

**Reprint
as at 1 July 2011**



Civil Aviation Act 1990

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Commencement see section 1(2)

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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Transport.

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An Act—

- (a) to establish rules of operation and divisions of responsibility within the New Zealand civil aviation system in order to promote aviation safety; and**
- (b) to ensure that New Zealand's obligations under international aviation agreements are implemented; and**
- (c) to consolidate and amend the law relating to civil aviation in New Zealand**

1 Short Title and commencement

- (1) This Act may be cited as the Civil Aviation Act 1990.
- (2) This Act shall come into force on 1 September 1990.

2 Interpretation

- (1) In this Act, unless the context otherwise requires,—

accident means an occurrence that is associated with the operation of an aircraft and takes place between the time any person boards the aircraft with the intention of flight and such time as all such persons have disembarked and the engine or any propellers or rotors come to rest, being an occurrence in which—

- (a) a person is fatally or seriously injured as a result of—
 - (i) being in the aircraft; or
 - (ii) direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or
 - (iii) direct exposure to jet blast—
except when the injuries are self-inflicted or inflicted by other persons, or when the injuries are to stowaways hiding outside the areas normally available to passengers and crew; or
- (b) the aircraft sustains damage or structural failure that—
 - (i) adversely affects the structural strength, performance, or flight characteristics of the aircraft; and
 - (ii) would normally require major repair or replacement of the affected component—
except engine failure or damage that is limited to the engine, its cowlings, or accessories, or damage limited to propellers, wing tips, antennas, tyres, brakes, fairings, small dents, or puncture holes in the aircraft skin; or
- (c) the aircraft is missing or is completely inaccessible

aerodrome—

- (a) means any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, and surface movement of aircraft; and
- (b) includes any buildings, installations, and equipment on or adjacent to any such area used in connection with the aerodrome or its administration

aerodrome control service means an air traffic control service provided for the control of aerodrome traffic

aerodrome flight information service means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome

aerodrome traffic means—

- (a) all traffic in the manoeuvring area of an aerodrome; and
- (b) all aircraft flying in the vicinity of an aerodrome

aerodrome traffic circuit means the pattern flown by aircraft operating in the vicinity of an aerodrome

aeronautical product means anything that comprises or is intended to comprise any part of an aircraft or that is or is intended to be installed in or fitted or supplied to an aircraft; and includes fuel and other similar consumable items necessary for the operation of the aircraft

air service means an air transport service or an aerial work service, whether regular or casual

air traffic means all aircraft in flight or operating on any manoeuvring area of an aerodrome

air traffic control service means a service provided for the purposes of—

- (a) preventing collisions—
 - (i) between aircraft; and
 - (ii) between aircraft and obstructions on any manoeuvring area; and
- (b) expediting and maintaining a safe and efficient flow of air traffic

air traffic service includes—

- (a) any aerodrome control service;
- (b) any area control service;
- (c) any approach control service;
- (d) any flight information service;
- (e) any aerodrome flight information service;
- (f) any alerting service;
- (g) any other air traffic service considered by the Director to be necessary or desirable for the safe and efficient operation of the civil aviation system

aircraft means any machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth

aircraft flying in the vicinity of an aerodrome means any aircraft that is in, entering, or leaving an aerodrome traffic circuit

alerting service means an air traffic service provided to notify appropriate organisations regarding aircraft in need of search and rescue aid, and to assist such organisations as required

ANZA means Australia New Zealand Aviation

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

approach control service means an air traffic control service for arriving or departing controlled flights

area control service means an air traffic control service provided for controlled flights in controlled airspace

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

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

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

Authority means the Civil Aviation Authority of New Zealand established by section 72A

aviation document means any licence, permit, certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service

aviation examiner means a health professional; and includes any medical practitioner to whom the Director has issued an aviation document under section 27F(2) or section 27Q(2)(c) to conduct specified examinations under Part 2A

aviation related service means any equipment, facility, or service (including any air traffic service but excluding any service of the Transport Accident Investigation Commission) operated

in support of or in conjunction with the civil aviation system;
and includes the provision of aeronautical products

aviation security officer means a person for the time being
employed as such in the Aviation Security Service

Aviation Security Service means the Aviation Security Ser-
vice established under section 72B(2)(ca)

CASA means—

- (a) the Civil Aviation Safety Authority established by the
Civil Aviation Act 1988 (Aust); and
- (b) any successor of that Authority

Civil Aviation Registry means the Registry established under
section 74

Commission means the Transport Accident Investigation
Commission established under the Transport Accident
Investigation Commission Act 1990

controlled airspace means an airspace of defined dimensions
within which an air traffic control service is provided to con-
trolled flights

controlled flight means any flight that is provided with or re-
quired by rules made under this Act to make use of an air traffic
control service

convener means a medical practitioner appointed as convener
by the Minister under section 27J or the deputy convener act-
ing as convener

Convention means the Convention on International Civil Avi-
ation signed on behalf of the Government of New Zealand in
Chicago on 7 December 1944, and includes—

- (a) any amendment to the Convention that has entered into
force under Article 94(a) of the Convention and has
been ratified by New Zealand; and
- (b) any Annex or amendment to any Annex accepted under
Article 90 of the Convention, to the extent adopted by
New Zealand; and
- (c) the international standards and recommended practices
from time to time accepted and amended by the Inter-
national Civil Aviation Organisation under Article 37 of
the Convention, to the extent adopted by New Zealand

Corporation means Airways Corporation of New Zealand Limited, a company incorporated under the Companies Act 1955 pursuant to the State-Owned Enterprises Act 1986

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

- (a) are listed in, or classified in accordance with, the ICAO's *Technical Instructions for the Safe Transport of Dangerous Goods by Air*; or
- (b) have properties that would result in the articles or substances being classified as dangerous goods under the ICAO's *Technical Instructions for the Safe Transport of Dangerous Goods by Air*

deputy convener means a medical practitioner appointed as deputy convener by the Minister under section 27J

Director means the person who is for the time being the Director of Civil Aviation under section 72I

flight information service means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights

General Manager means the person who is for the time being the General Manager of the Aviation Security Service under section 72L

health professional means a person who is, or is deemed to be, registered with an authority established or continued by section 114 of the Health Practitioners Competence Assurance Act 2003 as a practitioner of a particular health profession

holder, in relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document

ICAO means the International Civil Aviation Organisation established under the Convention; and includes any successor to the Organisation

incident means any occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation

international airport means any airport designated as an airport of entry and departure for international air traffic

where the formalities incident to customs, immigration, public health, animal and plant quarantine, and similar procedures are carried out

judicial officer means a District Court Judge, a Justice, a Community Magistrate, or a court Registrar (other than a constable)

manoeuvring area—

- (a) means that part of an aerodrome to be used for the take-off and landing of aircraft and for the surface movement of aircraft associated with take-off and landing; but
- (b) does not include areas set aside for loading, unloading, or maintenance of aircraft

medical examiner means a medical practitioner to whom the Director has issued an aviation document under section 27F(1) or section 27Q(2)(b) to conduct examinations under section 27D

medical practitioner means—

- (a) a health practitioner who is, or is deemed to be, registered with the Medical Council of New Zealand continued by section 114(1)(a) of the Health Practitioners Competence Assurance Act 2003 as a practitioner of the profession of medicine; or
- (b) a person in a jurisdiction other than New Zealand who is entitled, licensed, or registered to practise medicine in that jurisdiction

member means a member of the Authority

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of this Act or the relevant Part or provision of this Act

Ministry means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act

navigation installation—

- (a) means any building, facility, work, apparatus, equipment, or place, (whether or not part of an aerodrome) that is intended to assist in the control of air traffic or as an aid to air navigation; and

- (b) includes any land adjacent to any such building, facility, work, apparatus, equipment, or place, and used in connection therewith

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

New Zealand Register of Aircraft means the register of that name that is established under section 73

New Zealand registered aircraft means any aircraft that is for the time being registered by the Director under section 6(1)(a)

New Zealand temporary stop notice means a notice issued under section 11C(1)

operate, in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not the person is present with the aircraft; and **operator** has a corresponding meaning

owner, in relation to any aircraft, includes any person lawfully entitled to the possession of the aircraft for 28 days or longer

pilot-in-command, in relation to any aircraft, means the pilot responsible for the operation and safety of the aircraft

prescribed means prescribed by this Act or by regulations or rules made under this Act

rules means ordinary rules made by the Minister or Governor-General and emergency rules made by the Director under Part 3

Secretary means the chief executive of the Ministry

security area means an area that the Director has declared to be a security area under section 84

security designated aerodrome means an aerodrome for the time being designated as a security aerodrome under section 82

security designated navigation installation means a navigation installation for the time being designated as a security navigation installation under section 82

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

service charter means a service charter prepared and made available to the public under section 72G

specified examination means—

- (a) an examination of visual and colour perception; or
- (b) an examination of hearing; or
- (c) a psychological examination; or
- (d) any other class of examination prescribed in the rules

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

unruly passenger offence—

- (a) means an offence against Part 5A; and
- (b) includes an offence to which section 65C applies.

- (2) For the purposes of this Act, an aviation identity card issued or approved by the Director under any regulations or rules made under this Act is not an aviation document.

Compare: 1964 No 68 s 2; 1968 No 39 s 16(1); 1969 No 9 s 2; 1973 No 6 s 6(1); 1976 No 122 s 3(8); 1976 No 153 s 2; 1977 No 146 s 2; 1987 No 108 s 2

Section 2(1) **accident** paragraph (b): amended, on 1 June 2002, by section 4(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 2(1) **air traffic service** paragraph (g): amended, on 10 August 1992, by section 2(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 2(1) **air transport operations**: repealed, on 13 August 1996, by section 2 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 2(1) **ANZA**: inserted, on 30 March 2007, by section 4(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **ANZA mutual recognition agreements**: inserted, on 30 March 2007, by section 4(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **Australia**: inserted, on 30 March 2007, by section 4(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **Australian AOC with ANZA privileges**: inserted, on 30 March 2007, by section 4(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **Australian temporary stop notice**: inserted, on 30 March 2007, by section 4(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **Authority**: inserted, on 10 August 1992, by section 2(3) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 2(1) **aviation examiner**: inserted, on 1 April 2002, by section 4 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 2(1) **aviation examiner**: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **Aviation Security Service**: amended, on 20 August 1993, by section 2(2) of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 2(1) **CASA**: inserted, on 30 March 2007, by section 4(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **convener**: inserted, on 1 April 2002, by section 4 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 2(1) **convener**: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **Convention**: substituted, on 1 June 2002, by section 4(3) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 2(1) **dangerous goods**: substituted, on 1 June 2004, by section 4(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **deputy convener**: inserted, on 1 April 2002, by section 4 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 2(1) **deputy convener**: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **Director**: substituted, on 10 August 1992, by section 2(4) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 2(1) **General Manager**: inserted, on 20 August 1993, by section 2(1) of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 2(1) **health professional**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **judicial officer**: amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 2(1) **judicial officer**: amended, on 30 June 1998, by section 7 of the District Courts Amendment Act 1998 (1998 No 76).

Section 2(1) **medical examiner**: inserted, on 1 April 2002, by section 4 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 2(1) **medical examiner**: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **medical practitioner**: inserted, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **member**: inserted, on 10 August 1992, by section 2(5) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 2(1) **member**: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **Minister**: substituted, on 1 December 2004, by section 3 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 2(1) **Ministry**: substituted, on 1 December 2004, by section 3 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 2(1) **New Zealand AOC with ANZA privileges**: inserted, on 30 March 2007, by section 4(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **New Zealand registered aircraft**: amended, on 10 August 1992, by section 2(6) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 2(1) **New Zealand temporary stop notice**: inserted, on 30 March 2007, by section 4(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(1) **performance agreement**: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 2(1) **registered medical practitioner**: repealed, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 2(1) **rules**: amended, on 1 August 2010, by section 4 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Section 2(1) **Secretary**: substituted, on 1 December 2004, by section 3 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 2(1) **security area**: amended, on 20 August 1993, by section 2(3) of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 2 **security enhanced area**: inserted, on 26 September 2007, by section 4(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 2(1) **service charter**: added, on 10 August 1992, by section 2(8) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 2(1) **specified examination**: added, on 1 April 2002, by section 4 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 2(1) **sterile area**: added, on 26 September 2007, by section 4(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 2(1) **unruly passenger offence**: added, on 1 June 2004, by section 4(3) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 2(2): added, on 11 April 2008, by section 4(4) of the Civil Aviation Amendment Act 2007 (2007 No 89).

3 Act to bind the Crown

- (1) Subject to subsection (2), this Act shall bind the Crown.
- (2) Except as otherwise expressly provided in this Act or any other Act, or in the regulations or rules concerned, nothing in this Act or in any regulations or rules made under this Act shall apply to the New Zealand Defence Force.

Compare: 1964 No 68 s 26; 1986 No 124 s 32(1); 1987 No 108 s 5

4 Application of Act

- (1) Except as provided in section 53A, Part 5A, and section 96A, this Act and all regulations and rules made under this Act shall apply to the following:

- (a) every person, aircraft, aerodrome, aeronautical product, air service, and aviation related service, in New Zealand:
 - (b) every New Zealand registered aircraft whether within or outside New Zealand:
 - (c) every holder of an aviation document while outside New Zealand and exercising or purporting to exercise privileges accorded by that document:
 - (d) every foreign registered aircraft operating in New Zealand.
- (2) Notwithstanding subsection (1), the Minister, acting on the recommendation of the Authority or the Director, as the case may require, may, by agreement with the appropriate foreign aeronautical authority,—
- (a) transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibility for a New Zealand registered aircraft operated by that foreign operator that the Authority or the Director has under this Act or regulations or rules made under this Act:
 - (b) vest in the Authority or the Director, as the case may require, all or part of the responsibility for foreign registered aircraft operated by a New Zealand operator that arises under this Act or regulations or rules made under this Act:
 - (c) grant exemptions from this Act, and from regulations and rules made under this Act, relevant to any exercise of the Minister's powers under this subsection.
- (2A) Every New Zealand registered aircraft shall, while being operated over the high seas, be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.
- (3) Except where an act or omission is required in order to comply with the laws of any foreign State, every holder of an aviation document who, while outside New Zealand and exercising or purporting to exercise the privileges accorded by that document, commits an act or omission that would constitute an offence if it were committed in New Zealand, shall be deemed to have committed an offence under this Act and may be pro-

ceeded against in New Zealand as if the act or omission had occurred within New Zealand.

- (4) Nothing in this section shall be interpreted as requiring a person or aircraft to contravene or be operated in contravention of a law of a foreign State that applies to or in respect of the person or aircraft.
- (5) Nothing in this Act shall be interpreted as limiting the privileges or immunities of—
 - (a) any foreign military aircraft; or
 - (b) the officers and crew of any foreign military aircraft.

Section 4(1): amended, on 1 June 2004, by section 5 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 4(1): amended, on 13 August 1996, by section 3 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 4(2): substituted, on 10 August 1992, by section 3 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 4(2A): inserted, on 10 August 1992, by section 3 of the Civil Aviation Amendment Act 1992 (1992 No 75).

5 Civil Aviation Authority

[Repealed]

Section 5: repealed, on 10 August 1992, by section 4 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Part 1

Entry into the civil aviation system

6 Requirement to register aircraft

- (1) Except as otherwise provided in this Act or rules made under this Act, every person lawfully entitled to the possession of an aircraft for a period of 28 days or longer which flies to, from, within, or over New Zealand territory shall register that aircraft and hold a valid certificate of registration for that aircraft from—
 - (a) the Director; or
 - (b) the appropriate aeronautical authorities of a contracting State of ICAO; or
 - (c) the appropriate aeronautical authorities of another State that is party to an agreement with the Government of New Zealand or the Civil Aviation Authority for New

Zealand which provides for the acceptance of each other's registrations.

- (2) No aircraft shall be registered in or remain registered in New Zealand if it is registered in any other country.
- (3) The Director may decline to register any aircraft in accordance with the provisions of rules made under this Act.
- (4) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 66.

Compare: 1964 No 68 s 29(2)(h)

Section 6(1): amended, on 13 August 1996, by section 4 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 6(1)(a): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 6(3): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

7 Requirement for aviation document

- (1) Rules made under this Act may require that an aviation document shall be required by or in respect of all or any of the following:
 - (a) New Zealand registered aircraft:
 - (b) aircraft pilots:
 - (c) flight crew members:
 - (d) air traffic service personnel:
 - (e) aviation security service personnel:
 - (f) aircraft maintenance personnel:
 - (g) air services:
 - (h) air traffic services:
 - (i) aerodromes and aerodrome operators:
 - (j) navigation installation providers:
 - (k) aviation training organisations:
 - (l) aircraft design, manufacture, and maintenance organisations:
 - (m) aeronautical procedures:
 - (n) aviation security services:
 - (o) aviation meteorological services:
 - (p) aviation communications services:

- (q) any persons, services, or things within any of the classes specified in paragraphs (a) to (p):
 - (r) such other persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be specified in the rules:
 - (s) any person who is an aviation examiner or medical examiner.
- (2) The requirements, standards, and application procedure for each aviation document, and the maximum period for which each document may be issued, shall be prescribed by rules made under this Act.
- (3) Subject to any rules made under this Act, an aviation document may be issued by the Director for such specified period and subject to such conditions as the Director considers appropriate in each particular case.
- (4) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 66.

Section 7(1)(s): added, on 1 April 2002, by section 6 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 7(3): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

8 Application for aviation document

- (1) Every application for the grant or renewal of an aviation document shall be made to the Director in the prescribed form or, if there is no prescribed form, in such form as the Director may require.
- (2) Every applicant for an aviation document shall include in the application the applicant's address for service in New Zealand including, where applicable, telephone and facsimile numbers.
- (3) It shall be the duty of every holder of an aviation document to maintain the currency of the information provided under subsection (2) by promptly notifying the Director of any changes to the address, telephone number, or facsimile number.

- (4) The Director shall ensure that a record of all information provided under this section is maintained at the Civil Aviation Registry.
- (5) Service of any notification under this Act on a holder of, or applicant for, an aviation document shall be effective service if served on the address last provided by that holder or applicant under this section.

Section 8: substituted, on 10 August 1992, by section 5 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 8(2): substituted, on 13 August 1996, by section 5 of the Civil Aviation Amendment Act 1996 (1996 No 91).

9 Grant or renewal of aviation document

- (1) After considering any application for the grant or renewal of an aviation document, the Director shall, as soon as is practicable, grant the application if he or she is satisfied that—
 - (a) all things in respect of which the document is sought meet the relevant prescribed requirements; and
 - (b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document—
 - (i) either holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Director under subsection (2); and
 - (ii) is a fit and proper person to have such control or hold the document; and
 - (iii) meets all other relevant prescribed requirements; and
 - (ba) in the case of a New Zealand AOC with ANZA privileges,—
 - (i) the requirements in section 11G(2) are met; and
 - (ii) the applicant meets or will meet the conditions in section 11G(4); and
 - (c) it is not contrary to the interests of aviation safety for the document to be granted or renewed.
- (2) For the purpose of granting or renewing an aviation document, the Director may, subject to any provisions in the rules, accept

such foreign qualifications or recognise such foreign certifications as he or she considers appropriate in each case.

- (3) It shall be a condition of every current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document continue to satisfy the fit and proper person test specified in subsection (1)(b)(ii).
- (4) Where the Director declines to grant an application for the grant or renewal of an aviation document under this section, the applicant may appeal against that decision to a District Court under section 66.

Section 9(1): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 9(1)(b)(i): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 9(1)(b)(iii): amended, on 10 August 1992, by section 6(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 9(1)(ba): inserted, on 30 March 2007, by section 6 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 9(1)(c): added, on 10 August 1992, by section 6(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 9(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 9(3): amended, on 13 August 1996, by section 6 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 9(3): amended, on 10 August 1992, by section 6(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 9(4): substituted, on 10 August 1992, by section 6(3) of the Civil Aviation Amendment Act 1992 (1992 No 75).

10 Criteria for fit and proper person test

- (1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Director shall, having regard to the degree and nature of the person's proposed involvement in the New Zealand civil aviation system, have regard to, and give such weight as the Director considers appropriate to, the following matters:
 - (a) the person's compliance history with transport safety regulatory requirements:
 - (b) the person's related experience (if any) within the transport industry:

- (c) the person's knowledge of the applicable civil aviation system regulatory requirements:
 - (d) any history of physical or mental health or serious behavioural problems:
 - (e) any conviction for any transport safety offence, whether or not—
 - (i) the conviction was in a New Zealand court; or
 - (ii) the offence was committed before the commencement of this Act:
 - (f) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under this Act:
 - (g) in the case where a New Zealand AOC with ANZA privileges applies, the person's compliance with the conditions specified in section 11G(4).
- (2) The Director shall not be confined to consideration of the matters specified in subsection (1) and may take into account such other matters and evidence as may be relevant.
- (3) The Director may, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act,—
- (a) seek and receive such information (including medical reports) as the Director thinks fit; and
 - (b) consider information obtained from any source.
- (4) Subsection (1) applies to a body corporate with the following modifications:
- (a) paragraphs (a), (b), (c), (e), (f), and (g) of that subsection shall be read as if they refer to the body corporate and its officers:
 - (b) paragraph (d) of that subsection shall be read as if it refers only to the officers of the body corporate.
- (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), disclose that information to that person and, in accordance with section 11, give that person a reasonable opportunity to refute or comment on it.
- (6) Nothing in subsection (5) shall require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.

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

Section 10(1): amended, on 10 August 1992, by section 7(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(1): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(1)(d): amended, on 10 August 1992, by section 7(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(1)(g): added, on 30 March 2007, by section 7(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 10(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(3): amended, on 10 August 1992, by section 7(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(3): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(3)(a): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(4): substituted, on 28 November 1991, by section 2 of the Civil Aviation Amendment Act 1991 (1991 No 116).

Section 10(4)(a): amended, on 30 March 2007, by section 7(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 10(5): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(6): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 10(7): substituted, on 1 June 2004, by section 7(3) of the Civil Aviation Amendment Act 2004 (2004 No 8).

11 Rights of persons affected by proposed adverse decisions

- (1) In this section, unless the context otherwise requires,—
- adverse decision** means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act
- affected document holder**, in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the aviation document
- person directly affected**, in relation to any adverse decision, means the person who would be entitled under section 66 to appeal against that adverse decision
- person on the basis of whose character the adverse decision arises**, in relation to any adverse decision made or proposed to be made on the grounds referred to in section 10, means the person whom the Director assesses as not being a fit and proper person.
- (2) Where the Director proposes to make an adverse decision under this Act in respect of any person, the Director, by notice in writing, shall—
- (a) notify the person directly affected by the proposed decision of the proposed decision; and
 - (b) subject to subsection (4), inform that person of the grounds for the proposed decision; and
 - (c) specify a date by which submissions may be made to the Director in respect of the proposed decision, which date shall not be less than 21 days after the date on which the notice is given; and
 - (d) where appropriate, specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given; and

- (e) notify the person of the person's right of appeal under section 66, in the event of the Director proceeding with the proposed decision; and
 - (f) specify such other matters as in any particular case may be required by any provision of this or any other Act.
- (3) Where the Director gives a notice under subsection (2), the Director—
 - (a) shall also supply a copy of the notice to—
 - (i) any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and
 - (ii) any affected document holder, where the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and
 - (b) may supply a copy of the notice to any other affected document holder.
- (4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in section 10(1), except to the extent that—
 - (a) the notice or copy is supplied to the person to whom the information relates; or
 - (b) that person consents to the supply of that information to any other person.
- (5) Where any notice or copy of a notice is given to any person under this section, the following provisions shall apply:
 - (a) it shall be the responsibility of that person to ensure that all information that that person wishes to have considered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under subsection (2)(c), or within such further period as the Director may allow:
 - (b) the Director may consider any information supplied by that person after the expiry of the period referred to in paragraph (a), other than information requested by the Director and supplied by that person within such reasonable time as the Director may specify:

- (c) the Director shall consider any submissions made in accordance with paragraph (a), other than information requested by the Director and supplied pursuant to a request referred to in paragraph (b).
- (6) After considering the matters referred to in subsection (5), the Director shall—
- (a) finally determine whether or not to make the proposed adverse decision; and
 - (b) as soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in subsection (3)(a), of—
 - (i) the Director's decision and the grounds for the decision; and
 - (ii) the date on which the decision will take effect; and
 - (iii) in the case of an adverse decision, the consequences of that decision and any applicable right of appeal (being a right of appeal specified in section 9(4) or section 17(7) or section 18(4)).

Section 11(1) **adverse decision**: substituted, on 10 August 1992, by section 8(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(1) **person on the basis of whose character the adverse decision arises**: amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(2): amended, on 10 August 1992, by section 8(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(2)(c): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(2)(d): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(2)(e): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(3): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(3)(a)(ii): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(5)(a): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(5)(b): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(5)(c): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(6): amended, on 10 August 1992, by section 8(3) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(6): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(6)(b)(i): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 11(6)(b)(iii): substituted, on 10 August 1992, by section 8(4) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Part 1A

ANZA mutual recognition

Part 1A: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Preliminary provisions

Heading: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

11A Purpose

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

Section 11A: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Australian AOCs with ANZA privileges

Heading: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

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

- (1) The holder of an Australian AOC with ANZA privileges may conduct air operations to, from, or within New Zealand if the holder provides the Director with—
 - (a) a copy of the Australian AOC with ANZA privileges; and
 - (b) written notice of the following:

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

Section 11B: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

11C New Zealand temporary stop notice

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

- (4) The Director may not delegate the power to issue or revoke a New Zealand temporary stop notice.
- (5) The Director may amend or revoke a New Zealand temporary stop notice before the period specified in that notice has expired.
- (6) The Director must revoke a New Zealand temporary stop notice if the Authority receives notification from CASA of the Director of CASA's response to the New Zealand temporary stop notice.

Section 11C: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

11D Contents of New Zealand temporary stop notice

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

Section 11D: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

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

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

Section 11E: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

AOCs with ANZA privileges

Heading: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

11F Requirements for AOCs with ANZA privileges

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

Section 11F: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

11G Grant of New Zealand AOC with ANZA privileges

- (1) The Director may, in accordance with this Act and any rules made under this Act, grant to an air operator in New Zealand an authorisation (called a New Zealand AOC with ANZA privileges) that will authorise the air operator to conduct air operations to, from, or within Australia.
- (2) Before the Director may grant a New Zealand AOC with ANZA privileges, the Director must—
 - (a) be satisfied that the air operator will be conducting air operations to, from, or within New Zealand; and
 - (b) receive from the licensing authority written confirmation that, if the New Zealand AOC with ANZA privileges is issued to the air operator, the licensing authority considers that the air operator will be eligible to conduct air operations in Australia under the air services arrangements in place between Australia and New Zealand; and
 - (c) be satisfied that the air operator has complied with, or is capable of complying with, all the relevant requirements of the Civil Aviation Act 1988 (Aust) and regula-

- tions and civil aviation orders made under that Act that relate to safety; and
- (d) consult with CASA.
- (3) A New Zealand AOC with ANZA privileges may be granted by amending an appropriate existing aviation document or by granting an appropriate new aviation document.
- (4) A New Zealand AOC with ANZA privileges is subject to the conditions that the holder—
- (a) must conduct air operations to, from, or within New Zealand; and
 - (b) must not hold an Australian AOC with ANZA privileges authorising the holder to conduct air operations that are covered by the New Zealand AOC with ANZA privileges; and
 - (c) must comply with all the requirements of the Civil Aviation Act 1988 (Aust) and regulations and civil aviation orders made under that Act that apply to the holder; and
 - (d) must undertake the supervision of its management systems from or within New Zealand; and
 - (e) must ensure that the training and supervision of its employees is principally undertaken from or within New Zealand; and
 - (f) must ensure that the majority of resources associated with the exercise of the privileges of the AOC are situated within New Zealand; and
 - (g) must ensure that the people who control the exercise of the privileges of the AOC spend the majority of their time in New Zealand.
- (5) A New Zealand AOC with ANZA privileges may be issued on any other conditions that the Director thinks appropriate.
- (6) In subsection (2), **licensing authority** has the same meaning as in Part 8A.

Section 11G: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

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

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

Section 11H: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

11I Change of country of certification

- (1) This section applies if the Director believes on reasonable grounds that—
 - (a) it would be in the interests of Australian and New Zealand civil aviation safety for the holder to conduct air operations in the Australian civil aviation system; and
 - (b) the holder of a New Zealand AOC with ANZA privileges is no longer able to comply with all the conditions specified in section 11G(4).
- (2) If this section applies, the Director must—
 - (a) consult with CASA; and
 - (b) notify the holder—

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

Section 11I: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

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

An employee of the Authority may, subject to any directions from the Director of CASA, perform any function or exercise any power delegated to that employee under the Civil Aviation Act 1988 (Aust) for the purpose of enabling that employee to perform the function or exercise the power in New Zealand in respect of Australian AOCs with ANZA privileges.

Section 11J: inserted, on 30 March 2007, by section 8 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Part 2

Functions, powers, and duties of participants in the civil aviation system

12 General requirements for participants in civil aviation system

- (1) Every person who does anything for which an aviation document is required (in the succeeding provisions of this section

called a participant) shall ensure that the appropriate aviation documents and all the necessary qualifications and other documents are held by that person.

