical certificate, knows or has reason to believe that his or her medical fitness no longer meets the required medical standard, or knows or has reason to believe that his or her ability to act safely is, or is likely to be, impaired. Every person who commits an offence is liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000.

Clause 6 amends the principal Act to require the Director to undertake medical examinations and to issue medical certificates in accordance with *Part 2A*.

Clause 7 specifies that consequential amendments to the principal Act are set out in the *Schedule*.

Clause 8 consequentially amends the Civil Aviation Rules by revoking and amending specified rules.

Hon Mark Gosche

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Schedule
Consequential amendments to principal Act

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Civil Aviation Amendment Act (**No 2**) 2001.
- (2) In this Act, the Civil Aviation Act 1990¹ is called “the principal Act”. 5

¹ 1990 No 98

- 2 Commencement**
This Act comes into force on the day after the date on which it receives the Royal assent.
- 3 Purpose**
The purpose of this Act is to amend the principal Act by incorporating provisions that—
- (a) enhance the safety of civil aviation by improving the regulation of medical certification; and
 - (b) validate existing medical certificates and certification decisions.
- 4 New Part 2A inserted**
The principal Act is amended by inserting, after Part 2, the following Part:
- “Part 2A**
“Medical certification
- “27A Interpretation**
- “(1) In this Part, unless the context otherwise requires,—**
- “applicant** means a person who has applied for a medical certificate; and includes a licence holder who has reapplied for a medical certificate
- “aviation examiner** means a person designated by the Director under **section 27G(2)(b)**
- “examiner** means a person designated by the Director as a medical examiner or an aviation examiner
- “licence holder** means a person who—
- “(a) holds an aviation document or is a student pilot; and**
 - “(b) is required under the rules to hold a current medical certificate**
- “medical advisory panel** means the panel appointed by the Director to advise on aviation medical matters under **section 27L**
- “medical certificate** means a certificate issued by the Director under this Part to an applicant or licence holder
- “medical examiner** means a registered medical practitioner designated by the Director under **section 27G(2)(a)**
- “medically unfit** means the existence of any incapacity, risk of incapacity, or characteristic that interferes with or may

interfere with the safe exercise of the privileges of a licence holder.

“(2) To avoid doubt, a medical certificate is not an aviation document.

“27B **Medical certificate required**

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“(1) A licence holder must carry the appropriate current medical certificate whenever exercising any privilege to which the medical certificate relates.

“(2) Every licence holder must produce his or her medical certificate whenever required to do so by the Director.

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“(3) Except where required by the rules to produce a medical certificate immediately, a licence holder complies with the requirement in **subsection (2)** if he or she produces the medical certificate within 24 hours of the Director’s request at a place specified by the Director.

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“(4) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who fails to comply with **subsection (2)** or **subsection (3)**.

“27C **Director to issue medical certificate**

“(1) The Director may issue a medical certificate to an applicant with any conditions, restrictions, or endorsements.

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“(2) The Director must not issue a medical certificate if the Director has reasonable grounds to believe that an applicant—

“(a) is medically unfit; or

“(b) would be medically unfit in the absence of any conditions, restrictions, or endorsements placed on the medical certificate by the Director.

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“(3) Before issuing a medical certificate, the Director—

“(a) must have regard to the report of the medical examiner and such other information that may be relevant; and

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“(b) may require the applicant, at the applicant’s expense, to undertake any other tests, examinations, or re-examinations, or provide any medical information, as the Director reasonably considers necessary to assess the medical fitness of the applicant.

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“(4) The Director must maintain a current register of medical certificates issued under this section.

“27D Changes in medical conditions

- “(1) If a licence holder suspects or becomes aware of any change in his or her medical condition that indicates that he or she may be medically unfit, the licence holder—
- “(a) must advise the Director of the change as soon as practicable; and 5
 - “(b) may not exercise the privileges of the licence holder.
- “(2) If an examiner or operator suspects or becomes aware of any change in the medical fitness of a licence holder, being a change that has made or may make the person medically unfit, the examiner or operator must advise both the licence holder and the Director of the change as soon as practicable. 10
- “(3) If a registered medical practitioner has reasonable grounds to believe that a person is a licence holder and suspects or becomes aware of any change in the medical fitness of the licence holder that could adversely affect the medical fitness of the licence holder, the registered medical practitioner must advise the Director of the change. 15

“27E Medical examination, report, and disclosure

- “(1) Before the Director issues a medical certificate, an applicant must have a medical examination by a medical examiner who must forward his or her report to the Director. 20
- “(2) The Director may, by written notice, require any applicant or licence holder, for the purpose of determining whether or not the applicant or licence holder is medically unfit, to disclose or authorise the disclosure of any information relevant to his or her medical fitness. 25