- (2) Every participant shall comply with this Act, the relevant rules or regulations made under this Act, and the conditions attached to the relevant aviation documents.
- (3) Every participant shall ensure that the activities or functions for which the aviation document has been granted are carried out by the participant, and by all persons for whom the participant is responsible, safely and in accordance with the relevant prescribed safety standards and practices.
- (4) Every participant who holds an aviation document that authorises the provision of a service within the civil aviation system—
 - (a) shall, if so required by rules made under this Act, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the document; and
 - (b) shall provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and to promote safety; and
 - (c) shall provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

Section 12(2): amended, on 11 April 2008, by section 5 of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 12(4)(c): amended, on 28 November 1991, by section 3 of the Civil Aviation Amendment Act 1991 (1991 No 116).

13 Duties of pilot-in-command

The pilot-in-command of an aircraft shall—

- (a) be responsible for the safe operation of the aircraft in flight, the safety and well-being of all passengers and crew, and the safety of cargo carried; and

- (b) have final authority to control the aircraft while in command and for the maintenance of discipline by all persons on board; and
- (c) subject to section 13A, be responsible for compliance with all relevant requirements of this Act and regulations and rules made under this Act.

Section 13: substituted, on 13 August 1996, by section 7 of the Civil Aviation Amendment Act 1996 (1996 No 91).

13A Duties of pilot-in-command and operator during emergencies

- (1) Subject to subsections (2) and (6), in an emergency that arises in flight, the pilot-in-command may breach the provisions of this Act or of regulations or rules made under this Act.
- (2) For the purposes of subsection (1), a breach of any prescribed requirement is permitted only if the pilot-in-command is satisfied that—
 - (a) the emergency involves a danger to life or property; and
 - (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
 - (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.
- (3) Subject to subsections (4) to (6), where an emergency (not being an emergency that arises in flight) necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property, the pilot-in-command of the aircraft or the operator of the aircraft may breach the provisions of this Act or of regulations or rules made under this Act.
- (4) For the purposes of subsection (3), a breach of any prescribed requirement is permitted only if—
 - (a) the emergency involves a danger to life or property; and
 - (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and

- (c) there is no other reasonable means of alleviating, avoiding, or assisting with the emergency; and
 - (d) the degree of danger involved in deviating from the prescribed requirement is clearly less than the degree of risk in failing to attend to the emergency.
- (5) Nothing in subsection (3) permits—
- (a) the operation of an aircraft that is not registered in New Zealand or elsewhere; or
 - (b) the breach of any prescribed requirement as to the airworthiness of an aircraft; or
 - (c) the operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.
- (6) Where, in any emergency described in this section, a pilot-in-command or an operator breaches this Act or regulations or rules made under this Act in accordance with the provisions of this section, the pilot-in-command or the operator, as the case may be, shall—
- (a) immediately notify the relevant air traffic control service of the action; and
 - (b) as soon as practicable, notify the Director of the action and the circumstances that necessitated it, and, if requested by the Director, provide to the Director a written report in respect of the action.

Section 13A: inserted, on 13 August 1996, by section 7 of the Civil Aviation Amendment Act 1996 (1996 No 91).

14 Objectives of Minister

The objectives of the Minister under this Act are—

- (a) to undertake the Minister's functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transport system; and
- (b) to ensure that New Zealand's obligations under international civil aviation agreements are implemented.

Section 14: substituted, on 1 December 2004, by section 4 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

14A Functions of Minister

The functions of the Minister under this Act are—

- (a) to promote safety in civil aviation:

- (b) to administer New Zealand's participation in the Convention and any other international aviation convention, agreement, or understanding to which the Government of New Zealand is a party:
- (c) to administer the Crown's interest in the aerodromes referred to in Part 10:
- (d) to make rules under this Act.

Section 14A: inserted, on 1 December 2004, by section 4 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

14B Search and rescue operations

- (1) The Minister—
 - (a) must establish, maintain, and operate a search and rescue co-ordination centre to co-ordinate and conduct—
 - (i) an aviation search and rescue operation; and
 - (ii) a maritime search and rescue operation; and
 - (iii) any other search and rescue operation that the Minister considers appropriate; and
 - (b) may exercise any powers that may be necessary or desirable—
 - (i) for the effective co-ordination and performance of a search and rescue operation specified in paragraph (a); and
 - (ii) to implement any international convention or agreement relating to search and rescue to which New Zealand is a party; and
 - (c) may appoint persons to, either generally or in any particular case, participate in or co-ordinate a search and rescue operation specified in paragraph (a).
- (2) The Minister may authorise the payment, out of money appropriated for the purpose by Parliament, of an amount that the Minister considers appropriate to—
 - (a) any person who assisted in a search and rescue operation specified in subsection (1)(a) at the request of a person appointed under subsection (1)(c); or
 - (b) the owner of any vehicle, ship, or aircraft used in a search and rescue operation specified in subsection (1)(a) in response to a request by a person appointed under subsection (1)(c).

Section 14B: inserted, on 1 December 2004, by section 4 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

14C Minister may direct agencies with respect to search and rescue operations

The Minister may direct the Civil Aviation Authority or Maritime New Zealand, or any other Crown entity or government agency for which the Minister is responsible and whose functions are consistent with search and rescue operations, to do any or all of the following:

- (a) operate and maintain the search and rescue co-ordination centre established under section 14B(1)(a):
- (b) co-ordinate, or participate in the co-ordination of, any search and rescue operation specified in section 14B(1)(a):
- (c) perform, or participate in the performance of, any search and rescue operation specified in section 14B(1)(a):
- (d) exercise any or all of the powers of the Minister under section 14B(1)(b) and (c) and section 14B(2).

Section 14C: inserted, on 1 December 2004, by section 4 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 14C: amended, on 1 July 2005, by section 11(3) of the Maritime Transport Amendment Act 2004 (2004 No 98).

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

- (1) The Director may in writing require any person who—
- (a) holds an aviation document or an Australian AOC with ANZA privileges; or
 - (b) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, aviation related service, air traffic service, or aeronautical procedure; or
 - (c) is designated as an aviation examiner or medical examiner under Part 2A,—
- to undergo or carry out such inspections and such monitoring as the Director considers necessary in the interests of civil aviation safety and security.

- (1A) In the case of an Australian AOC with ANZA privileges, the Director may only carry out inspections and monitoring at the request of CASA.
- (2) The Director may, in respect of any person described in paragraph (a) or paragraph (b) of subsection (1), carry out such inspections and monitoring as the Director considers necessary in the interests of civil aviation safety and security.
- (2A) The Director may, in respect of a holder of a New Zealand AOC with ANZA privileges, carry out in Australia any inspections and monitoring that the Director considers necessary in the interests of civil aviation safety.
- (3) For the purposes of any inspection or monitoring carried out in respect of any person under subsection (2), the Director may in writing require from that person such information as the Director considers relevant to the inspection or the monitoring.

Section 15: substituted, on 13 August 1996, by section 8(1) of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 15(1)(a): amended, on 30 March 2007, by section 9(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 15(1)(b): amended, on 1 April 2002, by section 11 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 15(1)(c): inserted, on 1 April 2002, by section 11 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 15(1A): inserted, on 30 March 2007, by section 9(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 15(2A): inserted, on 30 March 2007, by section 9(3) of the Civil Aviation Amendment Act 2004 (2004 No 8).

15A Power of Director to investigate holder of aviation document

- (1) The Director may, in writing, require any holder of an aviation document to undergo an investigation conducted by the Director if the Director believes, on reasonable grounds, that it is necessary in the interests of civil aviation safety and security, and if the Director—
 - (a) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 12; or

- (b) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.
- (2) If the Director requires a holder to undergo an investigation, the Director must—
- (a) conclude the investigation as soon as practicable; and
 - (b) inform the holder, in writing, of—
 - (i) the date on which the investigation will begin; and
 - (ii) the results of the investigation, including—
 - (A) any recommendations arising out of the investigation; and
 - (B) the grounds for those recommendations.

Section 15A: inserted, on 1 June 2002, by section 5 of the Civil Aviation Amendment Act 2002 (2002 No 15).

16 Director of Civil Aviation Safety

[Repealed]

Section 16: repealed, on 10 August 1992, by section 10 of the Civil Aviation Amendment Act 1992 (1992 No 75).

17 Power of Director to suspend aviation document or impose conditions

- (1) The Director may suspend any aviation document issued under this Act or rules made under this Act or impose conditions in respect of any such document, if he or she considers such action necessary in the interests of safety, and if he or she—
- (a) considers such action necessary to ensure compliance with this Act or rules made under this Act; or
 - (b) is satisfied that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 12; or
 - (c) is satisfied the holder has contravened or failed to comply with section 49; or
 - (d) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner; or
 - (e) in the case of a holder of a New Zealand AOC with ANZA privileges, has received from the Director of

CASA a copy of an Australian temporary stop notice given to the holder.

- (2) Without limiting the general provisions of subsection (1), the Director may suspend any aviation document relating to the use of any aircraft, aeronautical product, or the provision of any service, or impose conditions in respect of any such document, if he or she considers that there is reasonable doubt as to the airworthiness of the aircraft or as to the quality or safety of the aeronautical product or service to which the document relates.
- (3) The suspension of any aviation document and any conditions imposed under subsection (1) or subsection (2) remain in force until the Director determines what action, if any, referred to in subsection (4) is to be taken; but any such suspension or conditions expire 10 working days after the date that the suspension or conditions are imposed unless, before the expiry of that 10-working day period, the Director extends the suspension or conditions for a further specified period.
- (4) The Director may take 1 or more of the following actions:
 - (a) impose conditions for a specified period:
 - (b) withdraw any conditions:
 - (c) suspend any aviation document for a specified period:
 - (d) revoke or partially revoke any aviation document under section 18.
 - (e) impose permanent conditions under section 18.
- (4A) If notice of a proposed revocation of an aviation document, or notice of the proposed imposition of permanent conditions, is given in accordance with section 11, either at the same time as the suspension of the document under this section is imposed or while the suspension is in force, the document to which the notice relates remains suspended until the Director finally decides whether to revoke the document or to impose permanent conditions on the document under section 18.
- (5) Any person whose aviation document has been suspended or made subject to conditions under subsection (4) shall forthwith produce that document to the Director for appropriate endorsement.

- (6) The whole or any part of an aviation document may be suspended under this section.
- (7) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 66.

Section 17(1)(c): substituted, on 10 August 1992, by section 11 of the Civil Aviation Act 1992 (1992 No 75).

Section 17(1)(d): amended, on 30 March 2007, by section 10(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 17(1)(e): added, on 30 March 2007, by section 10(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 17(3): substituted, on 1 June 2002, by section 6(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 17(4): substituted, on 1 June 2002, by section 6(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 17(4)(e): added, on 1 June 2004, by section 10(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 17(4A): inserted, on 1 June 2002, by section 6(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 17(4A): amended, on 1 June 2004, by section 10(3)(a) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 17(4A): amended, on 1 June 2004, by section 10(3)(b) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 17(5): amended, on 1 June 2002, by section 6(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

18 Power to revoke aviation document or impose conditions

- (1) The Director may, if he or she considers it necessary in the interests of aviation safety after an inspection, monitoring, or investigation carried out under this Act, revoke an aviation document or impose permanent conditions on an aviation document.
- (1A) Without limiting subsection (1), the Director may revoke or impose permanent conditions on an aviation document if the Director—
 - (a) has been advised by the Director of CASA that CASA has given the holder of the document an Australian temporary stop notice; and
 - (b) considers that the revocation or imposition of permanent conditions is necessary in the interests of aviation safety.

- (2) Revocation under this section may be in respect of the whole or any part of an aviation document.
- (3) If the Director proposes to take action under this section, he or she must give notice in accordance with section 11, which applies as if the proposed action were a proposed adverse decision under this Act.
- (4) A person whose aviation document is revoked or made subject to permanent conditions under this section must,—
 - (a) if the document is made subject to permanent conditions or revoked in part, immediately produce the document to the Director for appropriate endorsement;
 - (b) if the whole document is revoked, immediately surrender the document to the Director.
- (5) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 66.

Section 18: substituted, on 1 June 2002, by section 7 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 18(1A): inserted, on 30 March 2007, by section 11 of the Civil Aviation Amendment Act 2004 (2004 No 8).

19 Criteria for action taken under section 17 or section 18

- (1) The provisions of this section shall apply for the purpose of determining whether an aviation document should be suspended or made subject to conditions under section 17 or revoked or made subject to conditions under section 18.
- (2) Where this section applies, the Director may have regard to, and give such weight as the Director considers appropriate to, the following matters:
 - (a) the person's compliance history with transport safety regulatory requirements;
 - (b) any conviction for any transport safety offence, whether or not—
 - (i) the conviction was in a New Zealand court; or
 - (ii) the offence was committed before the commencement of this Act;
 - (c) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under this Act.

- (3) The Director shall not be confined to consideration of the matters specified in subsection (2) and may take into account such other matters and evidence as may be relevant.
- (4) The Director may—
 - (a) seek and receive such information as the Director thinks fit; or
 - (b) consider information obtained from any source.
- (5) If the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, subject to subsection (6), as soon as is practicable, but, in the case of the suspension of an aviation document or the imposition of conditions under section 17, no later than 5 working days after suspending the aviation document or imposing conditions, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.
- (6) Nothing in subsection (5) or subsection (7) requires the Director to disclose—
 - (a) any information, the disclosure of which would endanger the safety of any person; or
 - (b) any information or the fact of non-disclosure of that information, before suspending an aviation document or imposing conditions in respect of an aviation document under section 17.
- (7) If the Director determines not to disclose any information in reliance on subsection (6), the Director must inform the person of the fact of non-disclosure and,—
 - (a) in the case of non-disclosure to an individual of information about the individual,—
 - (i) inform the individual that the individual may, under the Privacy Act 1993, complain to the Privacy Commissioner about that non-disclosure; and
 - (ii) the provisions of that Act apply to that non-disclosure as if, following a request under that Act for the information withheld, the information had been withheld under section 27(1)(d) of that Act; and
 - (b) in any other case,—

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

Section 19(1): amended, on 1 June 2002, by section 8(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 19(2): amended, on 10 August 1992, by section 13(1)(a) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 19(2): amended, on 10 August 1992, by section 13(1)(b) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 19(3): amended, on 10 August 1992, by section 13(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 19(4): amended, on 10 August 1992, by section 13(3)(a) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 19(4)(a): amended, on 10 August 1992, by section 13(3)(b) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 19(5): amended, on 1 June 2002, by section 8(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 19(5): amended, on 10 August 1992, by section 13(4)(a) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 19(6): substituted, on 1 June 2002, by section 8(3) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 19(7): substituted, on 1 June 2004, by section 12 of the Civil Aviation Amendment Act 2004 (2004 No 8).

20 Power of Director to amend or revoke aviation document in other cases

- (1) The Director may, if so requested in writing by the holder of any aviation document, amend that document in the manner requested or revoke that document.
- (2) Subject to subsection (3), the Director may do any of the following:
 - (a) amend any aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder:
 - (b) revoke any aviation document if none of the privileges or duties for which the document has been granted are

being carried out, or are able to be carried out, by the holder:

- (c) amend any aviation document to correct any clerical error or obvious mistake on the face of the document.
- (3) Before taking any action under subsection (2), the Director shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.
- (4) The power to amend an aviation document under this section includes—
- (a) power to revoke the document and issue a new document in its place; and
 - (b) power to impose reasonable conditions.
- (5) When the holder of an aviation document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

Section 20 heading: amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 20(1): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 20(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 20(3): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 20(5): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

21 Power of Director to detain aircraft, seize aeronautical products, and impose prohibitions and conditions

- (1) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property, the Director may, if authorised by a warrant given by a judicial officer on written application on oath, do all or any of the following:
- (a) detain the aircraft or any aircraft of that class;
 - (b) seize the aeronautical product or any aeronautical products of that class;

- (c) prohibit or impose conditions on the operation of the aircraft or aircraft of that class, or the use of any aeronautical product or any aeronautical products of that class.
- (2) Where the Director believes on reasonable grounds that the operation or use of any aircraft or aeronautical product or any class of aircraft or aeronautical products may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may do all or any of the following:
 - (a) prohibit or impose conditions on the operation of the aircraft or all aircraft of that class;
 - (b) prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class;
 - (c) detain particular aircraft or seize particular aeronautical products where necessary in order to prevent their operation or use.
- (3) Any detention or seizure under subsection (1) or subsection (2) shall be maintained for only such time as is necessary in the interest of safety; but, if aircraft, aeronautical products, or parts thereof are required for the purpose of evidence in any prosecution under this Act those aircraft, products, or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.
- (4) The Director shall, if requested by the owner or the person for the time being in charge of an aircraft detained or an aeronautical product seized under subsection (1), provide in writing to the owner or that person the reasons for the detention or seizure.
- (5) Any person in respect of whom any decision is taken under this section may appeal against that decision to a District Court under section 66.
- (6) For the purpose of subsections (1) and (2), the Director shall notify any prohibitions or conditions to such persons as he or she considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.
- (7) *[Repealed]*

Section 21(1)(c): amended, on 10 August 1992, by section 14(a) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 21(6): amended, on 10 August 1992, by section 14(b) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 21(7): repealed, on 10 August 1992, by section 14(c) of the Civil Aviation Amendment Act 1992 (1992 No 75).

22 Delegation of Minister's functions or powers to Authority

- (1) The Minister may from time to time, either generally or particularly, delegate to the Authority all or any of the Minister's functions and powers under this Act.
- (2) Every delegation under this section shall be in writing.
- (3) No delegation under this section shall include the power to delegate under this section.
- (4) The power of the Minister to delegate under this section—
 - (a) is subject to section 28(9) and to any prohibitions, restrictions, or conditions contained in any other Act in relation to the delegation of the Minister's functions or powers; but
 - (b) does not limit any power of delegation conferred on the Minister by any other Act.
- (5) Subject to any general or special directions given or conditions imposed by the Minister, the Authority may exercise any functions or powers so delegated to the Authority in the same manner and with the same effect as if they had been conferred on the Authority directly by this section and not by delegation.
- (6) Where the Authority purports to act pursuant to any delegation under this section, the Authority, shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.
- (7) No such delegation shall affect or prevent the exercise of any function or power by the Minister, nor shall any such delegation affect the responsibility of the appropriate Minister for the actions of any person acting under the delegation.
- (8) The Authority must not delegate any functions or powers delegated to the Authority by the Minister without the written consent of the Minister.

Section 22: substituted, on 10 August 1992, by section 15 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 22(8): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

23 Delegation of Authority's functions or powers to employees of Authority

[Repealed]

Section 23: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

23A Delegation of Director's functions or powers to employees of Authority

- (1) The Director may from time to time, either generally or particularly, delegate to any employee of the Authority any of the Director's functions and powers under this Act or any other Act, or under any regulations or rules made under this Act, including functions or powers delegated to the Director under this Act.
- (2) Every delegation under this section shall be in writing.
- (3) *[Repealed]*
- (4) Notwithstanding subsection (1), the Director shall not delegate—
 - (a) *[Repealed]*
 - (b) the power under section 18 to revoke an aviation document.
- (5) The provisions of sections 73(4) and 74 to 76 of the Crown Entities Act 2004 apply as if references to the board were references to the Director, with all necessary modifications.
- (6) The Director must not delegate any functions or powers delegated to the Director by the Minister without the written consent of the Minister.
- (7) Any delegation under this section may be made to a specified employee of the Authority or to employees of a specified class, or to the holder or holders for the time being of a specified office or specified class of offices of the Authority.
- (8) Every delegation under this section, until it is revoked, continues in force according to its tenor, despite the fact that the employee of the Authority by whom it was made may cease to hold office, and continues to have effect as if made by the employee for the time being holding that office.

Section 23A: inserted, on 10 August 1992, by section 15 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 23A(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23A(4)(a): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23A(5): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23A(6): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23A(7): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23A(8): added, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

23B Delegation of Director's functions or powers to persons outside Authority

- (1) *[Repealed]*
- (2) Subject to this section, the Director may from time to time either generally or particularly delegate to any person who is not an employee of the Authority any of the Director's functions and powers under this Act, or under any regulations or rules made under this Act, other than—
 - (a) the power under section 18 to revoke aviation documents; or
 - (b) the power under section 41 to suspend or revoke aviation documents; or
 - (c) the power under section 58 to issue infringement notices.
- (2A) Any function or power that may be delegated under subsection (2) to a person in New Zealand who is not an employee of the Authority may be delegated under that subsection to an officer of CASA for the purpose of enabling that officer to perform the function or exercise the power in Australia in respect of New Zealand AOCs with ANZA privileges.
- (3) Every delegation under this section shall be in writing.
- (4) No delegation shall be made under this section without the written consent of the Minister.
- (5) In any case where the Director has delegated any functions or powers to any person under this section, that person may, with the prior approval in writing of the Minister, delegate to

any other person such of those functions or powers as are so approved.

- (6) The provisions of sections 73(4) and 74 to 76 of the Crown Entities Act 2004 apply as if references to the board were references to the Director, with all necessary modifications.
- (7) Any delegation under this section may be made to a specified person or persons of a specified class or to the holder or holders for the time being of a specified office or specified class of office.
- (8) Every delegation under this section shall be given for a specified period but in any event shall be revocable at will.
- (9) *[Repealed]*
- (10) *[Repealed]*
- (11) Every person purporting to act under any delegation under this section shall when reasonably requested to do so produce evidence of his or her authority to so act.
- (12) Any person who exercises any function or power under a delegation made under this section or under section 73 of the Crown Entities Act 2004 may charge the person in respect of whom the function or power is exercised a reasonable fee in respect of the exercise of that function or power.

Section 23B: inserted, on 10 August 1992, by section 15 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 23B heading: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23B(1): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23B(2A): inserted, on 30 March 2007, by section 13 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 23B(5): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23B(6): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23B(9): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23B(10): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 23B(12): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

23C Restrictions on delegations

Notwithstanding sections 23 to 23B of this Act or section 73 of the Crown Entities Act 2004,—

- (a) neither the Authority nor the Director may delegate any function or power that does not relate to the functions or powers of the Aviation Security Service to any person in the Aviation Security Service without the prior written approval of the Minister:
- (b) neither the Authority nor the Director may delegate any function or power in relation to the Aviation Security Service to any person outside that Service without the prior written approval of the Minister:
- (c) the General Manager shall not delegate any function or power in relation to the Aviation Security Service to any employee of the Authority who is not in the Aviation Security Service without the prior written approval of the Minister.

Section 23C: inserted, on 20 August 1993, by section 3 of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 23C: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

24 General power of entry

- (1) For the purpose of carrying out his or her functions, duties, or powers under this Act or regulations or rules made under this Act or for the purpose of the ANZA mutual recognition agreements, every person duly authorised by the Director shall have right of access at any reasonable time to the following:
 - (a) any aircraft, aerodrome, building, or place:
 - (b) any document or record concerning any aircraft, aeronautical product, or aviation related service.
- (1A) In the case of an Australian AOC with ANZA privileges, the power conferred by subsection (1) may only be exercised at the request of CASA.
- (2) Without limiting the power conferred by subsection (1), every person duly authorised by the Director who has reasonable grounds to believe that—
 - (a) any breach of this Act or of regulations or rules made under this Act is being or about to be committed; or

- (ab) in the case of an Australian AOC with ANZA privileges, a breach of the Civil Aviation 1988 (Aust) or of regulations or orders made under that Act is being, or is about to be, committed; or
 - (b) a condition imposed under any civil aviation document or Australian AOC with ANZA privileges is not being complied with; or
 - (c) a situation exists within the civil aviation system or is about to exist that constitutes a danger to persons or property—
may at any reasonable time enter any aircraft, aerodrome, building, or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) exists.
- (3) Every person who is authorised to have access to or to enter any aircraft, aerodrome, building, or place under subsection (1) or subsection (2)—
- (a) may require any person who is in possession of an aviation document, or of any certificate, book, manual, record, list, notice, or other document that is required to be kept under this Act or, in the case of an Australian AOC with ANZA privileges, under Australian law, to produce or surrender it; and
 - (b) must, if a document is surrendered under paragraph (a), orally inform the relevant aviation document holders or, if applicable, the relevant Australian AOC with ANZA privileges holder, as soon as practicable, and in writing that the document has been surrendered.
- (3A) The right of access and the powers conferred by any of subsections (1) to (3) may not be used to gain a right of access to, to inspect, or to require the production or surrender of a record specified in paragraph (a) or paragraph (b) of section 14C(2) of the Transport Accident Investigation Commission Act 1990.
- (4) Nothing in subsection (1) or subsection (2) shall confer on any person the power to enter any dwellinghouse, or any marae or building associated with a marae, unless the entry is authorised by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer

is satisfied that the entry is essential to enable the inspection to be carried out.

- (5) Every warrant issued under subsection (4) shall be directed to a named person and shall be valid for a period of 1 month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.
- (6) Every person exercising the power of entry conferred by subsection (1) or subsection (2) shall carry a warrant of authority issued by the Director specifying—
 - (a) the name and the office or offices held by the person; and
 - (b) that the person is authorised by the Director to exercise the power conferred by subsections (1) and (2) to enter aircraft, aerodromes, buildings, and places, and to carry out such inspection; and
 - (c) in the case of an Australian AOC with ANZA privileges, that the power is being exercised at the request of CASA.
- (7) Every person exercising the power of entry conferred by subsections (1) and (2) shall produce the warrant of authority and evidence of identity—
 - (a) if practicable on first entering the aircraft, aerodrome, building, or place; and
 - (b) whenever subsequently reasonably required to do so.
- (8) Every constable shall have and may exercise all or any of the powers conferred on a person who has been duly authorised by the Director under this section.

Section 24(1): amended, on 30 March 2007, by section 14(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(1): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 24(1A): inserted, on 30 March 2007, by section 14(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 24(2)(ab): inserted, on 30 March 2007, by section 14(3) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(2)(b): amended, on 30 March 2007, by section 14(4) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(3): substituted, on 1 June 2002, by section 9 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 24(3): amended, on 1 June 2004, by section 14(5) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(3)(a): amended, on 30 March 2007, by section 14(6) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(3)(b): substituted, on 30 March 2007, by section 14(7) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(3A): inserted, on 10 September 1999, by section 10 of the Transport Accident Investigation Commission Amendment Act 1999 (1999 No 113).

Section 24(6): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 24(6)(b): amended, on 30 March 2007, by section 14(8) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(6)(b): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 24(6)(c): added, on 30 March 2007, by section 14(8) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 24(8): amended, on 1 October 2008, pursuant to section 116(a)(vii) of the Policing Act 2008 (2008 No 72).

Section 24(8): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

25 Powers of entry of Corporation

- (1) Subject to subsection (3), Airways Corporation of New Zealand Limited may—
 - (a) enter upon any land for the purpose of gaining access to cables, wires, navigational aids, or other equipment used for the purpose of carrying out the functions of the Corporation, being equipment installed before 1 January 1988; and
 - (b) perform any act or operation necessary for the purpose of inspecting, maintaining, or repairing any such equipment.
- (2) A certificate under the seal of the Corporation containing a statement that any equipment of a kind referred to in subsection (1) was installed before 1 January 1988 shall be admissible in evidence in any proceedings and shall, in the absence of proof to the contrary, constitute proof of that statement.
- (3) The power to enter upon land conferred by subsection (1) shall be subject to the following conditions:

- (a) entry to the land shall be made only by an officer, employee, or agent of the Corporation authorised by it in writing, or by persons under the immediate control of such an officer, employee, or agent:
 - (b) reasonable notice of the intention to enter shall be given, and the provisions of Part 10 of Te Ture Whenua Maori Act 1993 shall apply in respect of notices served in the circumstances set out in that Part of that Act:
 - (c) entry shall be made at reasonable times:
 - (d) the officer, employee, or agent shall have with him or her, and shall produce on initial entry and subsequently if required to do so, evidence of his or her identity and authority.
- (4) Subsection (3) shall not apply where the entry is necessary in circumstances of probable danger to life or property.
- (5) Any equipment owned by the Corporation that is fixed to or installed over or under the land and is not owned by the Corporation shall be deemed to be lawfully fixed or installed and shall continue to be fixed or installed until the Corporation otherwise decides, and no person other than the Corporation shall have any interest in any such equipment by reason only of having an interest in the land.

Section 25(3)(b): amended, on 1 July 1993, pursuant to section 362(2) of Te Ture Whenua Maori Act 1993 (1993 No 4).

26 Obligation to notify all accidents and incidents

- (1) The pilot-in-command of any aircraft that is involved in an accident shall notify the accident to the Authority as soon as practicable.
- (1A) Every person who—
- (a) operates, maintains, or services, or does any other act in respect of any aircraft, aeronautical product, or aviation related service; and
 - (b) is involved in an incident,—
- shall, where required to do so under rules made under this Act, notify the incident to the Authority.
- (2) If, due to injuries or death, the pilot-in-command is unable to give the necessary notice under subsection (1), the operator shall provide the necessary notice.

- (3) The co-ordinator of any search and rescue operation for any aircraft shall notify the Authority of the operation as soon as practicable.
- (4) The Authority may on being notified under subsection (1) or subsection (1A) or subsection (2) or subsection (3) request such additional information, in such form as the Authority considers appropriate in each specific case, and the pilot-in-command or operator or person of whom the request is made shall provide the additional information forthwith.

Section 26(1): substituted, on 10 August 1992, by section 16(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 26(1A): inserted, on 10 August 1992, by section 16(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 26(3): substituted, on 10 August 1992, by section 16(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 26(4): amended, on 13 August 1996, by section 9 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 26(4): amended, on 10 August 1992, by section 16(3) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 26(4): amended, on 10 August 1992, by section 40(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

26A Obligation to identify pilot-in-command

- (1) If a pilot-in-command of an aircraft is alleged to have committed an offence under this Act or the rules, the Director or a constable may—
 - (a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and
 - (b) require that person to give all information in that person's possession or reasonably obtainable by that person that may lead to the identification of the pilot.
- (2) A request under subsection (1) may be made orally or in writing, and the operator or holder of the certificate of registration (as the case may be) must comply with the request within 10 working days.
- (3) Subsection (1) does not apply if the operator or holder of the certificate of registration has been arrested or detained in relation to the suspected offence.

Section 26A: inserted, on 1 June 2002, by section 10 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 26A(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

27 Duty of Authority to notify accidents and incidents to Transport Accident Investigation Commission

- (1) As soon as practicable after any accident or incident is notified to the Authority under section 26, the Authority shall notify the Transport Accident Investigation Commission that the Authority has been notified of the accident or incident, if it is—
 - (a) an accident involving aircraft; or
 - (b) a serious incident in accordance with the provisions of the Convention.
- (2) Where the Authority has been notified of a search and rescue operation under section 26(3), the Authority shall forthwith notify the Transport Accident Investigation Commission accordingly.

Section 27: substituted, on 13 August 1996, by section 10(1) the Civil Aviation Amendment Act 1996 (1996 No 91).

Part 2A Medical certification

Part 2A: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27A Interpretation

- (1) In this Part, unless the context otherwise requires,—

accredited medical conclusion means the conclusion reached by 1 or more medical experts acceptable to the Director for the purposes of the case concerned, in consultation with flight operations or any other experts that may be necessary

applicant means a person who has applied for a medical certificate; and includes a licence holder who has reapplied for a medical certificate

licence holder means a person who—

 - (a) holds an aviation document or is a pilot; and

- (b) holds, or is required under the rules to hold, a medical certificate

medical certificate means a medical certificate—

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

operator includes an air traffic service provider.

- (2) A medical certificate is not an aviation document.
- (3) In this Part, the phrase **privileges to which a medical certificate relates**, and its variations, means those privileges under this Act that may be exercised by a person who—
 - (a) holds a current aviation document; or
 - (b) is permitted under the rules to operate an aircraft solo as a pilot.

Section 27A: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 27A(1) **medical certificate**: substituted, on 1 June 2004, by section 15 of the Civil Aviation Amendment Act 2004 (2004 No 8).

27B Power of Director to issue medical certificate

- (1) After considering an application for a medical certificate, the Director must, as soon as practicable but no later than 30 working days after the date of receiving the report of the medical examiner, issue the medical certificate if he or she is satisfied that the applicant meets the medical standards prescribed in the rules, unless the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.
- (2) Despite subsection (1), the Director may, relying on flexibility, issue a medical certificate to the applicant.
- (3) In subsection (2), **flexibility** means the use of medical judgment to issue a medical certificate if the following conditions are fulfilled:
 - (a) an accredited medical conclusion indicates that in special circumstances the applicant's failure to meet any medical standard prescribed in the rules is such that the exercise of the privileges to which a medical certificate relates is not likely to jeopardise aviation safety; and

- (b) the relevant ability, skill, and experiences of the applicant and operational conditions have been given due consideration; and
 - (c) the medical certificate is endorsed with any conditions, restrictions, or endorsements when the safe performance of the applicant's duties is dependent on compliance with those conditions, restrictions, or endorsements.
- (4) The Director may impose any conditions, restrictions, or endorsements on a medical certificate issued under this section.
- (5) Before issuing a medical certificate, the Director—
 - (a) must have regard to the report of the medical examiner and any other information that may be relevant; and
 - (b) may require the applicant, at the applicant's expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the Director reasonably considers necessary to assess the applicant.
- (6) If the Director requires an applicant to undertake any other test, examination, or re-examination, or to provide any medical information, the period in which the Director must make a decision in relation to the medical certificate under this section does not include the number of days that are required to conduct and deliver the results of the test, examination, or re-examination, or to provide the medical information, to the Director.
- (7) The Director must maintain a register of current medical certificates issued under this section.
- (8) Any decision made under this section by the Director in relation to a medical certificate other than a decision under subsection (5)(b) is subject to section 27L (review of decisions regarding medical certificates or applications).

Section 27B: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27C Changes in medical condition of licence holder

- (1) Subject to any directions that the Director may issue under section 27G(1)(b), if a licence holder is aware of, or has rea-

sonable grounds to suspect, any change in his or her medical condition or the existence of any previously undetected medical condition that may interfere with the safe exercise of the privileges to which his or her medical certificate relates, the licence holder—

- (a) must advise the Director of the change as soon as practicable; and
 - (b) may not exercise the privileges to which the licence holder's medical certificate relates.
- (2) Subject to any directions that the Director may issue under section 27G(1)(b), if an aviation examiner or medical examiner or operator is aware of, or has reasonable grounds to suspect, any change in the medical condition of a licence holder or the existence of any previously undetected medical condition in the licence holder that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the aviation examiner or medical examiner or operator must advise both the licence holder and the Director of the change as soon as practicable.
- (3) Subject to any directions that the Director may issue under section 27G(1)(b), if a medical practitioner has reasonable grounds to believe that a person is a licence holder and is aware, or has reasonable grounds to suspect, that the licence holder has a medical condition that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the medical practitioner must, as soon as practicable,—
- (a) inform the licence holder that the Director will be advised of the condition; and
 - (b) advise the Director of the condition.
- (4) An aviation examiner or medical examiner or a medical practitioner is not subject to any civil or criminal liability for—
- (a) doing an indemnified act in good faith in the course of carrying out his or her functions under this Part; or
 - (b) doing an indemnified act in good faith in the course of answering any questions put to him or her by the Director that—
 - (i) concern a licence holder; and

- (ii) are relevant to any action the Director may take under this Part.
- (5) In this section, **indemnified act** means any of the following acts:
 - (a) advising the Director, whether in writing or otherwise, that a licence holder—
 - (i) may not meet the medical standards prescribed in the rules; or
 - (ii) may be unable to exercise safely the privileges to which the licence holder's medical certificate relates:
 - (b) expressing to the Director, whether in writing or otherwise, an opinion that the licence holder who the aviation examiner or medical examiner or medical practitioner has examined or treated may be unable to exercise safely the privileges to which the licence holder's medical certificate relates because of—
 - (i) illness or any bodily or mental infirmity, defect, incapacity, or risk of incapacity suffered by the licence holder; or
 - (ii) the effect on the licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity:
 - (c) stating to the Director, whether in writing or otherwise,—
 - (i) the nature of a licence holder's illness, infirmity, defect, incapacity, or risk of incapacity; or
 - (ii) the effect on a licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity.

Section 27C: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 27C(3): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 27C(4): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 27C(5)(b): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

27D 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.
- (2) The Director may, by written notice, require any applicant to disclose, or authorise the disclosure of, any information relevant to his or her medical condition or history for the purpose of determining whether or not the applicant is eligible for a medical certificate under section 27B.

Section 27D: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27E Expiry of medical certificate

The Director may, on receiving an application for a medical certificate from a licence holder before the expiry of his or her existing medical certificate, grant an extension of no more than 60 days from the expiry date of the licence holder's existing medical certificate with any additional conditions, restrictions, or endorsements as the Director considers necessary.

Section 27E: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27F Designation of aviation examiners and medical examiners

- (1) The Director must designate, by issuing an aviation document under section 9, 1 or more medical examiners to conduct examinations under section 27D.
- (2) The Director may designate, by issuing an aviation document under section 9, 1 or more aviation examiners to conduct specified examinations that the Director may require under this Part.

Section 27F: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27G General directions and emergency directives

- (1) The Director may, by notice in the *Gazette*, issue general directions in relation to—
 - (a) conducting examinations of applicants and licence holders, and reporting the results of those examinations to the Director; and

- (b) providing exceptions for temporary medical conditions to the reporting requirements set out in section 27C; and
 - (c) specifying the requirements of examinations or other clinical matters, which must be reasonable, including, but not limited to,—
 - (i) the medical content of examinations:
 - (ii) the interpretation and analysis of results of examinations:
 - (iii) the significance of results of examinations for the purpose of determining whether or not an applicant is eligible for a medical certificate under section 27B.
- (2) Before issuing general directions under subsection (1), the Director must consult with those persons, health professionals with aviation medical experience, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies that he or she considers appropriate.
- (3) General directions issued in relation to the matters specified in subsection (1)(a) or (c) must be—
- (a) notified in writing to aviation examiners or medical examiners; and
 - (b) incorporated in a medical manual issued by the Director.
- (4) The Director may issue directives in emergency situations without consultation or prior notice in the *Gazette*, but those directives—
- (a) must be published in the *Gazette* as soon as practicable after they are issued; and
 - (b) expire on the day that is 90 days after the date on which they were issued.
- (5) The Director may reissue, under subsection (1), directives issued under subsection (4) before or after they expire.

Section 27G: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27H Investigation of medical condition of licence holder

- (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 conducted by any

- suitably qualified and experienced person, or to 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—
- (a) may be unable to exercise safely the privileges to which the medical certificate relates; or
 - (b) has obtained his or her medical certificate fraudulently.
- (2) If the Director has delegated under section 27O the authority to issue medical certificates to any medical examiner, the Director may, by written notice to the relevant licence holder, withdraw any medical certificate that the medical examiner has issued under that authority within 60 days after the date it was issued if the Director requires the licence holder to supply additional medical information, in which case the Director must decide whether to reissue the medical certificate in accordance with section 27B.
- (3) The Director may, by written notice, require any licence holder, at the Authority's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his or her medical certificate if—
- (a) the Director—
 - (i) is monitoring licence holders on the basis of random selection from the register of current medical certificates that is required to be maintained under section 27B(7); or
 - (ii) has reasonable grounds to believe that the licence holder's medical certificate was issued in error; or
 - (iii) is monitoring aviation examiners or medical examiners for compliance with the requirements of this Act or the rules; and
 - (b) the Director has reasonable grounds to believe that any of those tests, examinations, re-examinations, or medical information are necessary to investigate the matters specified in paragraph (a).
- (4) The Director may, by written notice, require any licence holder to disclose, or authorise the disclosure of, any relevant infor-

mation for the purpose of determining whether or not the licence holder—

- (a) meets the medical standards prescribed in the rules; or
- (b) is able to exercise safely the privileges to which the medical certificate relates.

Section 27H: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27I Revocation, suspension, amendment, and surrender of medical certificate

- (1) If the Director has reasonable grounds to believe that a licence holder may be unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director may, by written notice to the licence holder,—
 - (a) suspend any medical certificate issued to the licence holder; or
 - (b) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.
- (2) If the Director has reasonable grounds to believe that a licence holder is unable to exercise safely the privileges to which the licence holder's medical certificate relates, the Director must, by written notice to the licence holder,—
 - (a) suspend any medical certificate issued to the licence holder; or
 - (b) revoke any medical certificate issued to the licence holder; or
 - (c) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.
- (3) If the Director has reasonable grounds to believe that a person who has been delegated authority under section 27O to issue a medical certificate has issued a medical certificate other than in accordance with this Part or the terms of the delegated authority, the Director—
 - (a) may, by written notice to the licence holder,—
 - (i) suspend any medical certificate issued to the licence holder; or

- (ii) revoke any medical certificate issued to the licence holder; or
 - (iii) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder; and
 - (b) may, by written notice to the person with delegated authority, revoke that person's delegated authority.
- (4) Any notice issued under this section must state the grounds for the Director's decision.
- (5) A notice of suspension issued under subsection (1)(a) or subsection (2)(a) or subsection (3)(a)(i) remains in force until the Director determines what action, if any, referred to in subsection (7) is to be taken, but any such suspension expires 10 working days after the date that the suspension is imposed unless, before the expiry of that 10-working-day period, the Director extends the suspension for a further specified period not exceeding 10 working days (the aggregate suspension period may not exceed 20 working days after the date on which the suspension is imposed).
- (6) Any conditions, restrictions, or endorsements that are imposed or made under subsection (1)(b) or subsection (2)(c) or subsection (3)(a)(iii) remain in force until the Director determines what action, if any, referred to in subsection (7) is to be taken, but any of those conditions, restrictions, or endorsements expire 10 working days after the date that they are imposed unless, before the expiry of that 10-working-day period, the Director extends the conditions, restrictions, or endorsements for a further specified period not exceeding 10 working days (the aggregate period may not exceed 20 working days after the date on which the conditions, restrictions, or endorsements are imposed).
- (7) If a notice is issued under subsection (1) or subsection (2) or subsection (3), the Director may, by written notice, take 1 or more of the following actions:
 - (a) impose or amend conditions, restrictions, or endorsements for a specified period:
 - (b) withdraw any conditions, restrictions, or endorsements:
 - (c) disqualify the licence holder from holding the medical certificate for a specified period:

- (d) revoke the medical certificate;
 - (e) cancel the suspension.
- (8) If the Director revokes a medical certificate under subsection (2)(b) or subsection (3)(a)(ii) or subsection (7)(d) or subsection (11) or imposes any conditions, restrictions, or endorsements on a medical certificate under subsection (7)(a) or disqualifies a licence holder under subsection (7)(c), the licence holder has 20 working days from the date of the decision to ask the convener to review the decision under section 27L, after which time the decision may not be referred to the convener.
- (9) A person who has had his or her medical certificate revoked, withdrawn, or suspended or who is disqualified from holding the medical certificate for a specified period must surrender the medical certificate to the Director, a person authorised by the Director, or a constable.
- (10) If the Director issues a notice under this section, the Director—
- (a) must also, if practicable, notify any aviation document holder affected by the notice, other than the licence holder, if the Director reasonably considers it necessary for reasons of aviation safety; and
 - (b) may notify any other affected aviation document holder.
- (11) The Director may, by written notice, revoke a medical certificate if a licence holder fails, without reasonable excuse, to comply with a demand under section 27H(1) or section 27H(3) or section 27H(4) within a reasonable period of time.
- (12) Any licence holder may return his or her medical certificate to the Director and ask the Director, in writing, to cancel the medical certificate.
- (13) If a licence holder asks the Director to cancel his or her medical certificate, the Director must—
- (a) cancel the medical certificate; and
 - (b) update the register of current medical certificates.

Section 27I: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 27I(9): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

27J Appointment of convener and deputy convener

- (1) The Minister must—

- (a) appoint a convener and a deputy convener for a period of no longer than 3 years; and
 - (b) consult with the Director, and other parties as the Minister thinks fit, before making either appointment; and
 - (c) take into account any representations made under paragraph (b).
- (2) The Minister may renew an appointment as convener or deputy convener for 1 or more periods, each of which may not exceed 3 years.
- (3) If the Minister renews an appointment, he or she must—
 - (a) consult with the Director, and other parties as the Minister thinks fit, before making the renewal; and
 - (b) take into account any representations made under paragraph (a).
- (4) The convener and the deputy convener must—
 - (a) be medical practitioners who are suitably qualified, and experienced or knowledgeable in civil aviation; and
 - (b) be able to represent the public interest in aviation safety.
- (5) If the convener is unavailable for any reason, the deputy convener must discharge the duties of the convener under this section until—
 - (a) the convener is available; or
 - (b) the Minister has appointed a new convener.

Section 27J: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 27J(4)(a): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

27K Cancellation of appointment as convener or deputy convener

- (1) The Minister may cancel a person's appointment under section 27J(1) if the person fails to discharge satisfactorily his or her duties as convener or deputy convener, as the case may be.
- (2) Before cancelling an appointment, the Minister must—
 - (a) give the person written notice of the matters that constitute grounds for cancellation; and
 - (b) give the person a reasonable opportunity to make representations that explain why his or her appointment should not be cancelled; and

- (c) take into account any representations made under paragraph (b).
- (3) If the Minister cancels an appointment, the Minister must give the person written notice of the cancellation that sets out the grounds for the cancellation.

Section 27K: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27L Review of decisions regarding medical certificates or applications

- (1) A licence holder or an applicant may, within 20 working days of a decision being made, ask the convener in writing to review the following decisions made by the Director about that person's medical certificate or application:
 - (a) any decision made under section 27B, other than a decision made under section 27B(5)(b);
 - (b) any decision made under section 27I, other than a decision made under—
 - (i) section 27I(1); or
 - (ii) section 27I(2)(a); or
 - (iii) section 27I(2)(c); or
 - (iv) section 27I(3)(a)(i); or
 - (v) section 27I(3)(a)(iii).
- (2) If such a request is made, the convener must, as soon as practicable, review the decision.
- (3) The convener—
 - (a) must draw on the advice and expertise of at least 1 person who the convener is satisfied is suitably qualified and experienced to assist the convener in his or her assessment of the decision that is under review; and
 - (b) must have regard to the purpose and scheme of the Act and the Director's duties under the Act when carrying out his or her review of the decision; and
 - (c) may require the person who asked for the review, at that person's expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the convener considers

- reasonably necessary to carry out his or her review of the decision; and
- (d) must receive and consider the relevant evidence provided under subsection (6).
- (4) The convener must, as soon as practicable, report the results of his or her review to the Director in writing.
 - (5) The Director must, within 10 working days of receiving the convener's report, implement the results of the decision contained within the convener's report or, if the Director does not implement the convener's report, notify the licence holder or applicant, in writing, of the Director's reasons for not doing so.
 - (6) The licence holder or applicant or Director may, either directly or through his or her medical experts, participate in the review process by providing relevant evidence to the convener regarding any medical matter at issue with respect to the decision that is under review.
 - (7) The convener may not review a decision made by the Director if the convener—
 - (a) acted as an aviation examiner or medical examiner of the person requesting the review with respect to that person's application for a medical certificate; or
 - (b) has any other conflict of interest with respect to the person's medical certificate.
 - (8) Any decision by the Director under review by the convener remains in force until the Director makes a final decision under subsection (5).

Section 27L: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27M Referral to convener by agreement

- (1) An application for a medical certificate may, by agreement in writing between the Director and the applicant, be referred to the convener for advice before the Director makes a decision on the application.
- (2) If an application is referred to the convener under subsection (1),—
 - (a) the deadline imposed on the Director under section 27B(1) does not apply; and

- (b) the convener must,—
 - (i) as soon as practicable, assess the application; and
 - (ii) draw on the advice and expertise of at least 1 person who the convener is satisfied is suitably qualified and experienced to assist the convener in his or her assessment of the application; and
 - (iii) require the applicant, at the applicant's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, that the convener considers reasonably necessary to carry out his or her assessment of the application; and
 - (iv) have regard to the purpose and scheme of the Act and the Director's duties under the Act when making his or her assessment of the application; and
 - (v) as soon as practicable, report the results of his or her assessment to the Director in writing; and
 - (vi) receive and consider the relevant evidence provided under subsection (5).
- (3) The Director must, within 10 working days of receiving the convener's report,—
 - (a) consider the convener's report; and
 - (b) make his or her decision in writing; and
 - (c) provide to the applicant—
 - (i) a copy of the convener's report; and
 - (ii) a copy of the Director's decision.
- (4) If an application is referred to the convener under this section, the applicant may not ask the convener to review the Director's eventual decision.
- (5) The applicant or Director may, either directly or through his or her medical experts, participate in the convener's assessment of the application by providing relevant evidence to the convener regarding any medical matter at issue with respect to that application.
- (6) The convener may not assess the application if the convener—

- (a) acted as an aviation examiner or medical examiner of the applicant with respect to that person's application for a medical certificate; or
- (b) has any other conflict of interest with respect to the person's medical certificate.

Section 27M: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27N Delegation of Director's powers under this Part to medical practitioners who are employees of Authority

- (1) The Director may, either generally or particularly, delegate to any suitably qualified medical practitioner who is an employee of the Authority any of the Director's functions and powers under this Part or under the rules relating to medical certification.
- (2) Every delegation under this section must be in writing.
- (3) *[Repealed]*
- (4) Section 23A applies to a delegation under this section.
- (5) Any delegation under this section may be made to a suitably qualified medical practitioner who is the holder of a specified office of the Authority.

Section 27N: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 27N heading: amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 27N(1): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

Section 27N(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 27N(4): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 27N(5): amended, on 18 September 2004, by section 175(1) of the Health Practitioners Competence Assurance Act 2003 (2003 No 48).

27O Delegation of Director's power under this Part to medical examiners who are not employees of Authority

- (1) The Director may, either generally or particularly, delegate to any suitably qualified medical examiner who is not an employee of the Authority any of the Director's functions and powers under this Part or under the rules relating to medical

certification other than the power under this Part to revoke medical certificates.

- (2) Despite subsection (1), the Director must delegate to suitably qualified medical examiners who are not employees of the Authority the power to issue medical certificates to any person who qualifies for a medical certificate under section 27B(1) or who otherwise meets the criteria for a standard medical assessment as prescribed in the rules or by the Minister under section 27Q(3).
- (3) Every delegation under this section must be in writing.
- (4) Subject to any general or special directions given or conditions imposed by the Director, any medical examiner to whom any functions or powers are delegated under this section may exercise those functions and powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.
- (5) Any delegation under this section may be made to a specified medical examiner or a specified class of medical examiner or to the holder or holders of a specified office.
- (6) Every delegation under this section must be given for a specified period but in any event must be revocable at will.
- (7) No delegation under this section may—
 - (a) affect or prevent the exercise of any function or power by the Director; or
 - (b) affect the responsibility of the Director for the actions of any person acting under the delegation.
- (8) Every delegation under this section continues in force until it is revoked or it expires, whether or not the person who made the delegation ceases to hold office.
- (9) Every person purporting to act under any delegation under this section may, when reasonably requested to do so, produce evidence of his or her authority to so act.
- (10) The Director may not delegate under this section any of his or her functions or powers under section 27L or section 27M.

Section 27O: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27P Right of appeal to District Court

Any person affected by a decision of the Director under section 27B (other than a decision made under section 27B(5)(b)), section 27I(7), section 27I(11), section 27L, or section 27M has a right of appeal to a District Court under section 66.

Section 27P: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27Q Transitional provisions

- (1) Part 67 of the rules (as it read immediately before the commencement of this Part) continues to apply to—
 - (a) any application for a medical certificate lodged before the commencement of this Part;
 - (b) any action begun with respect to a medical certificate before the commencement of this Part.
- (2) In the absence of rules providing for the issue of aviation documents to aviation examiners or medical examiners,—
 - (a) the Minister must establish the selection criteria for the issue of aviation documents to aviation examiners or medical examiners or classes of aviation examiners or medical examiners that the Director must use to issue those aviation documents, including any reasonable requirements—
 - (i) for examinations, training, and experience; and
 - (ii) for ongoing training and development; and
 - (iii) relating to the classification of aviation examiners and medical examiners and any related standards and restrictions on the exercise of their functions and powers; and
 - (b) the Director must designate, by issuing an aviation document under section 9, 1 or more medical examiners to conduct examinations under section 27D; and
 - (c) the Director may designate, by issuing an aviation document under section 9, 1 or more aviation examiners to conduct specified examinations that the Director may require under this Part.
- (3) In the absence of rules under section 30(b)(x) or section 30(b)(xi), the Minister must establish the criteria for the grant of delegations, including—

- (a) any requirements for the grant of delegations by the Director under section 27O(2); and
- (b) any requirements for the purposes of determining suitably qualified medical examiners and establishing the criteria for standard medical assessments under section 27O(2).

Section 27Q: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

27R 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.

Section 27R: inserted, on 1 April 2002, by section 5 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Part 3 Rules

28 Power of Minister to make ordinary rules

- (1) The Minister may from time to time make rules (in this Act called ordinary rules) for all or any of the following purposes:
 - (a) the implementation of New Zealand's obligations under the Convention:
 - (ab) to allow for the mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements:
 - (b) the provision of aviation meteorological services, search and rescue services, and civil aviation security programmes and services:
 - (c) assisting aviation safety and security, including (but not limited to) personal security:
 - (ca) assisting economic development:
 - (cb) improving access and mobility:
 - (cc) protecting and promoting public health:
 - (cd) ensuring environmental sustainability:
 - (ce) any matter related or reasonably incidental to any of the following:
 - (i) the Minister's objectives under section 14:
 - (ii) the Minister's functions under section 14A:

- (iii) the Authority's objectives under section 72AA:
 - (iv) the Authority's functions and duties under section 72B:
 - (v) the Director's functions and powers under section 72I:
 - (d) any other matter contemplated by any provision of this Act.
- (2) Any ordinary rule may apply generally or with respect to different classes of aircraft, aerodromes, aeronautical products, aeronautical procedures, or aviation related services, or with respect to the same class of aircraft, aerodrome, aeronautical product, aeronautical procedure, or aviation related service in different circumstances.
- (3) Any ordinary rule may apply generally throughout New Zealand or within any specified part or parts of New Zealand.
- (4) The commencement of any ordinary rule may be wholly suspended until it is applied by the Minister by notice in the *Gazette*.
- (5) An ordinary rule may, on any terms and conditions that are specified in the rule,—
- (a) require or provide for a matter to be determined, undertaken, or approved by the Authority, the Director, or any other person; or
 - (b) empower the Authority, the Director, or any other person to impose requirements or conditions as to the performance of any activity, including (but not limited to) any procedures to be followed.
- (5A) To avoid doubt, the terms and conditions specified in an ordinary rule may provide for—
- (a) consultation to be undertaken before the exercise of any of the powers given to the Authority, the Director, or any other person by the rule; or
 - (b) public notice to be given of the exercise of any powers; or
 - (c) any other matter.
- (6) No breach of any ordinary rule shall constitute an offence against this Act unless that offence is prescribed in regulations made under this Act.

- (7) Every ordinary rule is hereby deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989, but shall not be a regulation or an instrument for the purposes of the Acts and Regulations Publication Act 1989.
- (8) So far as the bylaws of any local authority are inconsistent with or repugnant to any ordinary rule made under this Act in force in the same locality, the bylaws shall be construed subject to the rules.
- (9) Notwithstanding section 28 of the State Sector Act 1988, the Minister shall not delegate his or her power to make ordinary rules under this Act.

Section 28(1)(ab): inserted, on 30 March 2007, by section 16 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 28(1)(c): substituted, on 1 December 2004, by section 5 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 28(1)(ca): inserted, on 1 December 2004, by section 5 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 28(1)(cb): inserted, on 1 December 2004, by section 5 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 28(1)(cc): inserted, on 1 December 2004, by section 5 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 28(1)(cd): inserted, on 1 December 2004, by section 5 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 28(1)(ce): inserted, on 1 December 2004, by section 5 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 28(5): substituted, on 1 August 2010, by section 5 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Section 28(5A): inserted, on 1 August 2010, by section 5 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

29 Rules relating to safety and security

Without limiting the power conferred by section 28, in the interests of safety or security within the civil aviation system the Minister may make all or any of the following ordinary rules:

- (a) *[Repealed]*
- (b) rules providing for the use of aerodromes and other aviation related facilities, including but not limited to the following:

- (i) the provision of identification procedures for persons, aircraft, and any other aviation related things:
 - (ii) the prevention of interference with aerodromes and other aviation related facilities:
- (c) general operating rules, air traffic rules, and flight rules, including but not limited to the following:
 - (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from an aircraft:
 - (ii) the prevention of aircraft endangering persons or property:
- (d) rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following:
 - (i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air:
 - (ii) the construction, use, or operation of anything likely to be hazardous to aviation safety.

Section 29(a): repealed, on 13 August 1996, by section 11 of the Civil Aviation Amendment Act 1996 (1996 No 91).

29A Rules relating to airspace

Without limiting the power conferred by section 28,—

- (a) in the interests of safety or security within the civil aviation system; or
- (b) in the interests of national security; or
- (c) for any other reason in the public interest,—

the Minister may make ordinary rules providing for the classification, designation, special use, prohibition, and the restriction of airspace and things affecting navigable airspace, including airspace used by aircraft used by the New Zealand Defence Force or a visiting force.

Section 29A: inserted, on 13 August 1996, by section 12 of the Civil Aviation Amendment Act 1996 (1996 No 91).

29B Rules for noise abatement purposes

Without limiting the power conferred by section 28, the Minister may make ordinary rules prescribing flight rules, flight

paths, altitude restrictions, and operating procedures for the purposes of noise abatement in the vicinity of aerodromes.

Section 29B: inserted, on 13 August 1996, by section 12 of the Civil Aviation Amendment Act 1996 (1996 No 91).