“27F Expiry of medical certificate

Despite the imminent expiry of an existing medical certificate, the Director may, on receiving an application from an existing licence holder for a new medical certificate, grant an extension of up to 60 days of the grant of the existing medical certificate. 30

“27G Examiners

- “(1) The Director may establish selection criteria for examiners, including— 35
- “(a) any requirements for examinations, training, and experience; and

- “(b) any requirements for ongoing training and development.
- “(2) The Director—
- “(a) must designate, subject to any conditions that the Director may specify, 1 or more registered medical practitioners to be medical examiners for a period of no longer than 3 years; and 5
- “(b) may designate, subject to any conditions that the Director may specify, 1 or more persons to be aviation examiners for a period of no longer than 3 years. 10
- “(3) The Director must maintain a current list of examiners.
- “(4) The Director may renew a designation as an examiner for 1 or more periods, each of which may not exceed 3 years.
- “(5) The Director may, by notice in the *Gazette*, issue general directions for conducting examinations of the medical fitness of applicants and licence holders, and reporting the results of those examinations to the Director; and the directions must be— 15
- “(a) notified in writing to examiners; and
- “(b) incorporated in a medical manual prepared by the Director. 20
- “(6) Nothing in this Act or the rules may be deemed to constitute an employment relationship or a contractual relationship of any kind between the Director and any examiner.
- “27H **Cancelling designation of examiners** 25
- “(1) The Director may cancel a person’s designation under **section 27G(2)** if the person—
- “(a) fails to comply with—
- “(i) any condition that the Director has specified; or
- “(ii) any direction that the Director has issued; or 30
- “(iii) any selection criterion that the Director has established; or
- “(b) fails to advise the Director, as soon as practicable, of any change in the medical fitness of a licence holder that indicates that the licence holder is medically unfit; 35
- or
- “(c) asks the Director to cancel his or her designation; or
- “(d) fails to discharge satisfactorily his or her duties as an examiner.

- “(2) Before cancelling a designation, the Director must—
- “(a) give the examiner written notice of the matters that constitute the grounds for cancellation; and
 - “(b) give the examiner a reasonable opportunity to make representations explaining why his or her designation should not be cancelled. 5
- “(3) If the Director cancels a designation, the Director must give the examiner written notice of the cancellation that sets out the grounds for the cancellation.
- “27I **Investigation of medical fitness** 10
- “(1) The Director may, by written notice, require any licence holder, at the licence holder’s expense, to undertake any tests, examinations, or re-examinations, or provide any medical information, at any time before the expiry of his or her medical certificate, if the Director has reasonable grounds to believe that the licence holder— 15
- “(a) may be medically unfit; or
 - “(b) has obtained his or her medical certificate fraudulently.
- “(2) The Director may, by written notice, require any licence holder, at the Authority’s expense, to undertake any tests, examinations, or re-examinations, or provide any medical information, at any time before the expiry of his or her medical certificate if the Director— 20
- “(a) is auditing licence holders on the basis of random selection from the register of medical certificates required to be maintained under **section 27C(4)**; or 25
 - “(b) has reasonable grounds to believe that the licence holder’s medical certificate was issued in error; or
 - “(c) is auditing examiners for compliance with the requirements of this Act or the rules. 30
- “(3) The Director may, by written notice, require any licence holder, for the purpose of determining whether or not the licence holder is medically unfit, to disclose or authorise the disclosure of any relevant information.
- “27J **Revocation, suspension, amendment, and surrender of medical certificate** 35
- “(1) If the Director believes that a licence holder may be medically unfit, the Director may, by written notice to the licence holder,—

- “(a) suspend any medical certificate issued to the licence holder by issuing a notice of temporary medical unfitness; or
- “(b) amend the conditions, restrictions, or endorsements on any medical certificate issued to the licence holder. 5
- “(2) If the Director believes that a licence holder is medically unfit, the Director must, by written notice to the licence holder,—
- “(a) suspend any medical certificate issued to the licence holder by issuing a notice of temporary medical unfitness; or 10
- “(b) revoke any medical certificate issued to the licence holder by issuing a notice of permanent or long-term medical unfitness; or
- “(c) amend the conditions, restrictions, or endorsements on any medical certificate issued to the licence holder. 15
- “(3) A notice issued under **subsection (1)** or **subsection (2)** must state the grounds for the Director’s decision to suspend, revoke, or amend the medical certificate.
- “(4) A person who has had his or her medical certificate revoked or suspended must surrender the medical certificate to the Director, a person authorised by the Director, or a member of the police. 20
- “(5) If necessary for ensuring the safety of civil aviation or for enabling an operator to ensure compliance with the operator’s obligations under this Act or the rules, the Director may inform the operator— 25
- “(a) that the medical certificate of any person for whom the operator is responsible has been revoked or suspended:
- “(b) of the duration of any suspension of any medical certificate: 30
- “(c) that the medical certificate of any person for whom the operator is responsible has had any conditions, restrictions, or endorsements placed on it.
- “(6) The Director may revoke a medical certificate and suspend the aviation document to which it relates if a licence holder fails to comply with a demand under **section 271(1)** or **(2)** or **(3)** within a reasonable period of time. 35
- “(7) Any person holding a medical certificate may, by notice in writing to the Director, surrender his or her medical certificate. 40