30 Rules relating to general matters

Without limiting the power conferred by section 28, the Minister may make ordinary rules for all or any of the following purposes:

- (a) the designation, classification, and certification of all or any of the following:
 - (i) aircraft:
 - (ii) aircraft pilots:
 - (iii) flight crew members:
 - (iv) air traffic service personnel:
 - (v) aviation security service personnel:
 - (vi) aircraft maintenance personnel:
 - (via) aviation examiners or medical examiners:
 - (vii) air services:
 - (viii) air traffic services:
 - (ix) aerodromes and aerodrome operators:
 - (x) navigation installation providers:
 - (xi) aviation training organisations:
 - (xii) aircraft design, manufacture, and maintenance organisations:
 - (xiii) aeronautical procedures:
 - (xiv) aviation security services:
 - (xv) aviation meteorological services:
 - (xvi) aviation communications services:
 - (xvii) any other person who provides services in the civil aviation system, and any aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities, and equipment operated in support of the civil aviation system:
- (b) the setting of standards, specifications, restrictions, and licensing requirements for all or any of those persons

or things specified in paragraph (a), including but not limited to the following:

- (i) the specification of the privileges, limitations, and ratings associated with licences or other forms of approval:
- (ii) the setting of standards for training systems and techniques, including recurrent training requirements:
- (iii) the setting of medical standards for personnel:
- (iv) the requirement for proof of access to appropriate weather services:
- (v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval, and identification of aircraft and aeronautical products:
- (vi) the requirements for notification of insurance coverage for air services:
- (vii) the format of aviation documents, forms, and applications, including the specification of information required on all application forms for aviation documents:
- (viii) the provision of information to the Authority or the Director by applicants for or holders of aviation documents:
- (ix) the requirements relating to the classification of aviation examiners and medical examiners and any related standards and restrictions on the exercise of their functions and powers:
- (x) the requirements for the grant of delegations by the Director under section 27O(2):
- (xi) the requirements for the purposes of determining suitably qualified medical examiners and establishing the criteria for standard medical assessments under section 27O(2):
- (xii) the requirements and criteria for determining medical experts acceptable to the Director for the purposes of reaching an accredited medical conclusion:

- (c) the conditions of operation of foreign aircraft and international flights to, from, or within New Zealand:
- (ca) to provide for the privileges of an air operator certificate to include conducting air operations in Australia:
- (d) the definitions, abbreviations, and units of measurement to apply within the civil aviation system:
- (e) prescribing the design and colours of the New Zealand Civil Air Ensign, and where and by whom it may be flown.

Compare: 1964 No 68 s 29(4), (5); 1970 No 52 s 2(1)

Section 30(a)(via): inserted, on 1 April 2002, by section 7(1) of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 30(b)(vi): amended, on 10 August 1992, by section 19 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 30(b)(viii): amended, on 10 August 1992, by section 40(3) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 30(b)(ix): added, on 1 April 2002, by section 7(2) of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 30(b)(x): added, on 1 April 2002, by section 7(2) of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 30(b)(xi): added, on 1 April 2002, by section 7(2) of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 30(b)(xii): added, on 1 April 2002, by section 7(2) of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 30(ca): inserted, on 30 March 2007, by section 17 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 30(e): added, on 13 August 1996, by section 13 of the Civil Aviation Amendment Act 1996 (1996 No 91).

31 Power of Director to make emergency rules

- (1) Subject to subsection (2), the Director may from time to time, in accordance with section 35, make such emergency rules as may be necessary to alleviate or minimise any risk of the death of or a serious injury to any person, or of damage to any property.
- (2) The Director shall not make emergency rules unless it is impracticable in the circumstances of the particular case for the Minister to make ordinary rules to effectively alleviate or minimise the risk concerned.

- (3) The Minister may revoke any emergency rule made under subsection (1), and the revocation shall be notified as if it were an emergency rule.
- (4) Every emergency rule is hereby deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989, but shall not be a regulation or an instrument for the purposes of the Acts and Regulations Publication Act 1989.

32 Procedures relating to rules

- (1) Every ordinary rule shall—
 - (a) be signed by the Minister; and
 - (b) contain a statement specifying the objective of the rule and the extent of any consultation under section 34; and
 - (c) set out fully the requirements of the rule, except where certain information is, under section 36, incorporated in the rule by reference.
- (2) Every emergency rule shall—
 - (a) be signed by the Director; and
 - (b) contain a statement specifying the objective of the rule and the extent of the consultation under section 35 that took place before the making of the rule; and
 - (c) set out fully the requirements of the rule, except where certain information is, under section 36, incorporated in the rule by reference.

Section 32(1)(c): substituted, on 1 June 2004, by section 18(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 32(2)(c): substituted, on 1 June 2004, by section 18(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

33 Matters to be taken into account in making rules

- (1) The ordinary rules made by the Minister and the emergency rules made by the Director shall not be inconsistent with the following:
 - (a) the standards of ICAO relating to aviation safety and security, to the extent adopted by New Zealand;
 - (b) New Zealand's international obligations relating to aviation safety and security.
- (2) In making, or recommending the making of, a rule the Minister or the Director, as the case may be, shall have regard to, and

shall give such weight as he or she considers appropriate in each case to, the following:

- (a) the recommended practices of ICAO relating to aviation safety and security, to the extent adopted by New Zealand:
- (b) the level of risk existing to aviation safety in each proposed activity or service:
- (c) the nature of the particular activity or service for which the rule is being established:
- (d) the level of risk existing to aviation safety and security in New Zealand in general:
- (e) the need to maintain and improve aviation safety and security, including (but not limited to) personal security:
- (f) whether the proposed rule—
 - (i) assists economic development:
 - (ii) improves access and mobility:
 - (iii) protects and promotes public health:
 - (iv) ensures environmental sustainability:
- (fa) the costs of implementing measures for which the rule is being proposed:
- (g) the international circumstances in respect of—
 - (i) aviation safety and security; and
 - (ii) mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements:
- (h) such other matters as the Minister or the Director considers appropriate in the circumstances.

Section 33(2): amended, on 1 August 2010, by section 6 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Section 33(2)(e): substituted, on 1 December 2004, by section 6 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 33(2)(f): substituted, on 1 December 2004, by section 6 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 33(2)(fa): inserted, on 1 December 2004, by section 6 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 33(2)(g): substituted, on 30 March 2007, by section 19 of the Civil Aviation Amendment Act 2004 (2004 No 8).

34 Procedure for making ordinary rules

- (1) Before making any ordinary rule, the Minister must, as the Minister in each case considers appropriate,—
- (a) publish a notice of his or her intention to make the rule; and
 - (b) consult—
 - (i) the persons, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies; and
 - (ii) the Environmental Protection Authority, established by section 7 of the Environmental Protection Authority Act 2011, about the contents of any rules that relate to the transportation of hazardous substances as defined in section 2(1) of the Hazardous Substances and New Organisms Act 1996.
- (2) Subject to subsection (3), every ordinary rule shall be notified in the *Gazette* and be made available by the Authority for purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.
- (3) Where for reasons of security it is inappropriate to notify a rule under subsection (2), the Minister shall notify such persons as he or she considers appropriate or necessary in the circumstances and service of notification may be effected in such other manner as the Minister considers appropriate or necessary in the circumstances, and the rule shall apply only to each person so notified (with effect from service of the rule on the person).
- (4) *[Repealed]*

Section 34(1): substituted, on 1 August 2010, by section 7(1) of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Section 34(1)(b)(ii): substituted, on 1 July 2011, by section 53(1) of the Environmental Protection Authority Act 2011 (2011 No 14).

Section 34(2): amended, on 10 August 1992, by section 40(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 34(3): amended, on 1 August 2010, by section 7(2) of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Section 34(4): repealed, on 1 August 2010, by section 7(3) of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

34A Governor-General may make ordinary rules

- (1) Despite anything in this Part, the Governor-General may, by Order in Council, on the recommendation of the Minister, make, amend, or revoke an ordinary rule for any of the purposes for which the Minister may make, amend, or revoke an ordinary rule under this Part.
- (2) The Minister must have regard to the criteria specified in section 33(2) before making a recommendation under subsection (1).
- (3) Sections 32(1)(a) and 34(1) do not apply to an ordinary rule made by Order in Council under subsection (1).
- (4) An ordinary rule or an amendment to an ordinary rule made by Order in Council under subsection (1) must be published as part of the rules as if the Minister had made the rule or the amendment to the rule.
- (5) The Minister may amend or revoke an ordinary rule or an amendment to an ordinary rule made by Order in Council under subsection (1) as if the Minister had made the ordinary rule or the amendment to the ordinary rule under this Part.
- (6) An Order in Council made under subsection (1)—
 - (a) is a regulation or an instrument for the purposes of the Regulations (Disallowance) Act 1989; but
 - (b) is not a regulation or an instrument for the purposes of the Acts and Regulations Publication Act 1989.

Section 34A: inserted, on 1 August 2010, by section 8 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

35 Procedure for making emergency rules

- (1) Before making an emergency rule, the Director shall consult with such persons, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies as the Director in each case considers appropriate.
- (2) Subject to subsection (4), every emergency rule shall be notified in the *Gazette* and be made available by the Director for

purchase by members of the public at a reasonable price, and the notification shall specify a place where the rule is available for inspection free of charge and for purchase.

- (3) Every emergency rule shall come into force immediately upon its being notified in the *Gazette*, or, where notified by service on any person under subsection (4), immediately upon service of notification upon that person and in respect of that person only.
- (4) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency rule under subsection (2), the Director shall notify such persons as he or she considers appropriate or necessary in the circumstances and service of such notification may be effected by facsimile, telephone, or such other manner as the Director considers appropriate or necessary in the circumstances.
- (5) An emergency rule may be in force for a period not exceeding 90 days, and may be renewed by the Director once only for a further period not exceeding 30 days.
- (5A) The Minister may, at any time while an emergency rule is in force in accordance with subsection (5), by notice in the *Gazette*, renew the rule in accordance with subsection (5B) for a further period not exceeding 180 days from the date of the notification.
- (5B) Before renewing an emergency rule under subsection (5A), the Minister shall consult with such persons, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies as the Minister thinks appropriate.
- (6) So far as any emergency rule is inconsistent or repugnant to any ordinary rule made under this Act, the emergency rule shall prevail.

Section 35(5): amended, on 13 August 1996, by section 15(1) of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 35(5): amended, on 20 August 1993, by section 5 of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 35(5A): inserted, on 13 August 1996, by section 15(2) of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 35(5B): inserted, on 13 August 1996, by section 15(2) of the Civil Aviation Amendment Act 1996 (1996 No 91).

36 Incorporation by reference

- (1) The following, whether in written or electronic form, may be incorporated by reference in a rule made by the Minister, the Governor-General, or the Director:
 - (a) any standards, requirements, or recommended practices of international aviation organisations:
 - (b) any standards, requirements, or rules—
 - (i) prescribed under law by any other contracting State of ICAO:
 - (ii) of the Standards Council, or a body or organisation outside New Zealand that has functions corresponding to the functions of the Standards Council:
 - (iii) of any aviation sport or aviation recreation organisation:
 - (c) any other material or document that, in the opinion of the Minister or the Director, is too large or impractical to be printed as part of the rule.
- (2) Material may be incorporated by reference in a rule—
 - (a) in whole or in part; and
 - (b) with modifications, additions, or variations specified in the rule.
- (3) A copy of any material incorporated by reference in rules, including any amendment to, or replacement of, the material, must be—
 - (a) certified as a correct copy of the material by the Minister or the Director (as the case may be); and
 - (b) retained by the Director.
- (4) Any material incorporated in a rule by reference under subsection (1) is to be treated for all purposes as forming part of the rule; and, unless otherwise provided in the rules, every amendment to any material incorporated by reference under subsection (1) that is made by the person or organisation originating the material is, subject to subsections (5) and (6), to be treated as being a part of the rule.
- (5) The Director must give notice in the *Gazette* stating—
 - (a) that the material is incorporated in the rule and the date on which the rule was made; and

- (b) that the material is available for inspection during working hours, free of charge; and
 - (c) the place where the material can be inspected; and
 - (d) that copies of the material can be purchased; and
 - (e) the place where the material can be purchased; and
 - (f) if copies of the material are available in other ways, the details of where or how the material can be accessed or obtained.
- (6) All material incorporated by reference under subsection (1) or (2) must be made available at the Civil Aviation Registry for inspection by the public free of charge.
- (7) The Acts and Regulations Publication Act 1989 does not apply to material incorporated by reference in a rule or to an amendment to, or a replacement of, that material.
- (8) Nothing in section 4 of the Regulations (Disallowance) Act 1989 requires material that is incorporated by reference in a rule to be presented to the House of Representatives.
- (9) Subsections (1) to (8) do not affect the application of sections 22 to 25 of the Standards Act 1988.

Section 36: substituted, on 1 August 2010, by section 9 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

37 Exemption power of Director

- (1) The Director may, if he or she considers it appropriate and upon such conditions as he or she considers appropriate, exempt any person, aircraft, aeronautical product, aerodrome, or aviation related service from any specified requirement in any rule made under section 28, 29A, 29B, or 30.
- (2) Before granting an exemption under subsection (1), the Director shall be satisfied in the circumstances of each case that—
- (a) the requirement has been substantially complied with and that further compliance is unnecessary; or
 - (b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; or
 - (c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; or

- (d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case,—
and that the risk to safety will not be significantly increased by the granting of the exemption.
- (3) The number and nature of exemptions granted under subsection (1) shall be notified as soon as practicable in the *Gazette*.
- (4) Nothing in this section shall apply in any case where any rule specifically provides that no exemptions are to be granted.

Section 37(1): amended, on 1 August 2010, by section 10 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Part 4 Fees and charges

38 Fees and charges

- (1) Without limiting the power to make regulations conferred by section 100, but subject to the provisions of this Act, the Governor-General may, from time to time, by Order in Council, make regulations prescribing, or providing for the fixing of, fees and charges payable for all or any of the following purposes:
- (a) to provide funds for the establishment, maintenance, and operation of works, facilities, and services under this Act:
 - (b) to defray the costs and expenses incurred by the Ministry or the Authority or any of their employees in the exercise of functions, powers, and duties, and in providing services, under this Act:
 - (ba) to reimburse the Authority and the convener for costs directly associated with the Director's functions and the convener's functions under Part 2A:
 - (c) generally for the purposes of civil aviation.
- (2) Different rates of fees and charges may be so prescribed or fixed in respect of different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, air traffic services, or aeronautical procedures, or on the basis of different times of use, or on any other differential basis.

- (3) Any such regulations may—
- (a) specify the persons by whom and to whom any fees or charges are payable:
 - (b) prescribe penal or overtime or additional fees or charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays:
 - (c) prescribe additional charges for reimbursement of travelling time, accommodation, and other expenses:
 - (d) require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns:
 - (e) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases.
- (4) Fees and charges in respect of the use of any airport operated or managed by an airport authority shall not be prescribed, except on the advice of the Minister given after consultation with that airport authority.
- (4A) The power to prescribe, or provide for the fixing of, fees and charges in respect of any matter under this Act includes the power to prescribe, or provide for the fixing of, fees or charges, or both, in respect of any matter.
- (5) For the purposes of this section, the expressions **airport** and **airport authority** shall have the same meaning as in the Airport Authorities Act 1966.

Compare: 1964 No 68 ss 13, 13A; 1986 No 128 s 8(3)

Section 38(1)(b): amended, on 10 August 1992, by section 20(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 38(1)(ba): inserted, on 1 April 2002, by section 8 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 38(4A): inserted, on 10 August 1992, by section 20(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

39 Rebates

- (1) The person or authority to whom any fees or charges are payable under regulations made under this Act may grant a rebate of such fees or charges to any person who is liable to pay them.
- (2) Every rebate of fees or charges granted under subsection (1) shall—

- (a) be based on the quantity of services used by the person liable to pay the fees or charges; and
- (b) be offered on an equal percentage basis to any other person using a similar quantity of such services; and
- (c) be granted in accordance with regulations made under this Act.

40 Payment of fees and charges

- (1) Except as otherwise provided in regulations made under this Act, every application under this Act shall be accompanied by payment of all relevant prescribed fees and charges.
- (2) Any regulations made under this Act may—
 - (a) prescribe a date by which any such fee or charge is payable or authorise the Authority to fix the date by which the fee or charge is payable:
 - (b) provide for a discount for early payment of any such fee or charge or a penalty for late payment, or both, on an equal basis to persons liable to pay the fee or charge.

Section 40(1): substituted, on 10 August 1992, by section 21(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 40(2)(a): amended, on 10 August 1992, by section 21(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

41 Suspension or revocation of aviation document where prescribed fees or charges unpaid

- (1) Where any fee or charge payable under this Act is not paid by the date prescribed or fixed for payment of that fee or charge, the Director may suspend the aviation document to which the unpaid fee or charge relates.
- (2) Where any fee or charge payable under this Act is not paid within 6 months after the date prescribed or fixed for payment of that fee or charge, the Director may revoke the aviation document to which the fee or charge relates.
- (3) Before suspending an aviation document under subsection (1), or revoking an aviation document under subsection (2), the Director shall notify the holder of that document of—
 - (a) the Director's intention to suspend or revoke the document; and

- (b) the right of appeal available to the holder of that document in the event of the document being suspended or revoked.
- (4) Where a fee or a charge is payable in respect of an application under this Act or the provision of a service under this Act, the Authority or the Director or other person asked to process the application or provide the service, as the case may be, may, unless the safety of any person would be put at risk, decline to process that application or provide that service until the appropriate fee or charge has been paid, or arrangements acceptable to the Authority or the Director, as the case may be, for payment of the fee or charge have been made.
- (5) The holder of an aviation document that is suspended under subsection (1) or revoked under subsection (2) may appeal against that decision to a District Court under section 66.

Section 41: substituted, on 10 August 1992, by section 22 of the Civil Aviation Amendment Act 1992 (1992 No 75).

42 Recovery of fees and charges for aviation related services

- (1) Subject to subsection (2), where a fee or charge is payable under this Act in respect of any function, power, duty, or service carried out or provided by the Authority or the Director in respect of any aircraft, the person whose name appears on the New Zealand Register of Aircraft in respect of that aircraft shall be deemed to be liable to pay that fee or charge.
- (2) Any person who would otherwise be liable to pay a fee or charge in relation to any aircraft in terms of subsection (1) shall not be so liable if that person—
 - (a) proves that during any relevant period of use of the aircraft that person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and
 - (b) has taken all reasonable steps to supply the Authority with such information as would identify the actual user.

Section 42: substituted, on 10 August 1992, by section 22 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Levies

Heading: inserted, on 10 August 1992, by section 22 of the Civil Aviation Amendment Act 1992 (1992 No 75).

42A Governor-General may impose levies

- (1) Subject to subsection (3), for the purpose of enabling the Authority to carry out its functions under this Act and any other Act, the Governor-General may from time to time, on the recommendation of the Minister, by Order in Council impose on all or any of the persons referred to in subsection (2) a levy payable to the Authority, and may in the same manner vary any such order.
- (2) A levy may be imposed under subsection (1) on—
 - (a) the holders of aviation documents of any class or classes specified in the order;
 - (b) persons who, but for an exemption granted under this Act, would be required by this Act to hold an aviation document of the class or classes specified in the order.
- (3) The Minister shall not make any recommendation under subsection (1) unless—
 - (a) the recommendation has been made at the request and with the concurrence of the Authority; and
 - (b) he or she is satisfied that the Authority's income from other sources is not or will not be sufficient to enable it to perform its functions under this Act without the imposition of a levy at the rate recommended; and
 - (c) he or she is satisfied that the Authority has consulted with such persons, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies as he or she considers appropriate.

Section 42A: inserted, on 10 August 1992, by section 22 of the Civil Aviation Amendment Act 1992 (1992 No 75).

42B Basis on which levies may be imposed

- (1) Different rates of levies may be imposed or varied under section 42A in respect of different classes of persons, aerodromes, aircraft, aeronautical products, or aviation related services, or on the basis of different times of use or on any other differential basis.

- (2) The rate of any levy imposed or varied under section 42A may be calculated according to any one of, or any combination of 1 or more of, the following factors:
- (a) the quantity of aviation fuel purchased by any person:
 - (b) the number of passengers able to be carried on any aircraft:
 - (c) the number of passengers actually carried on any aircraft:
 - (d) the amount of freight able to be carried on any aircraft:
 - (e) the amount of freight actually carried on any aircraft:
 - (f) the distance flown by any aircraft:
 - (g) aircraft size or capacity:
 - (h) the purpose for which any aircraft or aeronautical product is used or for which an aviation related service is supplied:
 - (i) any other basis whatever that relates to the use, capacity, or size of—
 - (i) any aircraft; or
 - (ii) any aeronautical product; or
 - (iii) any aviation related service; or
 - (iv) any privileges exercisable under any aviation document.

Section 42B: inserted, on 10 August 1992, by section 22 of the Civil Aviation Amendment Act 1992 (1992 No 75).

42C Levy orders to be confirmed

- (1) Every Order in Council made under section 42A shall be laid before the House of Representatives not later than the 16th sitting day of the House of Representatives after the day on which it is made.
- (2) Every such Order in Council shall—
- (a) where the order is made on or before 30 June in any year, expire on the close of 31 December of that year except so far as it is expressly validated or confirmed by Act of Parliament passed during that year; and
 - (b) where the order is made on or after 1 July in any year, expire on the close of 31 December in the following year except so far as it is expressly validated or con-

firmed by Act of Parliament passed before the end of that following year.

- (3) Where an Order in Council made under section 42A expires by virtue of subsection (2), the following provisions shall apply:
- (a) every levy imposed or increased or decreased by the order shall thereupon cease to be payable:
 - (b) the expiry of the order does not affect the liability of any person to pay any amount under the order, so long as the liability was incurred while the order was in force:
 - (c) where a payment of a levy under the order has been made in error or in excess of the amount payable, then, except so far as any other provision is made by any other Act in respect thereof, the person in respect of whom the payment was made shall, upon application made to the Authority, be entitled to a refund of the amount paid in error or in excess of the amount payable.
- (4) Every application under subsection (3)(c) shall be in a form provided for the purpose by the Authority and shall contain such information as the Authority considers necessary to enable the refund to be made in accordance with this section.
- (5) The repeal of any Act passed for the purpose of expressly validating or confirming any Orders in Council pursuant to subsection (2) shall not, unless there is any express provision to the contrary, affect the validity or confirmation of those orders.

Section 42C: inserted, on 10 August 1992, by section 22 of the Civil Aviation Amendment Act 1992 (1992 No 75).

42D Other provisions relating to levies

- (1) Every levy imposed under section 42A shall be paid to the Authority to be applied by the Authority in performing its functions under this Act.
- (2) An Order in Council made under section 42A may—
- (a) specify the persons by whom any levy is payable and the place at which it is payable:
 - (b) prescribe a date by which any levy is payable or authorise the Authority to fix the date by which the levy is payable:

- (c) require returns to be made by persons by whom any levy is payable, and prescribe conditions relating to the making of such returns.
- (3) Every levy imposed under section 42A is hereby deemed for the purposes of section 41 to be a charge payable under this Act.
- (4) Every such levy order is hereby declared to be a specific authorisation by an enactment for the purposes of section 43 of the Commerce Act 1986.

Section 42D: inserted, on 10 August 1992, by section 22 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Part 5 **Offences and penalties**

Safety offences

43 Endangerment caused by holder of aviation document

- (1) Every holder of an aviation document commits an offence who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act or omission, if the act or omission causes unnecessary danger to any other person or to any property.
- (2) Every person who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) The provisions of this section shall be in addition to and not in derogation of any regulations or rules made under this Act.

Section 43(2)(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

43A Operating aircraft in careless manner

- (1) Every person commits an offence who operates any aircraft in a careless manner.
- (2) Every person who commits an offence against subsection (1) is liable,—

- (a) in the case of an individual, to a fine not exceeding \$7,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$35,000.
- (3) The provisions of this section shall be in addition to and not in derogation of any regulations or rules made under this Act.

Section 43A: inserted, on 13 August 1996, by section 17 of the Civil Aviation Amendment Act 1996 (1996 No 91).

44 Dangerous activity involving aircraft, aeronautical product, or aviation related service

- (1) Every person commits an offence who—
- (a) operates, maintains, or services; or
 - (b) does any other act in respect of—
any aircraft, aeronautical product, or aviation related service,
in a manner which causes unnecessary danger to any other person or to any property.
- (2) Every person commits an offence who—
- (a) causes or permits any aircraft, aeronautical product, or aviation related service to be operated, maintained, or serviced; or
 - (b) causes or permits any other act to be done in respect of any aircraft, aeronautical product, or aviation related service,—
in a manner which causes unnecessary danger to any other person or to any property.
- (3) Every person who commits an offence against subsection (1) or subsection (2) is liable,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (4) The provisions of this section shall be in addition to and not in derogation of any regulations or rules made under this Act.

Section 44(3)(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

44A Failure to comply with inspection or monitoring request

- (1) Every person commits an offence who, without reasonable excuse, fails to comply with any requirement of the Director under subsection (1) or subsection (3) of section 15.
- (2) Every person who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000 and, if the offence is a continuing one, to a further fine not exceeding \$20,000 for every day or part of a day during which the offence is continued.

Section 44A: inserted, on 10 August 1992, by section 23 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 44A heading: amended, on 1 June 2002, by section 11 of the Civil Aviation Amendment Act 2002 (2002 No 15).

45 Court may disqualify holder of aviation document or impose conditions on holding of document

- (1) In addition to any penalty the court may impose under section 43 or section 43A or section 44 or section 44A, the court may, on convicting any person of an offence against either of those sections,—
 - (a) disqualify the person convicted from holding or obtaining an aviation document or a particular aviation document; or
 - (b) impose on any aviation document held by or issued to the person convicted such restrictions or conditions or both as the court, having regard to the circumstances of the offence, thinks fit—
for such period not exceeding 12 months as the court thinks fit.
- (2) Nothing in subsection (1) shall affect or prevent the exercise by the Director of his or her powers under section 9.

Section 45(1): amended, on 13 August 1996, by section 18 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 45(1): amended, on 10 August 1992, by section 24 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 45(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

46 Acting without necessary aviation document

- (1) Every person commits an offence who—
 - (a) operates, maintains, or services; or
 - (b) does any other act in respect of—
any aircraft, aeronautical product, or aviation related service, either without holding the appropriate current aviation document or knowing that a current aviation document is required to be held in respect of that aircraft, product, or service before that act may lawfully be done and knowing that the appropriate aviation document is not held.
- (2) Every person who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Section 46(2)(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

46A Acting without required medical certificate

- (1) Every person who exercises the privileges of any aviation document or operates an aircraft solo commits an offence if that person—
 - (a) does not hold an appropriate current medical certificate issued under Part 2A or a medical certificate recognised by the Director under the rules; or
 - (b) knows or has reasonable grounds to suspect that he or she can no longer exercise safely the privileges to which his or her medical certificate relates; or
 - (c) fails to comply with any conditions, restrictions, or endorsements specified by the Director under section 27B(4).
- (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.

Section 46A: inserted, on 1 April 2002, by section 9 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

46B Fraudulent, misleading, or intentionally false statements to obtain 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
 - (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
 - (c) any reproduction or alteration for fraudulent purposes of any medical certificate issued under Part 2A; or
 - (d) any fraudulent, misleading, or intentionally false statement during an investigation under section 27H or a review under section 27L or an assessment under section 27M.
- (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.

Section 46B: inserted, on 1 April 2002, by section 9 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

46C Failure to disclose information required by Director

- (1) Every person commits an offence who fails to disclose, without reasonable excuse, information required by the Director under section 27C(1) or section 27H.
- (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 \$5,000.

Section 46C: inserted, on 1 April 2002, by section 9 of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

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

- (1) Every person commits an offence who conducts an air operation in New Zealand while in breach of section 11B(1) or (2).
- (2) Every person who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to a fine not exceeding \$5,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$25,000.

Section 46D: inserted, on 30 March 2007, by section 20 of the Civil Aviation Amendment Act 2004 (2004 No 8).

46E Failure to cease conducting air operations in New Zealand

- (1) Every person commits an offence who fails to comply with section 11C(3).
- (2) Every person who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Section 46E: inserted, on 30 March 2007, by section 20 of the Civil Aviation Amendment Act 2004 (2004 No 8).

47 Additional penalty for offences involving commercial gain

- (1) In addition to any penalty the court may impose under section 43 or section 44 or section 44A or section 46, the court may, on convicting any person of an offence specified in any of those sections, order that person to pay an amount not exceeding 3 times the value of any commercial gain resulting from the commission of that offence if the court is satisfied that the offence was committed in the course of producing a commercial gain.
- (2) For the purpose of subsection (1), the value of any gain shall be assessed by the court, and shall be recoverable in the same manner as a fine.

Section 47(1): amended, on 10 August 1992, by section 25 of the Civil Aviation Amendment 1992 (1992 No 75).

General offences

48 Applying for aviation document while disqualified

- (1) Every person commits an offence who applies for or obtains an aviation document while disqualified by an order of the court from obtaining such a document and any such document so obtained shall be of no effect.
- (2) Every person who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 6 months or a fine not exceeding \$2,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$20,000,—

and the court may order the person to be disqualified from holding or obtaining an aviation document for such period not exceeding 12 months as the court thinks fit.

Section 48(2)(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

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

- (1) Every person commits an offence who,—
 - (a) by any means, provides to the Authority or the Director information relevant to the Authority's or the Director's exercise of powers under this Act, or under regulations or rules made under this Act, knowing the information to be false; or
 - (b) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the Authority's or the Director's exercise of powers under this Act, or under regulations or rules made under this Act; or
 - (c) being the holder of an aviation document, fails, without reasonable excuse, to provide to the Authority or the Director information known to that person which is relevant to the condition specified in section 9(3).

- (2) Every person who commits an offence against subsection (1) is liable,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Section 49(1): substituted, on 10 August 1992, by section 26 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 49(2)(a): amended, on 1 June 2004, by section 21(a) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 49(2)(b): amended, on 1 June 2004, by section 21(b) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 49(2)(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

49A Carrying on scheduled international air service without licence or contrary to licence

- (1) Every person commits an offence who—
- (a) carries on a scheduled international air service in New Zealand without a licence granted under Part 8A; or
 - (b) being the holder of a licence granted under Part 8A, carries on a scheduled international air service in New Zealand in a manner contrary to the terms and conditions of the licence.
- (2) Every person who commits an offence against subsection (1) is liable,—
- (a) in the case of an individual, to a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Section 49A: inserted, on 13 August 1996, by section 19 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 49A(2)(a): amended, on 1 June 2004, by section 22(a) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 49A(2)(b): amended, on 1 June 2004, by section 22(b) of the Civil Aviation Amendment Act 2004 (2004 No 8).

49B Operating unauthorised non-scheduled international flight or carrying on non-scheduled international flight contrary to licence

- (1) Every person commits an offence who—
 - (a) operates a non-scheduled international flight to which section 87ZE applies contrary to the provisions of that section; or
 - (b) being the holder of an open aviation market licence, carries on a non-scheduled international flight in a manner contrary to the terms and conditions of the licence.
- (2) Every person who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to a fine not exceeding \$6,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$30,000.

Section 49B: inserted, on 13 August 1996, by section 19 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 49B(2)(a): amended, on 1 June 2004, by section 23(a) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 49B(2)(b): amended, on 1 June 2004, by section 23(b) of the Civil Aviation Amendment Act 2004 (2004 No 8).

50 Obstruction of persons duly authorised by Director

- (1) Every person commits an offence who obstructs or impedes any person who is duly authorised by the Director and acting in the performance or exercise of any functions, duties, or powers conferred on him or her by this Act, or by any rules made under this Act, and is liable,—
 - (a) in the case of an individual, to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$10,000.
- (2) Subsection (1) shall apply only where the person obstructed or impeded is in uniform or produces evidence of his or her authority.

Section 50 heading: amended, on 10 August 1992, pursuant to section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 50(1): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 50(1)(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

50A Failure or refusal to produce or surrender documents

- (1) Every person commits an offence who, without reasonable excuse, fails or refuses to comply with a requirement made in accordance with section 24(3).
- (2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$1,000.

Section 50A: inserted, on 13 August 1996, by section 20 of the Civil Aviation Amendment Act 1996 (1996 No 91).

51 Trespass

Every person commits an offence and is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000 who, without reasonable excuse, enters or remains within any aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to remain by a person duly authorised by the Director in writing for that purpose, a constable, or an aviation security officer, or by notice posted by one of those persons.

Section 51: amended, on 1 October 2008, pursuant to section 116(a)(iii) of the Policing Act 2008 (2008 No 72).

Section 51: amended, on 20 August 1993, by section 17 of the Civil Aviation Amendment Act 1993 (1993 No 90).

52 Failure to maintain accurate records

- (1) Every person commits an offence who contravenes any provision of this Act or any rule made under this Act that requires that person—
 - (a) to make accurate entries in a record; or
 - (b) to maintain an accurate record; or
 - (c) to produce to the Authority or the Director an accurate record.
- (2) Every person who commits an offence against subsection (1) is liable,—

- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

Section 52(1)(c): amended, on 10 August 1992, by section 40(3) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 52(2)(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

52A Failure to notify emergency breach of Act or regulations or rules

Every pilot-in-command commits an offence and is liable to a fine not exceeding \$5,000 who, without reasonable excuse, fails to comply with section 13A(6) (which relates to the notification of breaches of this Act or regulations or rules made under this Act that are committed during an emergency).

Section 52A: inserted, on 10 August 1992, by section 27 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 52A: amended, on 1 June 2002, by section 12 of the Civil Aviation Amendment Act 2002 (2002 No 15).

52B Failure to notify accident or incident

- (1) Every pilot-in-command or operator commits an offence who, without reasonable excuse, fails to comply with subsection (1) or subsection (1A) or subsection (2) of section 26 (which subsections relate to the notification of an accident or incident).
- (2) Every pilot-in-command or operator who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000 and, if the offence is a continuing one, to a further fine not exceeding \$2,000 for every day or part of a day during which the offence is continued; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.

Section 52B: inserted, on 10 August 1992, by section 27 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 52B(2): substituted, on 1 June 2004, by section 24 of the Civil Aviation Amendment Act 2004 (2004 No 8).

52C Failure to provide identifying information

- (1) Every operator of an aircraft or holder of a certificate of registration commits an offence who, without reasonable excuse, fails to comply with section 26A(1) (which relates to the identification of the pilot-in-command of an aircraft).
- (2) Every operator or holder of a certificate of registration who commits an offence against subsection (1) is liable,—
 - (a) in the case of an individual, to a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$50,000.

Section 52C: inserted, on 1 June 2002, by section 13 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 52C(2)(a): amended, on 1 June 2004, by section 25(a) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 52C(2)(b): amended, on 1 June 2004, by section 25(b) of the Civil Aviation Amendment Act 2004 (2004 No 8).

53 Contravention of emergency rule, prohibition, or condition

Every person who, without reasonable excuse, acts in contravention of or fails to comply with any emergency rule made under section 31 or any prohibition or condition notified under section 21 commits an offence and is liable,—

- (a) in the case of an individual, to a fine not exceeding \$5,000; or
- (b) in the case of a body corporate, to a fine not exceeding \$30,000.

Section 53(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

53A Flight over foreign country without authority or for improper purpose

- (1) This section applies to—
 - (a) any aircraft that is registered or required to be registered in New Zealand under this Act;
 - (b) any other aircraft operated by a person who is normally resident in New Zealand or whose principal place of business is in New Zealand.

- (2) Every person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over a foreign country or territory, knowingly allows that aircraft to be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory.
- (3) In any prosecution for an offence against subsection (2), where it is proved by the prosecution that the aircraft was used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, the foreign country or territory, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the aircraft was being so used.
- (4) Every person commits an offence who, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of that country or territory where—
 - (a) the flight is not duly authorised; or
 - (b) there are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory,—
unless the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.
- (5) In any prosecution for an offence against subsection (4), where it is proved by the prosecution that the defendant failed to comply with a direction that was given in respect of that aircraft by the appropriate aeronautical authority, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the direction had been given.
- (6) The requirement in subsection (4) is without prejudice to any other requirement to comply with directions given by an aeronautical authority.
- (7) For the purposes of this section, **appropriate aeronautical authority** includes any person, whether a member of the mili-

tary authorities or the civil authorities of the foreign country or territory, who is authorised under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.

- (8) Every person who commits an offence against subsection (2) or subsection (4) is liable on conviction,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or
 - (b) in the case of a body corporate, to a fine not exceeding \$100,000.

Section 53A: inserted, on 13 August 1996, by section 21 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 53A(1)(b): amended, at 2 am on 29 November 2010, by section 406(1) of the Immigration Act 2009 (2009 No 51).

Security offences

54 Security area and security enhanced area offences

- (1) Every person commits an offence who, on being found in a security area or security enhanced area,—
- (a) refuses to state his or her name, address, and authority to enter the security area or security enhanced area after—
 - (i) having been informed that he or she is in a security area or security enhanced area; and
 - (ii) having been requested by an aviation security officer to state those particulars; or
 - (b) refuses forthwith to leave the security area or security enhanced area after having been ordered by an aviation security officer to do so.
- (2) Every person who commits an offence under subsection (1) in relation to a—
- (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.

Compare: 1964 No 68 s 21E(3), (6); 1976 No 153 s 4

Section 54 heading: amended, on 18 January 2008, by section 7(1) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 54(1): amended, on 18 January 2008, by section 7(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 54(1)(a): amended, on 18 January 2008, by section 7(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 54(1)(a)(i): amended, on 18 January 2008, by section 7(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 54(1)(b): amended, on 18 January 2008, by section 7(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 54(2): substituted, on 18 January 2008, by section 7(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

55 Personation or obstruction of aviation security officer

- (1) Every person commits an offence who, not being an aviation security officer,—
- (a) by words, conduct, demeanor, or the assumption of the dress, name, designation, or description of an aviation security officer, holds himself or herself out as being an aviation security officer; or
 - (b) wilfully obstructs, or incites or encourages any person to obstruct an aviation security officer in the execution of his or her duty.
- (2) Every person who commits an offence against subsection (1) is liable to imprisonment for a term not exceeding 3 months or a fine not exceeding \$2,000.

Compare: 1964 No 68 s 21I; 1976 No 153 s 4

56 Communicating false information affecting safety

- (1) Every person commits an offence who by any means provides to another person information relating to the safety of an aircraft, aerodrome, aeronautical product, aviation related service, or any other facility or product used in or connected with aviation, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false.
- (2) Every person who commits an offence against subsection (1) is liable,—
- (a) in the case of an individual, to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000; or

- (b) in the case of a body corporate, to a fine not exceeding \$100,000.
- (3) Where the commission of an offence against subsection (1) causes financial loss to any person and where the court imposes a fine under subsection (2) in respect of that offence, the court may order that such part of the fine as it thinks fit, but in any event not more than one-half of the fine, be awarded to that person.

Section 56(2)(b): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

56A Security check offences

- (1) Every person commits an offence who, in relation to a security check of that person,—
 - (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 liable to imprisonment for a term not exceeding 12 months or a fine not exceeding \$10,000.

Section 56A: inserted, on 26 September 2007, by section 8 of the Civil Aviation Amendment Act 2007 (2007 No 89).

Infringement offences

57 Infringement offences

- (1) In this Act **infringement offence** means an offence specified as such in regulations made under this Act or an offence against a provision specified in section 65Q(2).
- (2) Subject to section 65P, if any person is alleged to have committed an infringement offence that person may either—
 - (a) be proceeded against summarily for the alleged offence; or
 - (b) be served with an infringement notice as provided in section 58.

Section 57(1): amended, on 1 June 2004, by section 26(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 57(2): amended, on 1 June 2004, by section 26(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

58 Infringement notices

- (1) Where the Director or any person duly authorised by the Director observes a person committing an infringement offence or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be issued to that person by the Director or the authorised person.
- (2) An infringement notice may be served—
 - (a) by delivering it personally to the person who appears to have committed the infringement offence; or
 - (b) by sending it by post addressed to him or her at his or her last known place of residence or business; or
 - (c) where the person is a holder of an aviation document, by serving it by post on that person at his or her last address for service provided under section 8.
- (3) For the purposes of the Summary Proceedings Act 1957, an infringement notice sent to a person by post under paragraph (b) or paragraph (c) of subsection (2) shall be deemed to have been served on the person when it would have been delivered in the ordinary course of post.
- (4) Every infringement notice shall be in the prescribed form and shall contain the following particulars:
 - (a) such details of the alleged infringement offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence;
 - (b) the amount of the infringement fee for that offence;
 - (c) the address at which the infringement fee may be paid;
 - (d) the time within which the infringement fee shall be paid;
 - (e) a summary of the provisions of section 21(10) of the Summary Proceedings Act 1957;
 - (f) a statement of the right of the person served with the notice to request a hearing;
 - (g) a statement of the consequences if the person served with the notice does not pay the infringement fee and does not make a request for a hearing;
 - (h) such other particulars as are prescribed in regulations made under this Act.

- (5) Different forms of infringement notices may be prescribed in regulations made under this Act in respect of different kinds of infringement offences.
- (6) Where an infringement notice has been issued under this section, proceedings in respect of the offence to which the notice relates may be commenced in accordance with section 21 of the Summary Proceedings Act 1957, and in that case the provisions of that section shall, with the necessary modifications, apply.

Section 58(1): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Disqualification

59 Effect of disqualification

- (1) Where the holder of an aviation document is disqualified by an order of a court from holding or obtaining an aviation document, the document shall be deemed to be suspended while the disqualification continues in force, and during the period of suspension shall be of no effect.
- (2) If the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document, the document shall, on the expiration of the disqualification, continue to be of no effect until the holder of it undergoes and passes such tests and fulfils such requirements as the Director may from time to time specify.

Compare: 1964 No 68 s 24A; 1975 No 34 s 6

Section 59(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

60 Commencement of period of disqualification

Where an order is made disqualifying any person from holding or obtaining an aviation document, the period of disqualification shall commence on the date of the making of the order unless the court making the order directs that the period of disqualification shall commence on a later date.

Compare: 1964 No 68 s 24C; 1975 No 34 s 6

61 Retention and custody of document

- (1) Where by an order of a court the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the order is made shall forthwith, and whether or not demand is made, surrender the document to—
 - (a) the court where the order was made; or
 - (b) to the Authority.
- (2) Where an aviation document is so surrendered, it shall forthwith be forwarded to the Director who shall endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.
- (3) If the person entitled to the document is a person to whom section 59(2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

Compare: 1964 No 68 s 24D; 1975 No 34 s 6

Section 61(1)(b): substituted, on 10 August 1992, by section 28 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 61(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

62 Removal of disqualification

- (1) Subject to this section, any person who by order of a court is disqualified for a period exceeding 6 months from holding or obtaining an aviation document may, after the expiration of 6 months after the date on which the order of disqualification became effective, apply to the court by which that order was made to remove the disqualification.
- (2) On an application under this section the court may, having regard to the character of the applicant and the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, remove the disqualification as from such date as may be specified in the order or refuse the application.
- (3) Where the disqualification was ordered by a District Court, every application under this section shall be made to a District

Court Judge exercising jurisdiction in the court by which the order was made.

- (4) Notice of every application under this section shall be served on the Director who shall have a right to appear and be heard in respect of the matter.

Compare: 1964 No 68 s 24E; 1975 No 34 s 6

Section 62(4): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

63 Particulars of disqualification orders, etc, to be sent to Director

Where a court makes an order disqualifying a person from holding or obtaining an aviation document or imposes restrictions or conditions (or both) on any aviation document held by or issued to any person or makes an order under section 62 removing any disqualification, particulars of the order shall be sent by the Registrar of the court to the Director.

Compare: 1964 No 68 s 24F; 1975 No 34 s 6

Section 63 heading: amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 63: amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

64 Appeals against disqualification

- (1) For the purposes of Part 4 of the Summary Proceedings Act 1957, an order of a District Court by which any person is disqualified from holding or obtaining an aviation document shall be deemed to be a sentence or part of a sentence, as the case may be. If a notice of appeal against any such order is filed, the court may, if it thinks fit, defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.
- (2) Any person who is disqualified by an order of a District Court from holding or obtaining an aviation document and who applies for a removal of that disqualification and whose application is refused, may appeal against the refusal to the High Court, and in any such case the provisions of Part 4 of the Summary Proceedings Act 1957 shall, with the necessary modifications, apply.

- (3) Any person who is disqualified by an order of the High Court from holding or obtaining an aviation document and who applies for a removal of that disqualification and whose application is refused, may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the refusal, and in any such case the provisions of subsections (3) to (5) of section 379A of the Crimes Act 1961 shall, with the necessary modifications, apply as if it were an appeal under that section.
- (4) Where application is made to the Court of Appeal for leave to appeal to that court against a sentence of the High Court that is or includes an order of disqualification, the High Court may, if it thinks fit, defer the operation of the order pending the application for leave to appeal and, if leave is granted, pending the appeal.
- (5) Where an appeal to the High Court or Court of Appeal is allowed under this section, whether in whole or in part, the Registrar of the High Court shall send notice thereof to the Director who shall have a right to appear and be heard in respect of the matter.
- (6) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section shall be disregarded.

Compare: 1964 No 68 s 24G; 1975 No 34 s 6

Section 64(5): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Offences punishable on summary conviction

65 Offences to be punishable on summary conviction

- (1) Subject to section 57(2) and Part 5A, every offence against this Act shall be punishable on summary conviction.
- (2) Notwithstanding anything in the Summary Proceedings Act 1957, any information for an offence against this Act may be laid at any time within 12 months after the date of the offence.

Section 65(1): amended, on 1 June 2004, by section 27 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 65(2): added, on 13 August 1996, by section 22 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Part 5A

Unruly passenger offences

Part 5A: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Preliminary provisions

Heading: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65A Application of this Part

- (1) This Part applies to any unruly passenger offence committed—
 - (a) on an aircraft in New Zealand, regardless of the nationality of the aircraft;
 - (b) outside New Zealand on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is New Zealand.
- (2) For the purposes of this Part, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.
- (3) Despite subsection (2), in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place, or, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.
- (4) A person authorised by the Director to exercise a power or function under this Part must carry a warrant of authority issued by the Director that specifies—
 - (a) the name of, and the office or offices held by, that person; and
 - (b) the powers and functions that the person is authorised to exercise under this Part.
- (5) A constable may exercise all or any of the powers and functions that may be conferred on a person authorised by the Director under this Part.

- (6) For the purposes of this Part, **person authorised by the Director** includes (but is not limited to) an aviation security officer authorised by the Director.

Section 65A: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 65A(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

65B Liability for offences against this Part despite extraterritoriality

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

Section 65B: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

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

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

Section 65C: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65D Foreign aircraft outside New Zealand

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

- (a) the pilot-in-command—
 - (i) makes a request in the prescribed form to the Director or a person authorised by the Director to issue an infringement notice or to commence proceedings; and
 - (ii) provides an undertaking in the prescribed form that he or she (or the operator of the aircraft) has not made or will not make a similar request to the authorities of any other State; and
 - (b) in the case of proceedings, the Attorney-General consents.
- (2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody, or released on bail before the Attorney-General decides whether or not to consent to proceedings.
- (3) Despite subsection (1)(b), proceedings for an unruly passenger offence committed on a foreign aircraft outside of New Zealand may be commenced without the Attorney-General's consent if—
- (a) a copy of the infringement notice is filed or particulars of the infringement notice are provided under section 65S(1); or
 - (b) the defendant requests a hearing in respect of the infringement offence to which the infringement notice relates.
- (4) In any proceedings for an offence under this Part, the pilot-in-command's request and undertaking, if made in the prescribed form or forms, are—
- (a) admissible in evidence; and
 - (b) in the absence of proof to the contrary, sufficient evidence of the matters stated in the form or forms.

Section 65D: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 65D(3)(a): substituted, on 1 March 2007, by section 32(1) of the Summary Proceedings Amendment Act 2006 (2006 No 13).

65E Proceedings for offences

- (1) Subject to section 65Q(2), the offences specified in this Part (except sections 65F and 65G(1)(d)) are triable summarily.

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

Section 65E: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Unruly passenger offences

Heading: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65F Strict liability for acts endangering safety

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

Section 65F: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65G Disruptive conduct towards crew member

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

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

Section 65G: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65H Interference with aircraft

- (1) Every person commits an offence who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors.
- (2) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$10,000.

Section 65H: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65I Intoxicated persons on aircraft

- (1) Every person (except a person under medical care) commits an offence who—
- (a) is intoxicated and boards an aircraft; or
 - (b) becomes intoxicated on an aircraft.
- (2) Every person who commits an offence against—
- (a) subsection (1)(a) is liable to a fine not exceeding \$5,000;
 - (b) subsection (1)(b) is liable to a fine not exceeding \$3,000.
- (3) For the purposes of this section, a person is **intoxicated** if the pilot-in-command (or senior flight attendant authorised by the pilot-in-command for this purpose) has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to—
- (a) be incapable of properly looking after himself or herself; or
 - (b) actively present a hazard to the aircraft or to persons on the aircraft; or
 - (c) offend against the good order and discipline required on an aircraft.
- (4) For the purposes of this section, **person under medical care** means a person who—
- (a) is under the supervision of an attendant; and

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

Section 65I: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

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

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

Section 65J: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65K Offensive behaviour or words

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

Section 65K: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65L Portable electronic devices not to be operated

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

Section 65L: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65M Non-compliance with seating and seatbelt instructions

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

Section 65M: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65N No smoking

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

Section 65N: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65O Dangerous goods

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

Section 65O: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65P Procedure for certain unruly passenger offences

- (1) If any offence specified in section 65Q(2) is alleged to have been committed by any person (in this section, the defendant), the pilot-in-command of the aircraft at the time of the alleged

- offence may, by any available means, notify, or cause to be notified,—
- (a) the Director; or
 - (b) a person authorised by the Director.
- (2) If the Director or a person authorised by the Director has reason to believe that a defendant has committed any offence specified in section 65Q(2),—
- (a) the defendant may be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or
 - (b) the Director or the person authorised by the Director may issue an infringement notice in respect of the alleged offence.
- (3) If the Director or a person authorised by the Director has reasonable cause to suspect that a person has committed any offence specified in section 65G(1)(a) to (c) or section 65H or section 65J or section 65K or section 65Q(2), he or she may require the person to give his or her full name, address, and date of birth.
- (4) If the Director or the person authorised by the Director has reasonable grounds to suppose that any details provided under subsection (3) are false or misleading, he or she may require the person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.
- (5) If the person, without reasonable excuse, refuses or fails to comply with a request under subsection (3) or subsection (4), and persists in that refusal or failure after being warned by the Director or a person authorised by the Director that he or she may be arrested for committing an offence by that refusal or failure, a constable may arrest that person without warrant.
- (6) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse,—
- (a) refuses or fails to comply with a request under subsection (3) or subsection (4); or
 - (b) gives details that are false or misleading in a material respect to the Director or a person authorised by the Director in response to such a request.

- (7) Evidence produced by the defendant to the Director or the person authorised by the Director under subsection (4) must be inspected without delay and returned to the defendant as soon as practicable after the inspection has concluded.
- (8) The Director or a person authorised by the Director—
- (a) may deliver an infringement notice (or a copy of it) to the defendant personally; or
 - (b) may send it (or a copy of it) to the defendant by post addressed to the defendant's last known place of residence or business.

Section 65P: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 65P(5): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

65Q Form of infringement notice

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

- (d) in the case of an offence against section 65M, \$500:
- (e) in the case of an offence against section 65N, \$500:
- (f) in the case of an offence against section 65O, \$500.

Section 65Q: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

65R Payment of fees

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

Section 65R: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 65R(2): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

65S Filing of notices

- (1) The Director, or a person authorised by the Director, may provide particulars of an infringement notice issued under section 65P, in accordance with section 21(4) and (4A) of the Summary Proceedings Act 1957, after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if—
 - (a) the infringement fee for the offence has not by then been paid to the Director as specified in the notice; and
 - (b) the Director has not by then received at the address specified in the notice a notice requesting a hearing in respect of that offence.
- (2) If an infringement notice under section 65P has been issued and served under this section, the Summary Proceedings Act 1957 applies as if that notice were a reminder notice served under section 21(2) of that Act, and the provisions of that Act apply, with all necessary modifications, to the alleged offence as if—

- (a) the reference in section 21(1)(b) to providing particulars of a reminder notice under that section were a reference to providing particulars of the infringement notice under subsection (1) of this section; and
- (b) subsection (1) of this section were in the place of section 21(3); and
- (c) the reference in section 21(3A) to the particulars of a reminder notice not having been provided under section 21(3) were a reference to the particulars of the infringement notice not having been provided under subsection (1) of this section; and
- (d) every reference in section 21(4), (4A), and (4B) to particulars of a reminder notice were a reference to the particulars of an infringement notice and every reference to the contents of a reminder notice were a reference to the contents of an infringement notice; and
- (e) the reference in section 21(4)(a) to parts of the reminder notice were a reference to parts of the infringement notice; and
- (f) the reference in section 21(4C) to particulars of a reminder notice were a reference to particulars of an infringement notice; and
- (g) the reference in section 21(4C) to the reminder notice were a reference to the infringement notice; and
- (h) the reference in section 21(5) to the verification of particulars of a reminder notice provided under section 21(3) were a reference to the verification of particulars of an infringement notice provided under subsection (1) of this section; and
- (i) the reference in section 21(6)(b) and in section 21(10)(a) to a period of 28 days after the service of a reminder notice were a reference to the period of 14 days after the service of the infringement notice; and
- (j) each reference in section 21A and section 78B to a reminder notice were a reference to an infringement notice and each reference in section 21A and section 78B to the reminder notice were a reference to the infringement notice; and

- (k) the references to reminder notices in the definition of defendant in section 2, and in section 212, and in any other relevant provisions of that Act or in any regulations made under that Act, were references to the infringement notice.
- (3) *[Repealed]*
- (4) Despite section 203(1) of the Summary Proceedings Act 1957, an infringement notice under section 65P may be issued and served on a Sunday.
- (5) For the purpose of subsection (1), an infringement notice sent by post is deemed to have been served on the defendant when it was posted.

Section 65S: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 65S(1): substituted, on 1 March 2007, by section 32(2) of the Summary Proceedings Amendment Act 2006 (2006 No 13).

Section 65S(2): substituted, on 1 March 2007, by section 32(2) of the Summary Proceedings Amendment Act 2006 (2006 No 13).

Section 65S(3): repealed, on 1 March 2007, by section 32(2) of the Summary Proceedings Amendment Act 2006 (2006 No 13).

65T Savings

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

Section 65T: inserted, on 1 June 2004, by section 28 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Part 6

Rights of appeal

66 Appeal to District Court

- (1) A person may appeal to a District Court against a specified decision made under this Act by the Director if another section of this Act gives that person a right of appeal under this section, and—
 - (a) the person—
 - (i) is a person in respect of whom the decision was made; and
 - (ii) is dissatisfied with the decision; or
 - (b) the person is the owner, operator, or person for the time being in charge of the aircraft or aeronautical product that is the subject of the decision.
- (2) The court may confirm, reverse, or modify the decision appealed against.
- (3) Every decision of the Director appealed against under this section continues in force pending the determination of the appeal, and no person is excused from complying with any of the provisions of this Act on the ground that any appeal is pending.
- (4) Even though an appeal under this section may have been determined in favour of the appellant, the Director may, subject to the like right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with, in accordance with the provisions of this Act, any aviation document, any person to which or to whom the appeal related, or any aviation document or approval granted or restored in compliance with the decision of the District Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.
- (5) In this section, a **specified decision** is a decision—
 - (a) concerning the grant, issue, revocation, or suspension of an aviation document:
 - (b) to impose conditions on an aviation document:
 - (c) to exercise powers under section 21:
 - (d) to decline to register an aircraft under section 6.

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

Section 66: substituted, on 1 June 2002, by section 14 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 66(5)(e): added, on 24 February 2006, by section 29(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 66(5)(f): added, on 24 February 2006, by section 29(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 66(5)(g): added, on 24 February 2006, by section 29(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 66(5)(h): added, on 24 February 2006, by section 29(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 66(5)(i): added, on 24 February 2006, by section 29(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 66(5)(j): added, on 30 March 2007, by section 29(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

67 Procedure
[Repealed]

Section 67: repealed, on 1 June 2002, by section 14 of the Civil Aviation Amendment Act 2002 (2002 No 15).

68 Decision of Director to continue in force pending appeal, etc
[Repealed]

Section 68: repealed, on 1 June 2002, by section 15 of the Civil Aviation Amendment Act 2002 (2002 No 15).

69 Appeal to High Court on question of law

- (1) Every party to an appeal under section 66 may appeal to the High Court on a question of law.

- (2) The High Court Rules and sections 74 to 78 of the District Courts Act 1947, with all necessary modifications, apply to an appeal under subsection (1) as if it were an appeal under section 72 of that Act.

Section 69(2): substituted, on 24 November 2003, by section 4 of the District Courts Amendment Act 2002 (2002 No 63).

70 Further appeal to Court of Appeal

- (1) Every party to an appeal under section 69 may, with the leave of the High Court or (if that leave is declined) with special leave of the Court of Appeal, appeal to the Court of Appeal on that question of law.
- (2) On any appeal under subsection (1), the Court of Appeal may make such order or determination as it thinks fit.
- (3) The decision of the Court of Appeal on an appeal under this section, or on any application for leave to appeal to the court, shall be final.
- (4) Subject to this section, the procedure in respect of any appeal under this section shall be in accordance with the rules of court.