“27K Rights of persons affected by adverse decision

Any person affected by an adverse decision of the Director under this Part has a right of appeal to a District Court under section 66.

“27L Director to appoint medical advisory panel

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“(1) The Director must appoint a medical advisory panel to—

“(a) advise the Director on medical cases that the Director refers to the medical advisory panel for opinion or advice; and

“(b) advise the Director and the Authority on aviation medical issues that the Director refers to the medical advisory panel for opinion or advice.

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“(2) The Director may establish selection criteria for members of the medical advisory panel, including—

“(a) any requirements for examinations, training, and experience; and

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“(b) any requirements for ongoing training and development.

“27M Cancelling appointment of member of medical advisory panel

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“(1) The Director may cancel a person’s appointment under **section 27L(1)** if the person fails to discharge satisfactorily his or her duties as a member of the medical advisory panel.

“(2) Before cancelling an appointment, the Director must—

“(a) give the member written notice of the matters that constitute the grounds for cancellation; and

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“(b) give the member a reasonable opportunity to make representations explaining why his or her appointment should not be cancelled.

“(3) If the Director cancels an appointment, the Director must give the member written notice of the cancellation that sets out the grounds for the cancellation.

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“27N Validation and transitional provisions

“(1) Every decision regarding medical certificates, special medical assessments, notices of permanent or long-term medical unfitness, and notices of temporary medical unfitness, that the Director or the Authority made after 4 November 1992 and before the commencement of this Part, is as valid as it would

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have been if this Act had been in force at the time that the decision was made and the decision had been authorised under this Act.

- “(2) If any proceedings have been commenced before 20 February 2001, nothing in **subsection (1)** affects the rights of any person under any judgment of a court given in those proceedings or any judgment given on appeal from that judgment. 5
- “(3) This Act has effect for the purpose of determining any civil proceedings commenced on or after 20 February 2001 but not completed before the date on which this Act receives the Royal assent. 10
- “(4) No compensation is payable by the Crown or the Authority to any person for any loss or damage arising from the enactment or operation of this section.
- “(5) Subject to **section 27H(1)**, all persons exercising any function relating to medical certification under Part 67 of the rules as they stood immediately before the commencement of this Part are entitled to continue to exercise those functions for a period of 30 days after the commencement of this Part. 15
- “**27O Fees and charges** 20
Fees or charges to be paid by an applicant or licence holder under this Part, for the purpose of reimbursing the Authority for costs associated with the performance of the Director’s functions under this Part, may be prescribed by regulations made under section 38. 25
- “**27P Savings**
Any medical certificate issued under the rules before the commencement of this Part is deemed to be a medical certificate issued under this Part.”
- 5 Amendments to offence provisions** 30
The principal Act is amended by inserting, after section 46, the following sections:
- “**46A Acting without required medical certificate**
“(1) Every person who exercises or attempts to exercise the privileges of any aviation document, or flies or attempts to fly an aircraft solo as a student pilot, commits an offence if that person— 35

- “(a) does not hold an appropriate current medical certificate issued under **Part 2A**; or
- “(b) knows or has reason to believe that his or her medical fitness is no longer adequately covered by the terms of the existing medical certificate; or 5
- “(c) knows or has reason to believe that his or her ability to act safely is, or is likely to be, medically impaired despite any conditions, restrictions, or endorsements on the medical certificate; or
- “(d) fails to comply with any conditions, restrictions, or endorsements specified by the Director under **section 27C(1)**. 10
- “(2) Every person who commits an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000. 15
- 46B Fraudulent, misleading, or intentionally false statements to obtain a medical certificate**
- “(1) Every person commits an offence who makes or causes to be made—
- “(a) any fraudulent, misleading, or intentionally false statement for the purpose of obtaining a medical certificate under **Part 2A**; or 20
- “(b) any fraudulent, misleading, or intentionally false entry in any logbook, record, form, or report that is required to be kept, made, or used to show compliance with any conditions, restrictions, or endorsements placed on any medical certificate under **Part 2A**; or 25
- “(c) any reproduction or alteration for fraudulent purposes of any medical certificate issued under **Part 2A**.
- “(2) Every person who commits an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000.” 30
- 6 Director of Civil Aviation**
- (1) Section 71(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph: 35
- “(ca) the production of a written statement signed by the Director to the effect that on a specified date a person was or was not the holder of a medical certificate issued under Part 2A, or the rules before the commencement of