71 Evidence and proof

- (1) In any proceedings for an offence against this Act, the following provisions shall apply:
- (a) a copy of any aviation document which is certified correct by the Director or any other employee of the Authority authorised in that behalf by the Director shall be sufficient, in the absence of proof to the contrary, to prove that document:
- (b) evidence of the contents of the New Zealand Register of Aircraft maintained under section 72B(f) may be given by a certificate signed by the Director or any other employee of the Authority authorised in that behalf by the Director; and every such certificate shall be sufficient evidence of the matters stated in it, until the contrary is proved:
- (c) the production of a certificate signed by the Director or any other employee of the Authority authorised in that behalf by the Director to the effect that on a specified date a person or organisation was or was not the holder

- of any aviation document or any specified type of aviation document shall be sufficient evidence of the matter certified, until the contrary is proved:
- (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 (Medical Certification) Amendment Act 2001, is sufficient evidence of the matter stated, until the contrary is proved:
 - (cb) the production of a certified copy of material incorporated by reference is, in the absence of evidence to the contrary, sufficient evidence that the material produced is the material incorporated by reference in a rule:
 - (d) until the contrary is proved, it shall be presumed that every certificate purporting to have been certified or given under this section has been certified or given by the Director or by any other employee of the Authority authorised by the Director to certify documents or give certificates under this section.
 - (e) any licence granted under Part 8A may be proved by the production of a copy of that licence certified to be correct by the Secretary.
- (2) Without limiting any other method of proof, the production in any proceedings of a copy of—
- (a) any ordinary rule purporting to have been made by the Minister under Part 3; or
 - (b) any emergency rule purporting to have been made by the Director under section 31—
- shall, in the absence of proof to the contrary, be sufficient evidence of the rule and of the fact that it has been made in accordance with the provisions of that Part.

Section 71(1)(a): amended, on 10 August 1992, by section 30(a) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 71(1)(b): amended, on 13 August 1996, by section 23(1) of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 71(1)(b): amended, on 10 August 1992, by section 30(b) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 71(1)(c): amended, on 10 August 1992, by section 30(c) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 71(1)(ca): inserted, on 1 April 2002, by section 10(1) of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

Section 71(1)(cb): inserted, on 1 August 2010, by section 11 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Section 71(1)(d): amended, on 10 August 1992, by section 30(d) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 71(1)(e): added, on 13 August 1996, by section 23(2) of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 71(2): added, on 20 August 1993, by section 6 of the Civil Aviation Amendment Act 1993 (1993 No 90).

72 Evidence of air traffic services provider

- (1) Any document used in recording services in relation to the movement of any aircraft and purporting to have been initiated at the time of the movement by an employee of a person providing air traffic services shall be admissible in every court and in every judicial examination or proceeding as prima facie evidence that the air traffic services described in such document were provided on the date and for the aircraft referred to in the document.
- (2) A document certified by an employee of a person providing air traffic services purporting to be a computer record of the provision of air traffic services, the particulars of which have been recorded or stored in the usual and ordinary course of the business of such person, shall be admissible as if it were a document to which subsection (1) applies.
- (3) For the purposes of this section, the expression **computer record** includes a microfiche, a microfiche printout, a computer printout, or any other document produced by a device by means of which information is recorded or stored.

Compare: 1964 No 68 s 17F; 1987 No 108 s 4

Part 6A

Civil Aviation Authority of New Zealand

Part 6A: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

72A Civil Aviation Authority of New Zealand established

- (1) There is hereby established an authority to be known as the Civil Aviation Authority of New Zealand.
- (1A) The Authority is a Crown entity for the purposes of section 7 of the Crown Entities Act 2004.
- (1B) The Crown Entities Act 2004 applies to the Authority except to the extent that this Act expressly provides otherwise.
- (2) The Authority shall consist of 5 members appointed in accordance with section 28(1)(a) of the Crown Entities Act 2004.
- (2A) Members of the Authority are the board for the purposes of the Crown Entities Act 2004.
- (3) *[Repealed]*
- (4) The Minister shall appoint as members persons who the Minister considers will represent the public interest in civil aviation.
- (4A) Subsection (4) does not limit section 29 of the Crown Entities Act 2004.
- (5) Before appointing 2 of the members, the Minister shall request, from such organisation or organisations as the Minister considers represent those who have a substantial interest in the civil aviation industry in New Zealand, the names of persons such organisation or organisations consider proper candidates for appointment to the Authority.
- (6) *[Repealed]*
- (7) A person may hold office as a member concurrently with any other office, except any office or appointment under the Transport Accident Investigation Commission Act 1990.
- (8) Neither the Director nor any other employee of the Authority may be a member of the Authority.
- (9) The Authority is owned by the Crown.
- (10) The Authority is hereby deemed to be a Crown entity for the purposes of the Public Finance Act 1989.
- (11) *[Repealed]*
- (12) The provisions of Schedule 3 shall apply in relation to the Authority.

Section 72A: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 72A(1A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(1B): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(2): amended, on 1 June 2004, by section 30 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 72A(2A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(3): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(4): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(4A): inserted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(5): amended, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(6): repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(9): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72A(10): amended, on 21 December 1992, by section 42 of the Public Finance Amendment Act 1992 (1992 No 142).

Section 72A(11): repealed, on 20 August 1993, by section 7(b) of the Civil Aviation Amendment Act 1993 (1993 No 90).

72AA Objective of Authority

The objective of the Authority is to undertake its safety, security, and other functions in a way that contributes to the aim of achieving an integrated, safe, responsive, and sustainable transport system.

Section 72AA: inserted, on 1 December 2004, by section 7 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

72B Functions of Authority

(1) *[Repealed]*

(2) The Authority has the following functions:

- (a) to promote civil aviation safety and security in New Zealand:
- (b) to promote civil aviation safety and security beyond New Zealand in accordance with New Zealand's international obligations:

- (c) *[Repealed]*
 - (ca) to establish and continue a service to be called the Aviation Security Service:
 - (d) to investigate and review civil aviation accidents and incidents in its capacity as the responsible safety and security authority, subject to the limitations set out in section 14(3) of the Transport Accident Investigation Commission Act 1990:
 - (e) to notify the Transport Accident Investigation Commission in accordance with section 27 of accidents and incidents notified to the Authority:
 - (f) to maintain and preserve records and documents relating to activities within the civil aviation system, and in particular to maintain the New Zealand Register of Aircraft and the Civil Aviation Registry:
 - (g) to ensure the collection, publication, and provision of charts and aeronautical information, and to enter into arrangements with any other person or organisation to collect, publish, and distribute such charts and information:
 - (h) to provide to the Minister such information and advice as the Minister may from time to time require:
 - (i) to co-operate with, or to provide advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the Authority are satisfied that the performance of the functions and duties of the Authority will not be compromised:
 - (ia) to provide information and advice with respect to civil aviation, and to foster appropriate information education programmes with respect to civil aviation, that promote its objective:
 - (j) to enter into technical or operational arrangements, or both, with civil aviation authorities of other countries.
- (2A) The Authority must, if directed to do so by the Minister under section 14C, do any or all of the following:
- (a) operate and maintain the search and rescue co-ordination centre established under section 14B(1)(a):

- (b) co-ordinate, or participate in the co-ordination of, any search and rescue operation specified in section 14B(1)(a):
 - (c) perform, or participate in the performance of, any search and rescue operation specified in section 14B(1)(a):
 - (d) exercise any or all of the powers of the Minister under section 14B(1)(b) and (c) and section 14B(2).
- (3) The Authority must carry out any other civil aviation functions and duties that—
- (a) are conferred on it by this Act or any other Act; and
 - (b) the Minister may direct in accordance with section 112 of the Crown Entities Act 2004.
- (3A) The Authority may provide such administrative support services for the Aviation Security Service, and on such terms and conditions, as are agreed between the Director and the General Manager.
- (3B) The Authority shall perform its functions in respect of the Aviation Security Service separately from its other functions and shall maintain accounts, records, and reports accordingly.
- (4) *[Repealed]*

Section 72B: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 72B(1): repealed, on 1 December 2004, by section 8(1) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(2): amended, on 1 December 2004, by section 8(2) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(2)(a): substituted, on 1 December 2004, by section 8(3) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(2)(b): substituted, on 1 December 2004, by section 8(3) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(2)(c): repealed, on 1 December 2004, by section 8(3) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(2)(ca): inserted, on 20 August 1993, by section 8(1) of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 72B(2)(i): substituted, on 1 December 2004, by section 8(4) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(2)(ia): inserted, on 1 December 2004, by section 8(4) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(2)(j): added, on 24 February 2006, by section 31 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 72B(2A): substituted, on 1 December 2004, by section 8(5) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(3): substituted, on 1 December 2004, by section 8(6) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72B(3)(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72B(3A): inserted, on 20 August 1993, by section 8(2) of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 72B(3B): inserted, on 20 August 1993, by section 8(2) of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 72B(4): repealed, on 1 December 2004, by section 8(1) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

72C Authority to comply with policy directions

[Repealed]

Section 72C: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

72CA Surplus of Aviation Security Service funds payable to the Crown

If the Minister of Finance is satisfied at any time that in any financial year the Aviation Security Service has a surplus of funds, he or she may, after consultation with the Minister, direct the Authority to pay to the Crown a sum equal to the whole or any part of that surplus, as the Minister of Finance thinks fit.

Section 72CA: inserted, on 20 August 1993, by section 9 of the Civil Aviation Amendment Act 1993 (1993 No 90).

72D Authority to have powers of natural person

[Repealed]

Section 72D: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

72E Authority to consider delegating or contracting out of functions and powers

Subject to this Act, the Authority shall, in the course of performing its functions and powers, consider whether it could most efficiently and effectively perform those functions and powers by means of its own operations or by delegating or con-

tracting out those operations to appropriate persons selected after an appropriate competitive process.

Section 72E: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

72F Extra information to be included in statement of intent

- (1) The Authority must include the following information in its statement of intent prepared under section 139 of the Crown Entities Act 2004:
 - (a) a statement of any new borrowings or financial leases, or similar liabilities the Authority intends to incur during that year; and
 - (b) a statement of the Authority's best estimate of—
 - (i) both the various impacts the outputs described in the statement of intent will have for, and the consequences of those outputs for, a safe civil aviation system in New Zealand during the year to which the statement of intent relates; and
 - (ii) the impacts of those outputs on, and consequences of those outputs for, a safe civil aviation system in New Zealand for later years.
- (2) The Minister may direct the Authority to amend any provision that is included in the statement of intent under this section, and section 147 of the Crown Entities Act 2004 applies accordingly.
- (3) No provision specifying any liabilities the Authority intends to incur may be included in a statement of intent without the concurrence of the Minister of Finance.

Section 72F: substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

72G Service charter

- (1) As soon as practicable after the commencement of this Act but in any event not later than 1 January 1993, the Authority shall prepare and make available to the public a service charter including (but not limited to)—
 - (a) a statement by the Authority of the standards of service which the public can expect to apply to the carrying out of functions of the Authority and the Director under this

- Act and any regulations or rules made under this Act;
and
- (b) details of the procedures to be followed under the service charter by a person who alleges that the standards were not met; and
 - (c) details of the remedies that are available under the service charter to the person affected where it is established by that person to the satisfaction of the Authority that the standards were not met; and
 - (d) provision for the appointment by the Authority of an appropriate independent person to assist in the resolution of disputes arising in respect of alleged failures to meet the standards of service specified in the service charter.
- (2) The service charter may make provision for a person to be appointed as a deputy to the person appointed under the provision referred to in subsection (1)(d), and for the functions, duties, and powers of the deputy.
 - (3) The Authority, the Director, any employee or agent of the Authority, and any agent of the Director shall have a public duty to observe the provisions of the service charter.
 - (4) If the Authority fails to comply with subsection (1), the Minister shall prepare the service charter and shall make it available to the public.
 - (5) The Authority (in any case) and the Minister (where the Minister has prepared it) may from time to time, in writing, amend the service charter, and shall make such amendments available to the public.
 - (6) The Authority shall not amend the service charter under subsection (5) if the service charter is prepared by the Minister under subsection (4).
 - (7) Nothing in the service charter shall limit or restrict any right to make any complaint or to bring any proceedings under any Act or rule of law.

Section 72G: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 72G(5): amended, on 20 August 1993, by section 11 of the Civil Aviation Amendment Act 1993 (1993 No 90).

72H Use of words Civil Aviation Authority

- (1) No company or other body shall be incorporated or registered under a name that contains the words “Civil Aviation Authority” or under any name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names Protection Act 1981, so resembles such a name as to be likely to deceive.
- (2) Nothing in subsection (1) shall apply to the Authority or to any person who is appropriately authorised by the Authority.

Section 72H: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

72I Director of Civil Aviation

- (1) The Authority shall from time to time appoint a chief executive of the Authority, who shall be known as the Director of Civil Aviation.
- (2) The Director shall have and may exercise such functions and powers as may be conferred or imposed on the Director by this Act, or regulations or rules made under this Act, and such functions and powers as may be delegated to the Director by the Authority under section 73 of the Crown Entities Act 2004.
- (3) Without limiting subsection (2), the Director shall—
 - (a) exercise control over entry into the civil aviation system through the granting of aviation documents under this Act; and
 - (b) take such action as may be appropriate in the public interest to enforce the provisions of this Act and of regulations and rules made under this Act, including the carrying out or requiring of inspections and monitoring; and
 - (c) monitor adherence, within the civil aviation system, to any regulatory requirements relating to—
 - (i) safety and security, including (but not limited to) personal security;
 - (ii) access and mobility;
 - (iii) public health;
 - (iv) environmental sustainability;
 - (v) any other matter; and

- (d) ensure regular reviews of the civil aviation system to promote the improvement and development of its safety and security.
- (3A) Without limiting subsection (2), where the Director believes on reasonable grounds—
 - (a) that an unsafe condition exists in any aircraft or aeronautical product; and
 - (b) that condition is likely to exist or develop in any other aircraft or aeronautical products of the same design,—the Director may, by notice in writing, issue an airworthiness directive in respect of aircraft or aeronautical products, as the case may be, of that design.
- (3B) Notice of an airworthiness directive issued under subsection (3A) must be given in the *Gazette*.
- (3C) An airworthiness directive issued under subsection (3A) comes into force on the date specified in the directive, which may be a date earlier than the date of notification of the issuing of the directive in the *Gazette* under subsection (3B), if—
 - (a) the Director considers that urgent action is required; and
 - (b) the Director notifies the affected parties before the directive comes into force; and
 - (c) notification of the issuing of the directive is given in the *Gazette* not later than 28 days after the directive comes into force.
- (3D) The Director may enter into arrangements with CASA for the purpose of giving effect to the ANZA mutual recognition agreements.
- (4) In performing or exercising any functions or powers in relation to—
 - (a) the granting of aviation documents; or
 - (aa) the issue, suspension, or revocation of medical certificates; or
 - (b) the suspension of aviation documents; or
 - (c) the revocation of aviation documents; or
 - (d) the granting of exemptions; or
 - (e) the enforcement of the provisions of this Act or any other Act, or of rules or regulations made under any such Act,—

in respect of any particular case, the Director shall act independently and shall not be responsible to the Minister or the Authority for the performance or exercise of such functions or powers.

Section 72I: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 72I(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Section 72I(3)(b): amended, on 1 December 2004, by section 9 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72I(3)(b): amended, on 1 June 2002, by section 16(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 72I(3)(c): added, on 1 December 2004, by section 9 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72I(3)(d): added, on 1 December 2004, by section 9 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 72I(3A): inserted, on 13 August 1996, by section 26 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 72I(3A): amended, on 1 June 2002, by section 16(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 72I(3B): substituted, on 1 June 2002, by section 16(3) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 72I(3C): inserted, on 1 June 2002, by section 16(3) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 72I(3D): inserted, on 30 March 2007, by section 32 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 72I(4): substituted, on 20 August 1993, by section 12 of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 72I(4)(aa): inserted, on 1 April 2002, by section 10(2) of the Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87).

72J Acting Director of Civil Aviation

- (1) In the case of absence from duty of the Director (from whatever cause arising) or on the occurrence from any cause of a vacancy in that position (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the Director or pertaining to the position may be exercised and performed by—
- (a) any other employee for the time being directed by the Authority to exercise and perform them; or

- (b) any other person for the time being appointed by the Authority to exercise and perform them,—
whether the direction has been given or the appointment has been made before the absence or vacancy occurs or while the absence or vacancy continues.
- (2) No such direction or appointment, and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall in any proceedings be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.
- (3) No person employed within the Aviation Security Service shall be given any direction or appointment by the Authority under this section without the prior written approval of the Minister.

Section 72J: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 72J(3): added, on 20 August 1993, by section 13 of the Civil Aviation Amendment Act 1993 (1993 No 90).

72K Powers of Director in relation to examinations, etc

For the purposes of granting or renewing aviation documents under this Act, the Director may set, conduct, and administer examinations and tests, conduct flight testing, and carry out such other functions in relation to such examinations, tests, and flight testing as may be necessary.

Section 72K: inserted, on 10 August 1992, by section 31 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 72K: amended, on 1 June 2002, by section 17 of the Civil Aviation Amendment Act 2002 (2002 No 15).

72L General Manager of Aviation Security Service

- (1) The Authority shall from time to time appoint a General Manager of the Aviation Security Service who, by virtue of his or her office, shall be an aviation security officer.
- (2) The General Manager shall have and may exercise such functions and powers in relation to the Aviation Security Service as may be conferred or imposed on the General Manager by this Act, or regulations or rules made under this Act, and such

functions and powers in relation to aviation security services as may be delegated to the General Manager by the Authority under section 73 of the Crown Entities Act 2004 or by the Director under section 23A of this Act.

- (3) The General Manager shall, in performing any functions or exercising any powers conferred or imposed on the General Manager by this Act or any other Act, or by regulations or rules made under this Act or any other Act, (including any functions or powers relating to enforcement of the aviation security provisions of this Act or any other Act, or regulations or rules made under this Act or any other Act), in respect of any particular case, act independently and shall not be responsible to the Minister, the Authority, or the Director for the performance of such functions or the exercise of such powers.

Section 72L: inserted, on 20 August 1993, by section 14 of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 72L(2): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

72M Acting General Manager of Aviation Security Service

- (1) In the case of absence from duty of the General Manager (from whatever cause arising) or on the occurrence from any cause of a vacancy in that position (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the General Manager or pertaining to that position may be exercised and performed by—

- (a) any other person in the Aviation Security Service for the time being directed by the Authority to exercise and perform them; or
- (b) any other employee of the Authority for the time being directed by the Authority (with the prior written approval of the Minister) to exercise and perform them; or
- (c) any other person for the time being appointed by the Authority to exercise and perform them,—

whether the direction has been given or the appointment has been made before the absence or vacancy occurs or while the absence or vacancy continues.

- (2) No such direction or appointment, and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall in any proceedings be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.

Section 72M: inserted, on 20 August 1993, by section 14 of the Civil Aviation Amendment Act 1993 (1993 No 90).

72N Use of words Aviation Security Service

- (1) No company or other body shall be incorporated or registered under a name that contains the words “Aviation Security Service” or under any name that, in the opinion of the Registrar of Companies, or the appropriate registering authority within the meaning of section 2 of the Flags, Emblems, and Names Protection Act 1981, so resembles such a name as to be likely to deceive.
- (2) Nothing in subsection (1) shall apply to the Aviation Security Service or the Authority or to any person who is appropriately authorised by the Authority.

Section 72N: inserted, on 20 August 1993, by section 14 of the Civil Aviation Amendment Act 1993 (1993 No 90).

72O References to Director to be read as General Manager of Aviation Security Service in certain circumstances

- (1) Every reference in sections 23A, 23B, 42, 49(1)(a), and 50 to the Director shall be read as a reference to the General Manager in so far as the subject matter relates to aviation security services, the Aviation Security Service, or the office of the General Manager.
- (2) Where any doubt arises as to whether or not any subject matter relates to aviation security services, the Aviation Security Service, or the office of the General Manager, or relates to any other matter to which this Act relates, the issue shall be determined by the Authority.
- (3) No act, omission, or proceeding shall be called into question or declared invalid on the ground that the Director or the General Manager was not the appropriate person to be involved in the

act, omission, or proceeding if it is clear that either the Director or the General Manager was the appropriate person to be so involved.

Section 72O: inserted, on 20 August 1993, by section 14 of the Civil Aviation Amendment Act 1993 (1993 No 90).

Part 7

Registries and information services

73 New Zealand Register of Aircraft

- (1) The Authority shall establish a register to be called the New Zealand Register of Aircraft.
- (2) The Authority shall enter in the Register such particulars as may be prescribed of every aircraft registered under section 6(1)(a).

Compare: 1964 No 68 s 29(2)(h)

Section 73(1): amended, on 10 August 1992, by section 40(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 73(2): amended, on 10 August 1992, by section 40(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

74 Civil Aviation Registry

- (1) The Authority shall establish a Civil Aviation Registry.
- (2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry:
 - (a) every current aviation document:
 - (ab) every Australian AOC with ANZA privileges:
 - (b) the New Zealand Register of Aircraft:
 - (c) every regulation made under this Act, and every rule notified in the *Gazette* and for the time being in force:
 - (ca) any material incorporated into a rule by reference under section 36:
 - (d) every accident and incident notification given under section 26:
 - (da) every airworthiness directive issued by the Director under section 72I(3A):
 - (e) every delegation, authorisation, and exemption granted in writing under this Act:

- (f) the address for service of every current applicant for an aviation document and of every current aviation document holder:
 - (g) all information published under section 75:
 - (h) the current service charter:
 - (i) the current statement of intent under section 139 of the Crown Entities Act 2004.
- (3) Documents kept at the Registry shall be made available by the Authority, in accordance with the provisions of the Official Information Act 1982, for inspection by the public free of charge.
- (4) Subsection (3) is subject to the Privacy Act 1993.
- Section 74(1): amended, on 10 August 1992, by section 40(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).
- Section 74(2)(a): substituted, on 13 August 1996, by section 27(1) of the Civil Aviation Amendment Act 1996 (1996 No 91).
- Section 74(2)(ab): inserted, on 30 March 2007, by section 33(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).
- Section 74(2)(ca): inserted, on 13 August 1996, by section 27(2) of the Civil Aviation Amendment Act 1996 (1996 No 91).
- Section 74(2)(da): inserted, on 13 August 1996, by section 27(3) of the Civil Aviation Amendment Act 1996 (1996 No 91).
- Section 74(2)(h): added, on 10 August 1992, by section 32 of the Civil Aviation Amendment Act 1992 (1992 No 75).
- Section 74(2)(i): substituted, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).
- Section 74(3): amended, on 10 August 1992, by section 40(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).
- Section 74(4): added, on 1 June 2004, by section 33(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

75 Information services

- (1) The Authority shall ensure that an information service is provided which shall comprise the collection and dissemination of aeronautical information and instructions relating to the safety, regularity, and efficiency of air navigation.
- (2) The Authority shall ensure that such information and instructions are readily available to any person upon payment of a reasonable charge fixed by the Authority.

Section 75(1): amended, on 10 August 1992, by section 40(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 75(2): amended, on 10 August 1992, by section 40(1) of the Civil Aviation Amendment Act 1992 (1992 No 75).

Part 8

Aviation security

76 Aviation security

The prevention of the commission of crimes against the Aviation Crimes Act 1972 at any security designated aerodrome or security designated navigation installation, and the protection of persons and property from dangers arising from the commission or attempted commission of such crimes, shall be the joint responsibility of the New Zealand Police and any authorised provider of aviation security services at that aerodrome or installation.

Compare: 1964 No 68 s 21A; 1976 No 153 s 4

77 Responsibility of Minister

The Minister shall ensure that aviation security services are provided at all security designated aerodromes and security designated navigation installations.

77A Powers and duties of Minister to require screening, searching, and seizing

- (1) The Minister may, if the Minister considers it 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 service provider, by notice in the *Gazette*,—
- (a) to screen—
 - (i) any person boarding an aircraft:
 - (ii) any thing to be carried on an aircraft:
 - (iii) any person, item, or substance—
 - (A) before the person, item, or substance enters a sterile area:
 - (B) present in a sterile area:
 - (iv) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a security enhanced area:

- (B) present in a security enhanced area:
 - (v) any unattended item, substance, or vehicle in a security enhanced area:
 - (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)—
 - (A) aircraft or class of aircraft:
 - (B) aerodrome or class of aerodrome:
 - (C) navigation installation or class of navigation installation:
 - (iv) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a sterile area:
 - (B) present in a sterile area:
 - (v) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a security enhanced area:
 - (B) present in a security enhanced area:
 - (vi) any unattended item, substance, or vehicle in a security enhanced area:
 - (c) to seize any item or substance specified in the *Gazette* notice if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.
- (1A) An aviation security service provider directed under subsection (1) must screen and search for any item or substance specified in the *Gazette* notice.
- (2) Before directing an aviation security provider under subsection (1), the Minister must consult—
 - (a) the Director; and
 - (b) as the Minister in each case considers appropriate and practical, other ministers, representative groups in the aviation industry, government departments, and Crown agencies.
- (3) A direction made under subsection (1) takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette* if the Minister—

- (a) considers on reasonable grounds that urgent action is required; and
 - (b) has consulted the Director before that date; and
 - (c) has notified all affected parties (other than persons boarding an aircraft) before that date.
- (4) If a direction takes effect on a date before the notice is published in the *Gazette*,—
- (a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and
 - (b) if the notice is published in the *Gazette* within 28 days of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period, the Minister, after complying with subsection (3)(b) and (c), extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days).
- (5) If a direction takes effect on a date on or after the notice is published in the *Gazette*, the notice is a regulation for the purposes of the Regulations (Disallowance) Act 1989.
- (5A) A direction is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.
- (6) The Minister may rescind a direction made under subsection (1).
- (7) Subject to subsection (4), a direction remains in effect until it is rescinded.
- (8) Nothing in this section empowers the Minister to exercise the Director's powers under section 77B.

Section 77A: inserted, on 1 June 2002, by section 18 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 77A heading: amended, on 18 January 2008, by section 9(1) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77A(1): substituted, on 18 January 2008, by section 9(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77A(1A): inserted, on 18 January 2008, by section 9(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77A(2): amended, on 18 January 2008, by section 9(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77A(2)(b): amended, on 18 January 2008, by section 9(4) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77A(5A): inserted, on 1 June 2004, by section 34 of the Civil Aviation Amendment Act 2004 (2004 No 8).

77B Powers and duties of Director to require screening, searching, and seizing

- (1) The Director may, if he or she believes on reasonable grounds that a security risk exists, direct an aviation security service provider, by notice in the *Gazette*,—
- (a) to screen—
 - (i) any person boarding an aircraft:
 - (ii) any thing to be carried on an aircraft:
 - (iii) any person, item, or substance—
 - (A) before the person, item, or substance enters a sterile area:
 - (B) present in a sterile area:
 - (iv) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a security enhanced area:
 - (B) present in a security enhanced area:
 - (v) any unattended item, substance or vehicle in a security enhanced area:
 - (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)—
 - (A) aircraft or class of aircraft:
 - (B) aerodrome or class of aerodrome:
 - (C) navigation installation or class of navigation installation:
 - (iv) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a sterile area:
 - (B) present in a sterile area:
 - (v) any person, item, substance, or vehicle—
 - (A) before the person, item, substance, or vehicle enters a security enhanced area:
 - (B) present in a security enhanced area:
 - (vi) any unattended item, substance, or vehicle in a security enhanced area:

- (c) seize any item or substance specified in the *Gazette* notice if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.
- (1A) An aviation security service provider directed under subsection (1) must screen and search for any item or substance specified in the *Gazette* notice.
 - (2) Before directing an aviation security provider under subsection (1), the Director must, to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate and practical, representative groups in the aviation industry, government departments, and Crown agencies.
 - (3) A direction made under subsection (1) takes effect on the date specified in the notice, which may be a date before the notice is published in the *Gazette*, if the Director—
 - (a) considers on reasonable grounds that urgent action is required; and
 - (b) has notified all affected parties (other than persons boarding an aircraft) before that date.
 - (4) If a direction takes effect on a date before the notice is published in the *Gazette*,—
 - (a) the direction expires 28 days after that date unless the notice is published in the *Gazette* within 28 days of that date; and
 - (b) if the notice is published in the *Gazette* within 28 days of that date, the direction expires 90 days after that date unless, before the expiry of the 90-day period, the Director, after complying with subsection (3)(b), extends the period for a further specified period not exceeding 90 days (the aggregate period may not exceed 180 days).
 - (5) If a direction takes effect on a date on or after the notice is published in the *Gazette*, the notice is a regulation for the purposes of the Regulations (Disallowance) Act 1989.
 - (5A) A direction is not a regulation for the purposes of the Acts and Regulations Publication Act 1989.

- (6) The Director may rescind a direction made under subsection (1).
- (7) Subject to subsection (4), a direction remains in effect until it is rescinded.

Section 77B: inserted, on 1 June 2002, by section 18 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 77B heading: amended, on 18 January 2008, by section 10(1) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77B(1): substituted, on 18 January 2008, by section 10(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77B(1A): inserted, on 18 January 2008, by section 10(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77B(2): amended, on 18 January 2008, by section 10(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 77B(5A): inserted, on 1 June 2004, by section 35 of the Civil Aviation Amendment Act 2004 (2004 No 8).

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.
- (2) For the purposes of this section, **security sensitive information** means information that would prejudice the national security interests of New Zealand if disclosed.

Section 77BA: inserted, on 18 January 2008, by section 11 of the Civil Aviation Amendment Act 2007 (2007 No 89).

77C Transitional provisions for screening

- (1) A direction requiring the screening of domestic aircraft passenger services made by the Director before 1 June 2002 continues in force until 1 September 2002, on which date it expires; however, the Director may rescind the direction before 1 September 2002.
- (2) A person carrying out the screening of domestic aircraft passenger services under a direction to do so made before 1 June 2002 (or a search in accordance with such a direction) is entitled to continue to carry out that screening (or search) until 1 September 2002, on which date the entitlement expires.

Section 77C: inserted, on 1 June 2002, by section 18 of the Civil Aviation Amendment Act 2002 (2002 No 15).

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.

Section 77F: inserted, on 26 September 2007, by section 12(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

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 regarding the recommendation with the Inspector-General of Intelligence and Security in accordance with sections 11 and 16 of the Inspector-General of Intelligence and Security Act 1996.
- (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—
- (a) advise the person of the proposed determination and the reasons for the proposed determination; and
 - (b) give the person written notice that, within 20 working days of the date of the notice, the person may—
 - (i) seek legal advice or assistance with respect to the proposed determination;
 - (ii) respond to, comment on, or make submissions on the proposed determination;
 - (iii) provide new information relevant to the proposed determination; and
 - (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
 - (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
 - (e) make a final determination and inform the person and any other affected party of,—
 - (i) in the case of the person, the final determination and the reasons for the final determination; and
 - (ii) in the case of any other affected party, the final determination but not the reasons for the final determination.
- (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) follow the procedure set out in subsection (2) with respect to the information other than the recommendation and advise the person that the proposed determination is based on—
 - (i) a recommendation made by the New Zealand Security Intelligence Service; and
 - (ii) information other than the recommendation; and

- (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
 - (ii) the person is a New Zealand person.
- (4) If the Director makes a final adverse security check determination, the Director must—
 - (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
 - (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.
- (5) For the purposes of this section,—

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.

Section 77G: inserted, on 26 September 2007, by section 12(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

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—
 - (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.

Section 77H: inserted, on 26 September 2007, by section 12(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

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—
 - (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.

Section 77I: inserted, on 26 September 2007, by section 12(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

78 Aviation Security Service

[Repealed]

Section 78: repealed, on 20 August 1993, by section 8(3)(a) of the Civil Aviation Amendment Act 1993 (1993 No 90).

79 Authorised aviation security service providers

- (1) Subject to subsection (2), aviation security services at any security designated aerodrome or security designated navigation installation may be provided by—
 - (a) the Aviation Security Service; or
 - (b) the operator of that aerodrome or navigation installation.
- (2) No operator of an aerodrome or navigation installation, and no person employed by any such operator to provide aviation security services, shall provide aviation security services at that aerodrome or installation, except pursuant to a current aviation document issued by the Director under section 7.
- (3) The holder of every such document shall comply with the relevant prescribed requirements and standards.

Section 79(2): amended, on 10 August 1992, by section 40(2) of the Civil Aviation Amendment Act 1992 (1992 No 75).

79A Further provisions relating to Aviation Security Service

- (1) Notwithstanding sections 9 and 79, but subject to subsection (2), the Minister may from time to time by notice in the *Gazette* specify that only the Aviation Security Service may be granted an aviation document to provide aviation security services at any security designated aerodrome or security designated nav-

igation installation. Any such notice may be amended or revoked by the Minister by notice in the *Gazette*.

- (2) Where any person already holds an aviation document entitling that person to provide aviation security services at a security designated aerodrome or security designated navigation installation, the Minister shall not give a notice under subsection (1) in respect of that aerodrome or navigation installation without the consent of that person.
- (3) Notwithstanding anything in section 79, the Minister may at any time, in the event of an emergency or other crisis, appoint the Aviation Security Service to provide aviation security services at any designated aerodrome or security designated navigation installation, notwithstanding that the operator of that aerodrome or navigation installation is providing aviation security services.
- (4) Any appointment made by the Minister under subsection (3) shall have effect for a period specified by the Minister, being not more than 10 days.

Section 79A: inserted, on 20 August 1993, by section 15 of the Civil Aviation Amendment Act 1993 (1993 No 90).

80 Powers, functions, and duties of Aviation Security Service

Without limiting the powers, functions, duties, or responsibilities of the Police under this Act or any other enactment, and without limiting the generality of section 77, the Aviation Security Service shall have the following powers, functions, and duties:

- (a) to carry out—
 - (i) crew, passenger, and baggage screening of all international aircraft passenger services; and
 - (ii) the screening, reasonable searches, or seizures specified in section 77A(1) or section 77B(1):
- (ab) to undertake, if necessary, reasonable searches of crew, passengers, baggage, cargo, aircraft, aerodromes, and navigation installations:
- (b) to carry out aerodrome security patrols and patrols of navigation installations:
- (c) to review, inquire into, and keep itself informed on security techniques, systems, devices, practices, and pro-

- cedures related to the protection of civil aviation and persons employed in or using it:
- (d) to undertake, or encourage or supervise, such experimental or research work in respect of any aspect of aviation security as the Director may specify:
 - (e) for the purpose of better carrying out any of its functions under this Act, to co-operate with the Police, government departments, airport authorities, operators, and authorities administering the airport security services of other countries, and with any appropriate international organisation:
 - (ea) to provide security support services to the Police when requested by the Commissioner of Police, but only subject to the following conditions:
 - (i) the Commissioner of Police is satisfied that the provision of those services to the New Zealand Police is necessary to enable the New Zealand Police to carry out its security duties; and
 - (ii) the Aviation Security Service is satisfied that the provision of those services to the New Zealand Police will not compromise aviation security:
 - (eb) to co-operate with, or to provide advice and assistance to, any government agency or local government agency when requested to do so by the Minister, but only if the Minister and the Aviation Security Service are satisfied that the performance of the functions and duties of the Aviation Security Service will not be compromised:
 - (f) to exercise and perform such other functions and duties as may be conferred on it by any enactment.

Compare: 1964 No 68 s 21B; 1976 No 153 s 4

Section 80 heading: amended, on 26 September 2007, by section 13(1) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 80: amended, on 26 September 2007, by section 13(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 80(a): substituted, on 1 June 2002, by section 19 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 80(a)(ii): amended, on 26 September 2007, by section 13(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 80(ab): inserted, on 1 June 2002, by section 19 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 80(d): amended, on 20 August 1993, by section 17 of the Civil Aviation Amendment Act 1993 (1993 No 90).

Section 80(ea): inserted, on 24 March 2004, by section 36 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 80(eb): inserted, on 1 December 2004, by section 10 of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

80A Powers and duties of aviation security officer relating to dangerous goods

- (1) Without limiting section 80(a) and (ab), an aviation security officer may screen any person boarding an aircraft or any thing to be carried by an aircraft for the purpose of detecting dangerous goods.
- (2) If dangerous goods are detected and the aviation security officer has reasonable grounds to believe that they may not be lawfully carried on an aircraft, the aviation security officer may seize and detain the dangerous goods for the purpose of determining whether or not they may be lawfully carried on an aircraft.
- (3) If the aviation security officer determines that the dangerous goods may not be lawfully carried on an aircraft, the aviation security officer must notify the relevant operator or delivery service as soon as practicable and—
 - (a) may detain the dangerous goods until they are dealt with in accordance with paragraph (b) or paragraph (c); or
 - (b) may deliver the dangerous goods to the operator or delivery service; or
 - (c) may, if the Director agrees, destroy or otherwise dispose of the dangerous goods.
- (4) If the aviation security officer determines that the dangerous goods may be lawfully carried on an aircraft, the aviation security officer must, as far as practicable, return the dangerous goods to the owner of the dangerous goods.
- (5) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the dangerous goods pose an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the dangerous goods.

- (6) The aviation security officer must report the detection of dangerous goods in accordance with the rules or, in the absence of rules, as the Director may direct.

Section 80A: inserted, on 1 June 2002, by section 20 of the Civil Aviation Amendment Act 2002 (2002 No 15).

80B Power of aviation security officers to search for and seize certain items or substances to be carried on aircraft or into sterile areas

- (1) Without limiting section 80 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 or substance specified in a direction given under section 77A(1) or 77B(1), screen or search any person, item, substance, or vehicle—
- (a) before the person, item, substance, or vehicle enters a sterile area:
 - (b) present in a sterile area.
- (2) A search undertaken under subsection (1) must be carried out in accordance with the requirements for searches specified in section 12(2) to (8) of the Aviation Crimes Act 1972.
- (3) If an item or substance specified in section 11(1) of the Aviation Crimes Act 1972 or a direction under section 77A(1) or 77B(1) is detected in a search undertaken under subsection (1) or section 80 of this Act or section 12 of the Aviation Crimes Act 1972, and an aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area.
- (4) If the aviation security officer determines that the item or substance 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 or substance to the person from whom it was seized; or
 - (b) if impracticable to return the item or substance to the person from whom it was seized, deliver the item or

substance to the carrier of the aircraft that the person boarded or intended to board when the item or substance was seized.

- (5) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft or into a sterile area, the aviation security officer may—
 - (a) detain the item or substance until it is dealt with in accordance with paragraph (b) or (c); or
 - (b) dispose of or destroy the item or substance; or
 - (c) deliver the item or substance to a constable.
- (6) If an aviation security officer delivers an item or substance to a constable under subsection (5)(c), the aviation security officer must record the delivery and the relevant details of the seizure.
- (7) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that an item or substance poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

Section 80B: inserted, on 26 September 2007, by section 14(1) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 80B(5)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 80B(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

80C Powers and duties of aviation security officers relating to security enhanced areas

- (1) Without limiting section 80, an aviation security officer may, for the purpose of detecting any item or substance 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, substance, or vehicle—
 - (a) before the person, item, substance, or vehicle enters a security enhanced area;
 - (b) present in a security enhanced area.
- (2) A search undertaken under subsection (1) must be carried out in accordance with the requirements for searches specified in section 12(2) to (8) of the Aviation Crimes Act 1972.

- (3) If an item or substance specified in section 11(1) of the Aviation Crimes Act 1972 or a direction under section 77A(1) or 77B(1) is detected in a search undertaken under subsection (1) or section 80 of this Act 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 or substance to be carried into or remain in the security enhanced area, the aviation security officer may seize and detain the item or substance for the purpose of determining whether there is lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area.
- (4) If the aviation security officer determines that there is no lawful authority or reasonable excuse for the item or substance to be carried into or remain in the security enhanced area, the aviation security officer—
 - (a) must—
 - (i) detain the item or substance until it is delivered to a constable 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 substance; or
 - (iii) direct the person in possession of the item to leave the security enhanced area, with or without—
 - (A) the item or substance;
 - (B) any vehicle used to transport the item or substance; and
 - (b) must make a record of the item or substance and the person from whom the item or substance was seized (if any).
- (5) If the aviation security officer determines that the item or substance may be lawfully carried into or remain in the security enhanced area, the aviation security officer must, if practicable, return the item or substance to the person from whom the item or substance was seized.
- (6) Despite anything in this section, if the aviation security officer has reasonable grounds to believe that the item or substance

poses an imminent risk to safety, the aviation security officer may destroy or otherwise dispose of the item or substance.

Section 80C: inserted, on 18 January 2008, by section 14(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 80C(4)(a)(i): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

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:
 - (ii) an item, substance, or vehicle to be screened or searched with the consent of the person in possession of the item, substance, or vehicle.
- (2) To avoid doubt, an item, substance, or vehicle may be screened or searched without consent if it is unattended.

Section 80D: inserted, on 18 January 2008, by section 14(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

80E Persons who refuse to consent to be screened or searched

- (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—
 - (i) leave the security enhanced area:
 - (ii) remove any item, substance, or vehicle in that person's possession 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:
 - (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:

- (b) refuses to be screened or searched if the aviation security officer has reasonable grounds to suspect that—
 - (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.
- (4) A person detained under subsection (3) must be delivered to a constable as soon as practicable.
- (5) An aviation security officer, or any person assisting an aviation security officer, may use reasonable force, or any assistance that is reasonably necessary in the circumstances, to—
 - (a) prevent a person from entering a security enhanced area under subsection (2)(a):
 - (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

Section 80E: inserted, on 18 January 2008, by section 14(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 80E(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

80F Searches of persons refusing consent to be searched

- (1) If a person refuses to consent to the screening or searching under section 80C(1), a constable may, without a warrant, search the person and any item, substance, or vehicle in the person's possession, and may detain the person for the purposes of the search, and may take possession of any item or substance found in the course of the search that is specified in section 11(1) of the Aviation Crimes Act 1972, if the constable has reasonable grounds to suspect that—
 - (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; and

- (b) a search of the person refusing to consent, or any item, substance, or vehicle in the person's possession, 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.
- (2) The refusal of a person to consent to the searching of his or her person, or any item, substance, or vehicle in the person's possession, 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.
- (3) A constable 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
 - (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 constable to the person to be searched.
- (4) If a constable 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

Section 80F: inserted, on 18 January 2008, by section 14(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 80F(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 80F(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 80F(3)(c): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 80F(4): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

80G Searches of persons

- (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;
 - (ii) remove any gloves, footwear (including socks or stockings), head coverings, belts, jewellery, or other accessories;
 - (iii) allow an aviation security officer to carry out a pat down search;
 - (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, **pat down search**—
- (a) means a search of a clothed person in which the person conducting the search may do all or any of the following:
 - (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;
 - (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:
 - (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—
 - (i) any item or substance 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.

Section 80G: inserted, on 18 January 2008, by section 14(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

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 any item, substance, or person in the vehicle.
- (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 any item, substance, or person 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—
 - (a) stop a vehicle in a security enhanced area as soon as is practicable when required to do so by an aviation security officer; or
 - (b) remain stopped for as long as is reasonably necessary for the aviation security officer to screen or search the vehicle, and any item, substance, or person in the vehicle.

Compare: 1998 No 110 s 114

Section 80H: inserted, on 18 January 2008, by section 14(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

80I Protection of aviation security officers

Nothing done by an aviation security officer under sections 80B(3) to (7) and 80C(3) to (6) may subject the aviation security officer to personal liability if done in—

- (a) good faith; and

- (b) the exercise of powers or the performance of duties under this Act.

Compare: 1949 No 19 s 13

Section 80I: inserted, on 18 January 2008, by section 14(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

81 Functions and duties of other aviation security service providers

- (1) Aviation security service providers (other than the Aviation Security Service) shall have such functions and duties as may be prescribed by rules made under this Act.
- (2) Such aviation security service providers shall designate employees to be aviation security officers; and every such officer shall have and may exercise, in relation to the aerodrome or navigation installation at which he or she is employed, all the powers of an aviation security officer under this Part, except the powers to arrest and detain any person.

82 Security designated aerodromes and navigation installations

- (1) The Minister may, by notice in the *Gazette*, designate any aerodrome or navigation installation as a security designated aerodrome or security designated navigation installation.
- (2) Any designation under subsection (1) may at any time be revoked, in whole or in part, or amended by the Minister by notice in the *Gazette*.

Compare: 1964 No 68 s 21C; 1976 No 153 s 4

83 Right of access

- (1) Subject to subsections (2) and (3), an aviation security officer while on duty may at any time enter any security designated aerodrome or a security designated navigation installation, or any aircraft, building, or place in any part of a security designated aerodrome or security designated navigation installation, for the purpose of exercising and carrying out his or her powers, functions, and duties under this Act.
- (2) Unless the aviation security officer is accompanied by a constable, the power of entry conferred by subsection (1) shall be limited to peaceful and non-forceable entry.

- (3) Where the Police have taken command of any situation at an aerodrome or navigation installation, the rights of aviation security officers to enter any part thereof or any aircraft, building, or place shall be subject to such limitations as the senior constable present at the aerodrome or navigation installation specifies.
- (4) Where an aircraft or vehicle is not being used for commercial purposes, subsection (1) shall not apply unless the aviation security officer believes on reasonable grounds that there is in that vehicle or aircraft a person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.
- Compare: 1964 No 68 s 21D; 1976 No 153 s 4
- Section 83(2): amended, on 1 October 2008, pursuant to section 116(a)(v) of the Policing Act 2008 (2008 No 72).
- Section 83(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

84 Security areas and security enhanced areas

- (1) The Director may declare, by a sign or signs affixed at the perimeter of the area, that an area within any security designated aerodrome or security designated navigation installation is a security area.
- (1A) The Director may declare, by appropriate notification, that an area within a security area is a security enhanced area.
- (2) No person other than a constable 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—
- (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.
- (3) Every person in a security area or security enhanced area shall, on the request of an aviation security officer, state his or her name, address, the purpose of his or her presence in the security area or security enhanced area, and his or her authority to

enter it, and shall produce satisfactory evidence of the correctness of his or her stated name and address.

- (4) Where a person who fails or refuses to provide an aviation security officer with satisfactory evidence of his or her name and address when requested by the aviation security officer, or where a person fails to satisfy the aviation security officer that he or she is authorised to be there, the aviation security officer may order that person to leave the security area or security enhanced area.
- (5) An aviation security officer, and any person whom he or she calls to his or her assistance, may use such force as may be reasonably necessary to remove from any security area or security enhanced area any person who fails or refuses forthwith to leave the security area or security enhanced area after having been ordered by an aviation security officer to do so under subsection (4).
- (6) Any person who refuses to comply with subsection (3) or subsection (4) and, after having been warned that he or she commits an offence, persists in its commission, may be detained by an aviation security officer and in that case he or she shall as soon as may be practicable be delivered to a constable.
- (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.
- (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.

Compare: 1964 No 68 s 21E; 1976 No 153 s 4

Section 84 heading: amended, on 18 January 2008, by section 15(1) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 84(1): amended, on 18 January 2008, by section 15(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 84(1): amended, on 10 August 1992, by section 33 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 84(1A): inserted, on 18 January 2008, by section 15(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 84(2): substituted, on 18 January 2008, by section 15(4) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 84(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 84(3): amended, on 18 January 2008, by section 15(5) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 84(4): amended, on 18 January 2008, by section 15(6) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 84(5): amended, on 18 January 2008, by section 15(7) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 84(6): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 84(7): substituted, on 18 January 2008, by section 15(8) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 84(8): added, on 18 January 2008, by section 15(8) of the Civil Aviation Amendment Act 2007 (2007 No 89).

85 Powers of arrest and seizure of items or substances

- (1) Every aviation security officer is justified in arresting without warrant any person on or in the vicinity of any security designated aerodrome or security designated navigation installation if he or she has reasonable grounds to believe that an offence has been or is being committed by that person against any of the following enactments:
- (a) sections 3, 4, 5, 5A, and 11 of the Aviation Crimes Act 1972;
 - (b) section 45 of the Arms Act 1983 (which relates to unlawful carriage of firearms, ammunition, or explosives).
- (1A) An aviation security officer may—
- (a) search a person arrested under subsection (1);
 - (b) seize any item or substance 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 or substance 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 or substance 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 reasonable force, or any assistance that is reasonably necessary in the circumstances, to—
- (a) arrest a person under subsection (1):
 - (b) search a person under subsection (1A):
 - (c) seize an item or substance 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).
- (2) Any person called upon to do so by an aviation security officer is justified in assisting him or her in good faith to arrest any person.
- (3) An aviation security officer shall as soon as may be practicable deliver any person he or she arrests, and any item or substance he or she seizes, to a constable.
- (4) An aviation security officer may seize an item or substance 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 or substance is evidence of an offence against an enactment specified in subsection (1).

Compare: 1964 No 68 s 21F; 1976 No 153 s 4

Section 85 heading: amended, on 26 September 2007, by section 16(1) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 85(1)(a): amended, on 26 September 2007, by section 16(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 85(1A): inserted, on 26 September 2007, by section 16(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 85(1B): inserted, on 26 September 2007, by section 16(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 85(1C): inserted, on 26 September 2007, by section 16(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 85(1D): inserted, on 26 September 2007, by section 16(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 85(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 85(3): amended, on 26 September 2007, by section 16(4) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 85(4): added, on 26 September 2007, by section 16(5) of the Civil Aviation Amendment Act 2007 (2007 No 89).

86 Arrest of persons delivered to Police

- (1) A constable shall accept delivery of a person whom an aviation security officer seeks to deliver to him or her under this Part if he or she has reasonable grounds to suspect that person of having done or omitted to do anything if that act or omission is an offence against section 54 or any enactment specified in section 85(1).
- (2) A constable who accepts delivery of a person under subsection (1) may forthwith arrest that person.
- (3) An aviation security officer who detains any person in accordance with the provisions of section 84(6) and delivers him or her to a constable, and any person who at his or her request and in good faith assists an aviation security officer in doing so, is justified in so detaining and delivering that person and in using such force as may be reasonably necessary in doing so.

Compare: 1964 No 68 s 21G; 1976 No 153 s 4

Section 86(1): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 86(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

Section 86(3): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Policing Act 2008 (2008 No 72).

87 Powers of Police

Every constable shall have and may exercise all or any of the powers conferred on an aviation security officer under this Act or regulations or rules made under this Act

Compare: 1964 No 68 s 21H; 1976 No 153 s 4

Section 87: amended, on 1 October 2008, pursuant to section 116(a)(vii) of the Policing Act 2008 (2008 No 72).

Part 8A

International air services licensing

Part 8A: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87A Interpretation

In this Part,—

capacity, in relation to a scheduled international air service, means—

- (a) with respect to the transport of passengers, the number of seats provided per week on each route followed (expressed either as a number of seats or in terms of aircraft equivalents); and
- (b) with respect to the transport of cargo, the amount of cargo space provided per week on each route followed (expressed in terms of cargo aircraft equivalents)

foreign international airline means an air transport enterprise of a country or territory other than New Zealand that is offering or operating a scheduled international air service or intends to offer or operate such a service

licensee means the holder for the time being of a licence issued under this Part

New Zealand international airline means a New Zealand air transport enterprise that is offering or operating a scheduled international air service or intends to offer or operate such a service

scheduled international air service means a series of flights performed by aircraft for the transport of passengers, cargo, or mail between New Zealand and 1 or more points in any other country or territory, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open to use by members of the public; and, in relation to a New Zealand international airline, includes a seventh freedom service

seventh freedom service means a series of flights between 1 or more points in 1 country or territory other than New Zealand

and 1 or more points in another country or territory other than New Zealand, if—

- (a) the airline is designated by New Zealand under the air services agreement (or similar arrangement) between New Zealand and each country or territory in which the service is being performed; and
- (b) the service is performed according to the traffic rights allocated to the airline under those agreements (or arrangements); and
- (c) the service is a scheduled service.

Section 87A: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 87A **scheduled international air service**: amended, on 1 June 2002, by section 22(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 87A **seventh freedom service**: added, on 1 June 2002, by section 22(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

87B Scheduled international air service not to be carried on except pursuant to licence

No person shall carry on in New Zealand any scheduled international air service otherwise than pursuant to and in conformity with the terms of a scheduled international air service licence or, as the case may be, an open aviation market licence.

Section 87B: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 87B heading: amended, on 1 June 2002, by section 23 of the Civil Aviation Amendment Act 2002 (2002 No 15).

87C Application for licence

- (1) Every application for a licence under this Part shall be lodged with the Secretary.
- (2) Every applicant for a licence shall, when making the application,—
 - (a) supply such information and documents as may be required by regulations made under this Act or as may be specified by the Secretary; and
 - (b) pay the prescribed fees and charges (if any).

Section 87C: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

*Scheduled international air service licences for
New Zealand international airlines*

Heading: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87D Minister to be licensing authority for New Zealand international airlines

The Minister shall be the licensing authority to grant scheduled international air service licences to New Zealand international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

Section 87D: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87E Notice of application

- (1) Where an application for a scheduled international air service licence is lodged by a New Zealand international airline in accordance with section 87C, the Secretary shall give notice in the *Gazette* that the application has been received.
- (2) Every notice under this section shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.

Section 87E: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87F Consideration of application for scheduled international air service licence by New Zealand international airline

- (1) In considering any application for a scheduled international air service licence made by a New Zealand international airline the Minister shall take into account the following matters:
 - (a) any relevant international agreement, convention, or arrangement to which New Zealand is a party;
 - (b) the safety and security requirements of the Director;
 - (c) the financial ability of the applicant to carry on the proposed service;
 - (d) the likelihood of the applicant carrying on the proposed service satisfactorily:

- (e) any written representations received by the Minister in relation to the application:
 - (f) such other matters as the Minister thinks fit.
- (2) If the granting of the licence would be contrary to any agreement, convention, or arrangement referred to in subsection (1)(a), the Minister shall refuse to grant the licence.

Section 87F: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87G Scheduled international air service licence may be granted subject to conditions

- (1) The Minister, after giving consideration to the application in accordance with section 87F, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Minister thinks fit.
- (2) The scheduled international air service licence shall be in such form as the Minister thinks fit.
- (3) Without prejudice to the generality of subsection (1), the Minister, in granting any scheduled international air service licence, may prescribe, in respect of the scheduled international air service,—
- (a) the countries or territories, or points within those countries or territories, that may be served and the route or routes that may be followed:
 - (b) the maximum capacity that may be provided:
 - (c) a date not later than which the service shall be commenced.

Section 87G: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87H Duration of scheduled international air service licence

- (1) Every scheduled international air service licence granted under section 87G shall take effect from the date stated in the licence, and may be granted for such term as the Minister considers appropriate in the particular case.
- (2) Where an application is made under section 87I for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the

date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

Section 87H: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87I Renewal of scheduled international air service licence

- (1) The Minister may, from time to time, renew a scheduled international air service licence granted under section 87G.
- (2) Every application for the renewal of a scheduled international air service licence granted under section 87G shall be lodged with the Secretary not less than 3 months before the date on which the licence expires.
- (3) Section 87C(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.
- (4) The Secretary shall give notice in the *Gazette* of the Minister's intention to consider exercising the power conferred on the Minister by subsection (1).
- (5) The notice given under subsection (4) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.
- (6) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering any application for a renewal the Minister shall take into account all the matters referred to in section 87F as if the application were an application for a new licence.
- (7) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted, and may be for such term as the Minister considers appropriate in the particular case.

Section 87I: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87J Variation of terms and conditions of scheduled international air service licence

- (1) The Minister, while a scheduled international air service licence granted under section 87G is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add

any new terms or conditions that in the Minister's opinion are necessary or desirable in the public interest.

- (2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.
- (3) Where any proposed variation involves—
 - (a) a change or addition to the route or routes to be operated; or
 - (b) an increase in the capacity of the service to be provided—pursuant to the licence, the Secretary shall, by notice in the *Gazette*, give not less than 21 clear days' notice of the Minister's intention to consider exercising the power conferred on the Minister by this section.
- (4) The notice given under subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations regarding the proposed variation.
- (5) In considering any application referred to in subsection (3), the Minister shall take into account all the matters referred to in section 87F as if the application were an application for a new licence.
- (6) Where the Minister has varied the terms or conditions of any scheduled international air service licence under this section, the Minister shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

Section 87J: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87K Transfer of scheduled international air service licence

- (1) Any scheduled international air service licence granted under section 87G may, subject to the provisions of this section, be transferred to any person.
- (2) Every application for the transfer of a scheduled international air service licence shall be lodged with the Secretary not less than 3 months before the date of the proposed transfer.

- (3) The Secretary shall give notice in the *Gazette* of the Minister's intention to consider the application for the transfer of the licence.
- (4) The notice given under subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.
- (5) In considering the application for the transfer of the licence the Minister shall take into account all the matters referred to in section 87F as if the application were an application for a new licence.

Section 87K: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

*Scheduled international air service licences for
foreign international airlines*

Heading: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

**87L Secretary to be licensing authority for foreign
international airlines**

- (1) Subject to subsection (2), the Secretary shall be the licensing authority to grant scheduled international air service licences to foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.
- (2) Where the applicant for a scheduled international air service licence is a foreign international airline of a country or territory with which New Zealand does not have an air service agreement or similar arrangement, the application shall be referred to the Minister for determination in accordance with sections 87M to 87O as if the references in those sections to the Secretary were references to the Minister.

Section 87L: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87M Consideration of application for scheduled international air service licence by foreign international airline

- (1) In considering any application for a scheduled international air service licence made by a foreign international airline the Secretary shall take into account the following matters:
 - (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention, or arrangement to which New Zealand is a party:
 - (b) the safety and security requirements of the Director:
 - (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.
- (2) If the granting of the licence would be contrary to any agreement, arrangement, or convention referred to in subsection (1)(a), the Secretary shall refuse to grant the licence.

Section 87M: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87N Scheduled international air service licence may be granted subject to conditions

- (1) The Secretary, after giving consideration to the application in accordance with section 87M, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Secretary thinks fit.
- (2) The scheduled international air service licence shall be in such form as the Secretary thinks fit.
- (3) Without prejudice to the generality of subsection (1), the Secretary, in granting any scheduled international air service licence, may prescribe, in respect of the scheduled international air service,—
 - (a) the countries or territories, or points within those countries or territories that may be served and the route or routes that may be followed:
 - (b) the maximum capacity that may be provided:
 - (c) the date not later than which the service shall be commenced.
- (4) Where the Secretary grants a licence in accordance with this section, the Secretary shall give notice in the *Gazette* that the licence has been granted.

Section 87N: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87O Duration of scheduled international air service licence

- (1) Every scheduled international air service licence granted under section 87N shall take effect from the date stated in the licence, and may be granted for such term as the Secretary considers appropriate in the particular case or, if the Secretary thinks fit, for an indefinite term.
- (2) Where an application is made under section 87P for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Secretary otherwise directs.