the **Civil Aviation Amendment Act (No 2) 2001**, is sufficient evidence of the matter stated, until the contrary is proved.”.

- (2) Section 72I(3) of the principal Act is amended by adding to paragraph (b) the word “; and” and by adding the following paragraph: 5
- “(c) undertake medical assessments and issue, suspend, or revoke medical certificates in accordance with **Part 2A**.”
- (3) Section 72I(4) of the principal Act is amended by inserting, after paragraph (a), the following paragraph: 10
- “(aa) the issue, suspension, or revocation of medical certificates; or”.
- 7 Consequential amendments to principal Act**
- The principal Act is consequentially amended in the manner indicated in the **Schedule**. 15
- 8 Consequential amendments to rules**
- (1) The rules are amended by revoking the following rules:
- (a) rule 61.35(b) to (d) (medical requirements):
 - (b) rule 63.23(b) (medical requirements):
 - (c) rule 63.23(c) (medical requirements): 20
 - (d) rule 65.25(b) (medical requirements):
 - (e) rule 65.25(c) (medical requirements):
 - (f) rule 67.03(b) (application):
 - (g) rule 67.05 (aviation medical assessors and designated medical examiners): 25
 - (h) rule 67.07 (medical examinations):
 - (i) rule 67.09 (issue of medical certificates):
 - (j) rule 67.13 (review assessments):
 - (k) rule 67.15 (special medical assessments):
 - (l) rule 67.19(a) (certificates, reports and records). 30
- (2) Rule 1.1 (general definitions) is amended by revoking the definitions of **aviation medical assessor**, **designated medical examiner**, and **flexibility**.
- (3) Rule 1.1 (general definitions) is amended by inserting, after the definition of **escorted passenger**, the following definition: 35
- “**examiner** means a person designated by the Director under the Act as a medical examiner or an aviation examiner”.

- (4) Rule 1.1 (general definitions) is amended by revoking the definition of **valid**, and substituting the following definition:
“**valid** means,—
“(a) in respect of a licence or rating, the document has been issued in accordance with the Civil Aviation Rules, and is not expired, suspended, or revoked; and
“(b) in respect of a medical certificate, the medical certificate has been issued in accordance with the Act, and is not expired, suspended, or revoked.”
- (5) Rule 61.35(a)(1) (medical requirements) is amended by omitting the words “Part 67”, and substituting the words “the Act”.
- (6) Rule 67.03(a) (application) is amended by omitting the words “this Part”, and substituting the words “the Act”.
- (7) Rule 67.03(a)(4) (application) is amended by omitting the words “and the relevant Aviation Medical Assessor”.
- (8) Rule 67.03(a)(5) (application) is amended by omitting the words “Aviation Medical Assessor or Designated Medical Examiner”, and substituting the word “examiner”.
- (9) Rules 61.105(2) (student pilots flying solo), 61.153(a)(2) (private pilots licences), 61.203(3) (commercial pilot licences), 63.23(a)(1) (flight engineers licences), 63.53(2) (eligibility requirements), 65.25(a)(1) (air traffic controller licences), 65.53(a)(2) (eligibility requirements), and 105.5(c)(3) are amended by omitting the expression “Part 67”, and substituting the words “the Act”.

Schedule

s 7

Consequential amendments to principal Act**Section 15(1)(b)**

Insert, after the word “procedure”, the word “; or” and the following paragraph: 5

“(c) is designated as an examiner under Part 2A”.

Section 49(1)(b)

Insert, after the word “document”, the words “or medical certificate”. 10

Section 49(1)(c)

Insert, after the word “document”, the words “or medical certificate”.

Insert, after the words “section 9(3) of this Act”, the words “or that is required to be provided under **section 27D or section 27I**”. 15

Section 66(5) (as enacted by the Civil Aviation Amendment Act 2001)

Add, after paragraph (d), the following paragraph:

“(e) by the Director regarding the issue of a medical certificate under **Part 2A** of this Act.” 20