Section 87O: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87P Renewal of scheduled international air service licence

- (1) The Secretary may, from time to time, renew a scheduled international air service licence granted under section 87N.
- (2) Every application for the renewal of a scheduled international air service licence granted under section 87N shall be lodged with the Secretary not less than 1 month before the date on which the licence expires.
- (3) Section 87C(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.
- (4) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering any application for a renewal the Secretary shall take into account all the matters referred to in section 87M as if the application were an application for a new licence.
- (5) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted and may be for such term as the Secretary considers appropriate in the particular case or, if the Secretary thinks fit, for an indefinite term.

Section 87P: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 87P(2): amended, on 1 June 2002, by section 24 of the Civil Aviation Amendment Act 2002 (2002 No 15).

87Q Variation of terms and conditions of scheduled international air service licence

- (1) The Secretary, while a scheduled international air service licence granted under section 87N is in force, may, of the Secretary's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Secretary's opinion are necessary or desirable in the public interest.
- (2) Where the Secretary, on the Secretary's own motion, proposes to exercise the power conferred on the Secretary by subsection (1), the Secretary shall give the licensee not less than 21 clear days' notice in writing of the Secretary's intention to exercise that power.
- (3) Where any application under subsection (1) seeks approval for—
 - (a) a change or addition to the route or routes to be operated; or
 - (b) an increase in the capacity of the service to be provided—pursuant to the licence, the Secretary shall take into account all the matters referred to in section 87M as if the application were an application for a new licence.
- (4) Where the Secretary has varied the terms or conditions of any licence under this section, the Secretary shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

Section 87Q: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Open aviation market licences

Heading: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87R Minister may designate countries or territories for open aviation market licences

The Minister may from time to time, by notice in the *Gazette*, designate any 1 or more countries or territories in respect of which—

- (a) scheduled international air services; and
- (b) non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire—

may be carried on pursuant to and in conformity with an open aviation market licence.

Section 87R: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87S Secretary to be licensing authority for open aviation market licences

The Secretary shall be the licensing authority to grant open aviation market licences to New Zealand international airlines and foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

Section 87S: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87T Consideration of application for open aviation market licence

- (1) In considering an application for an open aviation market licence made by a New Zealand international airline or a foreign international airline the Secretary shall take into account the following matters:
 - (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention, or arrangement to which New Zealand is a party;
 - (b) the safety and security requirements of the Director;
 - (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.
- (2) If the granting of the open aviation market licence would be contrary to any agreement, convention, or arrangement re-

ferred to in subsection (1)(a), the Secretary shall refuse to grant the licence.

Section 87T: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87U Open aviation market licence may be granted subject to conditions

- (1) The Secretary, after giving consideration to the application in accordance with section 87T, may refuse it, or may grant it wholly or partly, and subject to such conditions as the Secretary thinks fit.
- (2) Without prejudice to the generality of subsection (1), the Secretary, in granting any open aviation market licence, shall prescribe, in respect of any scheduled international air service and non-scheduled international flight carried on pursuant to the licence, the countries or territories that may be served.
- (3) The open aviation market licence shall be in such form as the Secretary thinks fit.
- (4) Where the Secretary grants an open aviation market licence under this section, the Secretary shall give notice in the *Gazette* that the licence has been granted.

Section 87U: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87V Duration of open aviation market licence

- (1) Every open aviation market licence granted under section 87U shall take effect from the date stated in the licence, and may be granted for such term as the Secretary considers appropriate in the particular case or, in respect of a foreign international airline, if the Secretary thinks fit, for an indefinite term.
- (2) Where an application is made under section 87W for the renewal of an open aviation market licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Secretary otherwise directs.

Section 87V: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87W Renewal of open aviation market licence

- (1) The Secretary may, from time to time, renew an open aviation market licence granted under section 87U.
- (2) Every application for the renewal of an open aviation market licence granted under section 87U shall be lodged with the Secretary not less than 3 months before the date on which the licence expires.
- (3) Section 87C(2) shall apply to every application for the renewal of an open aviation market licence as if it were an application for a new licence.
- (4) No person shall be entitled as of right to a renewal of an open aviation market licence, and in considering any application for a renewal the Secretary shall take into account all the matters referred to in section 87T as if the application were an application for a new licence.
- (5) The renewal of the open aviation market licence shall take effect from the date of expiry of the licence for which the renewal is granted and may be for such term as the Secretary considers appropriate in the particular case or, in respect of a foreign international airline, if the Secretary thinks fit, for an indefinite term.

Section 87W: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87X Variation of terms and conditions of open aviation market licence

- (1) The Secretary, while an open aviation market licence granted under section 87U is in force, may, of the Secretary's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the Secretary's opinion are necessary or desirable in the public interest.
- (2) Where the Secretary, on the Secretary's own motion, proposes to exercise the power conferred on the Secretary by subsection (1), the Secretary shall give the licensee not less than 21 clear days' notice in writing of the Secretary's intention to exercise that power.
- (3) Where any application under subsection (1) seeks approval for a change or addition to the country or countries, or territory or

territories, to be served pursuant to the open market aviation licence, the Secretary shall take into account all the matters referred to in section 87T as if the application were an application for a new licence.

- (4) Where the Secretary has varied the terms or conditions of an open aviation market licence under this section, the Secretary shall give notice in the *Gazette* of the fact of, and the terms of, that variation.

Section 87X: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87Y Transfer of open aviation market licence

- (1) Any open aviation market licence granted to a New Zealand international airline under section 87U may, subject to the provisions of this section, be transferred to any other New Zealand international airline.
- (2) Every application for the transfer of an open aviation market licence shall be lodged with the Secretary not less than 3 months before the date of the proposed transfer.
- (3) In considering the application for the transfer of the licence the Secretary shall take into account all the matters referred to in section 87T as if the application were an application for a new licence.
- (4) Where the Secretary transfers any open aviation market licence under this section, the Secretary shall give notice in the *Gazette* that the licence has been transferred.

Section 87Y: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87Z Holder of open aviation market licence may operate non-scheduled international flights without authorisation under section 87ZE

The holder of an open aviation market licence under this Part shall be entitled to carry on, to or from the countries or territories that may be served pursuant to the licence as prescribed under section 87U(2), non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire without authorisation under section 87ZE.

Section 87Z: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Requirements on licensees

Heading: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87ZA Insurance cover against liability

The Minister or the Secretary, as the case may be, may, before granting or renewing any licence, or at any other time while the licence is in force, call upon the applicant or the licensee, as the case may be, to furnish to the satisfaction of the Minister or the Secretary, as the case may be, proof that the liability of the applicant or the licensee which may arise out of or in connection with the operation of the service in respect of the death of or bodily injury to any person and in respect of loss of or damage to any property is covered by insurance.

Section 87ZA: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87ZB Returns to be furnished

Every person carrying on a scheduled international air service or non-scheduled international flight pursuant to a licence shall furnish to the Secretary such financial and statistical returns and statements as the Secretary may from time to time require by notice in writing addressed to that person.

Section 87ZB: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Suspension and revocation of licences

Heading: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87ZC Suspension of licences

Where the Minister is satisfied that a licensee has wilfully committed a breach of any of the conditions of a licence granted under this Part, the Minister may suspend the licence for such period as the Minister thinks fit.

Section 87ZC: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87ZD Revocation of licences

The Minister may revoke a licence granted under this Part if—

- (a) the service authorised by the licence is not commenced on the date specified in the licence; or
- (b) the Minister is satisfied that the service authorised by the licence is not being carried on in conformity with the terms and conditions of the licence; or
- (c) the service authorised by the licence has been terminated; or
- (d) the licence has been granted under or in accordance with any convention, agreement, or arrangement between the Government of New Zealand and the Government of any other country (whether or not any other Government is also a party thereof) and that convention, agreement, or arrangement has been terminated or has ceased to bind the Government of New Zealand or the Government of that other country; or
- (e) the licence has been granted under or in accordance with any such convention, agreement, or arrangement referred to in paragraph (d) and circumstances have occurred or any condition has been fulfilled whereby the Minister, or the Government of New Zealand, has become entitled under or in accordance with the convention, agreement, or arrangement, to revoke the licence.

Section 87ZD: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Non-scheduled international flights

Heading: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87ZE Commercial non-scheduled international flights not to be operated except as authorised by Secretary

- (1) Subject to section 87Z, no person shall operate a non-scheduled international flight engaged in the carriage of passengers, cargo, or mail for remuneration or hire between New Zealand and 1 or more points in any other country or territory, except as authorised by the Secretary and in accordance with such conditions as the Secretary may impose in accordance with guide-

lines specified by the Minister in accordance with subsection (2).

- (2) For the purposes of this section, the Minister may issue guidelines to the Secretary for the regulation of flights described in subsection (1).
- (3) The Minister may from time to time review and amend the guidelines referred to in subsection (2).
- (4) The Secretary shall, when requested by any person, make a copy of the guidelines issued in accordance with subsection (2) available to that person.

Section 87ZE: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Miscellaneous provisions

Heading: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87ZF Provisions of this Part in addition to requirements of regulations and rules

No aircraft being used in connection with any scheduled international air service pursuant to a licence granted under this Part or a non-scheduled international flight shall, by virtue of its being used in connection with that service or flight, be exempt from the operation of any regulation or rules made under this Act.

Section 87ZF: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

87ZG This Part not in force in Tokelau

Except as may be provided in regulations made under section 4 of the Tokelau Act 1948, this Part shall not be in force in Tokelau.

Section 87ZG: inserted, on 13 August 1996, by section 28 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Part 9

International air carriage competition

88 Authorisation of contracts, arrangements, and understandings relating to international carriage by air

- (1) In this section and in sections 89 to 91, unless the context otherwise requires,—

capacity means a statement, expressed to apply to 1 or more specified airlines, or to all airlines other than 1 or more specified airlines, or to all airlines, specifying the number of flights to be undertaken between specified points in a period or successive periods by the airline or airlines, whether or not by reference to specified classes of aircraft or the number of seats or volume of cargo space to be provided

commission regime means a statement, expressed to apply to any specified international carriage by air, specifying the rates and bases of calculation of agency commissions (including any benefit, whether in monetary form or otherwise, supplied to an agent) to be allowed, charged, disbursed, given, offered, paid, provided, or retained, in relation to the international carriage by air to which it is expressed to apply, and the circumstances and conditions under and subject to which any such commission is to be allowed, charged, disbursed, given, offered, paid, provided, or retained; and different rates, bases, circumstances, and conditions may be specified in respect of all or any of the following:

- (a) international carriage by air provided by different airlines;
- (b) international carriage by air arranged by persons of different classes;
- (c) international carriage by air provided for persons of different classes

international carriage by air means the carriage by air of persons, baggage, or cargo—

- (a) between New Zealand and any place outside New Zealand; or
- (b) where that carriage is purchased, sold, or arranged in New Zealand, between places outside New Zealand

tariff means a statement, expressed to apply to 1 or more specified airlines, or to all airlines other than 1 or more specified airlines, or to all airlines, specifying—

- (a) the fares, rates, and charges applicable to international carriage by air between specified points (whether direct or indirect, and whether or not including any stopovers) that may at any time be provided by the airlines to which it is expressed to apply; and
 - (b) any conditions subject to which any such fares, rates, and charges, or any of them, are to apply to international carriage by air between those points; and
 - (c) any conditions subject to which international carriage by air between those points is to be provided on such fares, rates, and charges.
- (2) The Minister may from time to time specifically authorise all or any provisions of a contract, arrangement, or understanding made between 2 or more persons in respect of international carriage by air and related to such carriage so far as the provisions relate, whether directly or indirectly, to the fixing of tariffs, the application of tariffs, or the fixing of capacity, or any combination thereof.
- (3) In considering whether to grant authorisation under subsection (2), the Minister shall ensure that the granting of such authorisation will not prejudice compliance with any relevant international convention, agreement, or arrangement to which the Government of New Zealand is a party.
- (4) Subject to subsection (5), authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding that—
- (a) provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement, or understanding; or
 - (b) has the purpose or effect of breaching the terms of a commission regime issued under section 89; or
 - (c) unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs; or

- (d) so far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates; or
 - (e) has the purpose or effect of preventing any party from seeking approval, in terms of section 90, for the purpose of selling international carriage by air at any other tariff so approved; or
 - (f) prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.
- (5) Notwithstanding the provisions of subsection (4), the Minister may authorise any provision of any contract, arrangement, or understanding under this section if the Minister believes that to decline authorisation would have an undesirable effect on international comity between New Zealand and any other State.
- (6) If the Minister declines to authorise any provision of any contract, arrangement, or understanding under this section, the Minister shall give notice in the *Gazette* that authorisation has been declined.

Compare: 1964 No 68 s 29A; 1982 No 175 s 2(1); 1987 No 12 s 2(1)

89 Minister may issue commission regimes

The Minister may from time to time, by notice in the *Gazette*,—

- (a) issue commission regimes; and
- (b) amend or revoke any commission regime so issued.

Compare: 1964 No 68 s 29B; 1987 No 12 s 2(1)

90 Authorisation of tariffs by Minister

- (1) The Minister may from time to time specially authorise any tariff in respect of international carriage by air where the relevant places of departure and destination are within the territories of 2 countries, one of which is New Zealand, whether or not there is to be a break in the carriage or a transhipment.
- (2) In giving authorisation under this section the Minister shall have regard to—

- (a) whether the proposed tariff is excessive in terms of a reasonable return on investment by the supplier of the carriage; and
- (b) whether it is likely that supply of the relevant carriage can be carried on for a reasonable period at the level of tariff proposed; and
- (c) whether there is likely to be a substantial degree of benefit accruing to consumers generally, or to a significant group of consumers, as a result of the application of the proposed tariff,—

and shall ensure that the granting of such authorisation will not prejudice compliance with any international convention, agreement, or arrangement to which the Government of New Zealand is a party.

Compare: 1964 No 68 s 29C; 1987 No 12 s 2(1)

91 Application of Commerce Act 1986

- (1) Nothing in sections 27 to 29 of the Commerce Act 1986 shall apply to or in respect of—
 - (a) the negotiation or conclusion of any contract, arrangement, or understanding so far as it contains a provision relating to international carriage by air, so long as that provision is not given effect to before its authorisation under section 88; or
 - (b) any provision of a contract, arrangement, or understanding relating to international carriage by air so long as it is not given effect to before its authorisation under section 88.
- (2) Every authorisation by the Minister under section 88 or section 90 and every issue or amendment of a commission regime under section 89 is hereby declared to be a specific authorisation by an enactment for the purposes of section 43 of the Commerce Act 1986.

Compare: 1964 No 68 s 29D; 1987 No 12 s 2(1)

Part 9A International carriage by air

Part 9A: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91A Interpretation

In this Part, unless the context otherwise requires,—

Additional Protocol No 1 means Additional Protocol No 1 to amend the Warsaw Convention which was opened for signature at Montreal on 25 September 1975

Additional Protocol No 2 means Additional Protocol No 2 to amend the Warsaw Convention and the Hague Protocol which was opened for signature at Montreal on 25 September 1975

the amended Convention means the Convention, the English text of which is set out in Schedule 4, being the Warsaw Convention as amended by the following protocols:

- (a) the Hague Protocol:
 - (b) Additional Protocols Nos 1 and 2, and Protocol No 4
- court**, in relation to an arbitration allowed by the Montreal Convention, the amended Convention, or the Guadalajara Convention, includes an arbitrator

the Guadalajara Convention means the Convention, the English text of which is set out in Schedule 5, being a Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a person other than the contracting carrier, which opened for signature at Guadalajara on 18 September 1961

the Hague Protocol means the Protocol opened for signature at the Hague on 28 September 1955

High Contracting Party has the same meaning as in Article 40A of the amended Convention

Montreal Convention means the Convention, the English text of which is set out in Schedule 6, for the unification of certain rules for international carriage by air done at Montreal on 28 May 1999

Protocol No 4 means Protocol No 4 to amend the Warsaw Convention and the Hague Protocol which was opened for signature at Montreal on 25 September 1975

the Warsaw Convention means the Convention for the unification of certain rules relating to international carriage by air, which opened for signature at Warsaw on 12 October 1929; and includes the Additional Protocol to that Convention.

Compare: 1967 No 151 s 5; 1990 No 102 s 2

Section 91A: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91A **court**: substituted, on 4 November 2003, by section 25(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91A **Montreal Convention**: inserted, on 4 November 2003, by section 25(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

91B Application of Guadalajara Convention

In this Part, references to the amended Convention or to any Article of that Convention are, where applicable and subject to any necessary modifications, to be read as references to that Convention or Article as supplemented by the Guadalajara Convention.

Compare: 1967 No 151 s 6

Section 91B: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91C Conventions to have force of law

- (1) The provisions of the Montreal Convention, the amended Convention and the Guadalajara Convention have the force of law in New Zealand in relation to any carriage by air to which the Montreal Convention, the amended Convention or the Guadalajara Convention, as the case may require, applies.
- (2) Despite subsection (1), the provisions of the Montreal Convention, the amended Convention and the Guadalajara Convention have the force of law in New Zealand only in so far as they relate to the rights and liabilities of carriers, carriers' servants and agents, passengers, consignors, consignees, and other persons.
- (3) The provisions of the Montreal Convention, the amended Convention and the Guadalajara Convention apply in New Zealand in accordance with subsection (1), irrespective of the nationality of the aircraft performing that carriage.
- (4) The provisions of the Montreal Convention, the amended Convention and the Guadalajara Convention apply in New Zealand subject to the provisions of this Part.

- (5) Each version of Article 22 of the amended Convention set out in Schedule 4 applies in the circumstances outlined in the heading of that version.

Compare: 1967 No 151 s 7(1)

Section 91C: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91C(1): amended, on 4 November 2003, by section 26(1)(a) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91C(1): amended, on 4 November 2003, by section 26(1)(b) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91C(2): amended, on 4 November 2003, by section 26(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91C(3): amended, on 4 November 2003, by section 26(3) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91C(4): amended, on 4 November 2003, by section 26(4) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91C(5): amended, on 4 November 2003, by section 26(5) of the Civil Aviation Amendment Act 2002 (2002 No 15).

91D Inconsistency between French and English texts

- (1) If there is any inconsistency between the English text of the amended Convention which is set out in Schedule 4 and the corresponding text in French, the text in French prevails.
- (2) If there is any inconsistency between the English text of the Guadalajara Convention which is set out in Schedule 5 and the corresponding text in French, the text in French prevails.
- (3) A certificate may be given by or on behalf of the Secretary of Foreign Affairs and Trade stating that a document to which the certificate is annexed is a true copy of the authentic text in the French language of 1 or more of the following:
- (a) Additional Protocol No 1:
 - (b) Additional Protocol No 2:
 - (c) the Guadalajara Convention:
 - (d) the Hague Protocol:
 - (e) Protocol No 4:
 - (f) the Warsaw Convention.
- (4) Any certificate given under subsection (3) must be received in evidence in any proceedings and, in the absence of proof to

the contrary, is sufficient evidence of the matters stated in the certificate.

Compare: 1967 No 151 s 7(2)

Section 91D: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91E Fatal accidents

References in section 4 of the Deaths by Accidents Compensation Act 1952 to a wrongful act, neglect, or default, include references to any occurrence which gives rise to a liability under Article 17(1) of the Montreal Convention or Article 17 of the amended Convention.

Compare: 1967 No 151 s 9

Section 91E: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91E: amended, on 4 November 2003, by section 27 of the Civil Aviation Amendment Act 2002 (2002 No 15).

91F Contributory negligence

For the purposes of Article 20 of the Montreal Convention or Article 21 of the amended Convention, the provisions of the Contributory Negligence Act 1947 are the provisions of the law of New Zealand under which a court may exonerate the carrier wholly or partly from the carrier's liability.

Compare: 1967 No 151 s 12

Section 91F: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91F: amended, on 4 November 2003, by section 28 of the Civil Aviation Amendment Act 2002 (2002 No 15).

91G Limitation of liability

- (1) The limitations on liability referred to in Articles 21 and 22 of the Montreal Convention or in Article 22 of the amended Convention apply whatever the nature of the proceedings by which liability may be enforced and, in particular,—
 - (a) those limitations apply where proceedings are brought by a tortfeasor to obtain contribution from another tortfeasor if the tortfeasor from whom contribution is sought is the carrier or a servant or agent of the carrier; and

- (b) the limitation for each passenger referred to in Article 21 of the Montreal Convention or in paragraph (1) of Article 22 of the amended Convention applies to the aggregate liability of the carrier in all proceedings which may be brought against the carrier under the law of New Zealand, together with any proceedings brought against the carrier outside New Zealand.
- (2) A court before which proceedings are brought to enforce a liability which is limited by Article 21 or Article 22 of the Montreal Convention or Article 22 of the amended Convention may at any stage of the proceedings make any order that appears to the court to be just and equitable, in view of—
 - (a) the provisions of Article 21 or Article 22 of the Montreal Convention or Article 22 of the amended Convention; and
 - (b) any other proceedings which have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part.
- (3) A court before which proceedings are brought to enforce a liability that is limited by Article 21 or Article 22 of the Montreal Convention or Article 22 of the amended Convention has jurisdiction, where the liability is, or may be, partly enforceable in other proceedings in New Zealand or elsewhere, to—
 - (a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or
 - (b) make any part of its award conditional on the result of any other proceedings.
- (4) The provisions of subsection (3) do not limit the powers conferred on a court by subsection (2).
- (5) Unless the context otherwise requires, references in this section to Article 22 of the amended Convention are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles V and VI of the Guadalajara Convention.

Compare: 1967 No 151 s 10(1), (2), (3), (5)

Section 91G: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91G(1): amended, on 4 November 2003, by section 29(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91G(1)(b): amended, on 4 November 2003, by section 29(2)(a) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91G(1)(b): amended, on 4 November 2003, by section 29(2)(b) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91G(2): amended, on 1 December 2004, by section 11(1) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 91G(2): amended, on 4 November 2003, by section 29(3) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91G(2)(a): amended, on 1 December 2004, by section 11(1) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 91G(2)(a): amended, on 4 November 2003, by section 29(4)(a) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91G(2)(a): amended, on 4 November 2003, by section 29(4)(b) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91G(3): substituted, on 1 December 2004, by section 11(2) of the Civil Aviation Amendment Act (No 2) 2004 (2004 No 95).

Section 91G(5): amended, on 4 November 2003, by section 29(6) of the Civil Aviation Amendment Act 2002 (2002 No 15).

91H Value of special drawing right

- (1) For the purposes of Article 23 of the Montreal Convention or Article 22 of the amended Convention, the value of 1 special drawing right must be treated as equal to such a sum in New Zealand currency as is fixed by the International Monetary Fund as being the equivalent of 1 special drawing right for—
 - (a) the date of judgment; or
 - (b) any other relevant date; or
 - (c) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.
- (2) For the purposes of subsection (1), a certificate may be given by or on behalf of the Secretary to the Treasury stating that—
 - (a) a particular sum in New Zealand currency has been fixed as the equivalent of 1 special drawing right for a particular date; or
 - (b) no sum has been fixed for that date, and that a particular sum has been so fixed for the date most recently preceding a particular date.

- (3) Any certificate given under subsection (2) must be received in evidence in any proceedings and, in the absence of proof to the contrary, is sufficient evidence of the value of 1 special drawing right in terms of the New Zealand currency for the purposes of subsection (1).
- (4) Unless the context otherwise requires, references in this section to Article 22 of the amended Convention are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles V and VI of the Guadalajara Convention.

Compare: 1967 No 151 s 10(4), (4A), (5); 1990 No 102 s 4

Section 91H: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91H(1): amended, on 4 November 2003, by section 30(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91H(4): amended, on 4 November 2003, by section 30(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

91I Time for bringing proceedings

- (1) No action against a carrier's servant or agent, which arises out of damage to which this Part relates, may be brought after more than 2 years if the servant or agent was acting within the scope of that person's employment.
- (2) For the purposes of subsection (1), the period of 2 years is calculated from the earliest of the following dates:
 - (a) the date of arrival at the destination:
 - (b) the date the aircraft ought to have arrived:
 - (c) the date carriage stopped.
- (3) Neither Article 35 of the Montreal Convention nor Article 29 of the amended Convention applies to any proceedings for contribution between tortfeasors.
- (4) Despite subsection (3), no action may be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which Article 35 of the Montreal Convention or Article 29 of the amended Convention applies after the expiration of 2 years from the time when judgment is obtained against the person seeking to obtain the contribution.

- (5) Subsections (1) to (4) and the provisions of Article 35 of the Montreal Convention and Article 29 of the amended Convention have effect as if references in those provisions to an action included references to an arbitration.
- (6) Subsections (7) and (8) (which determine the time at which an arbitration is deemed to have commenced) apply for the purposes of subsection (5).
- (7) An arbitration (whether under an enactment or under an arbitration agreement) must be treated as being commenced in the same manner as provided in Article 21 of Schedule 1 of the Arbitration Act 1996.
- (8) If the High Court orders that an award be set aside, it may also order that the period between the commencement of the arbitration and the date of the setting aside order must be excluded in computing the time prescribed by this section for the commencement of civil proceedings (including arbitration) with respect to the dispute referred.
- (9) Subsections (6) to (8) do not limit or affect section 39 of the Limitation Act 2010.

Compare: 1967 No 151 s 11

Section 91I: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91I(3): substituted, on 4 November 2003, by section 31(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91I(4): amended, on 4 November 2003, by section 31(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91I(5): substituted, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 91I(6): added, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 91I(7): added, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 91I(8): added, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

Section 91I(9): added, on 1 January 2011, by section 58 of the Limitation Act 2010 (2010 No 110).

91J Actions against High Contracting Parties

- (1) Every High Contracting Party to the amended Convention is to be regarded as having submitted to the jurisdiction of the court in the circumstances described in subsection (2).
- (2) Subsection (1) applies where any action is brought in a court in New Zealand by a High Contracting Party in accordance with the provisions of Article 28 of the amended Convention or Article VIII of the Guadalajara Convention to enforce a claim in respect of carriage undertaken by that Party.
- (3) Rules of court may provide for the manner in which any action to which subsection (1) applies is to be commenced and carried on.
- (4) Nothing in this section authorises the issue of execution against the property of any High Contracting Party.
- (5) Subsection (1) does not apply to any High Contracting Party to the amended Convention which has availed itself of the provisions of the Additional Protocol, which appears before the Additional Provisions of the Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in Schedule 4.

Compare: 1967 No 151 s 14

Section 91J: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91JA Actions against Parties to Montreal Convention

- (1) Every Party to the Montreal Convention is to be regarded as having submitted to the jurisdiction of the court in the circumstances described in subsection (2).
- (2) Subsection (1) applies if any action is brought in a court in New Zealand by a Party to the Montreal Convention in accordance with Article 46 of the Montreal Convention to enforce a claim in respect of carriage undertaken by that Party.
- (3) Rules of court may provide for the manner in which any action to which subsection (1) applies is to be commenced and carried on.
- (4) Nothing in this section authorises the issue of execution against the property of any Party to the Montreal Convention.

Section 91JA: inserted, on 4 November 2003, by section 32 of the Civil Aviation Amendment Act 2002 (2002 No 15).

91K Designation of Parties

- (1) The Governor-General may from time to time, by Order in Council, certify—
 - (a) the identity of—
 - (i) the High Contracting Parties to the amended Convention; or
 - (ii) the Parties to the Guadalajara Convention; or
 - (iii) the Parties to the Hague Protocol; or
 - (iv) the Parties to Additional Protocol No 1; or
 - (v) the Parties to Additional Protocol No 2; or
 - (vi) the Parties to Protocol No 4; or
 - (vii) the High Contracting Parties to the Warsaw Convention; or
 - (viii) the Parties to the Montreal Convention; or
 - (b) the territories in respect of which the parties referred to in paragraph (a)(i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) are respectively parties; or
 - (c) to what extent the parties referred to in paragraph (a)(i), (ii), (iii), (iv), (v), (vi), or (vii) have availed themselves of the Additional Protocol, which appears before the Additional Provisions of the Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in Schedule 4.
- (2) An Order in Council under this section is, except in so far as it has been superseded by a subsequent order, sufficient evidence of the matters so certified.
- (3) An Order in Council under this section may contain such transitional and other consequential provisions as the Governor-General considers to be desirable.
- (4) An Order in Council under this section certifying who are the High Contracting Parties to the amended Convention or the Parties to the Guadalajara Convention or the Parties to the Hague Protocol or the Parties to Additional Protocol No 1 or No 2 or to Protocol No 4 or the High Contracting Parties to the Warsaw Convention or the Parties to the Montreal Convention, must specify the date on and from which any such Party became or ceased to be a Party.

Compare: 1967 No 151 s 8(1), (3), (4), (5)

Section 91K: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91K(1)(a)(viii): added, on 4 November 2003, by section 33(1) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91K(1)(b): amended, on 4 November 2003, by section 33(2) of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91K(4): amended, on 4 November 2003, by section 33(3) of the Civil Aviation Amendment Act 2002 (2002 No 15).

91L Article 40A of amended Convention

- (1) Paragraph (2) of Article 40A of the amended Convention does not extend references in the amended Convention to the territory of a High Contracting Party to include any territory in respect of which that High Contracting Party is not a Party.
- (2) Subsection (1) does not apply to references in the amended Convention to the territory of any State, whether a High Contracting Party or not.

Compare: 1967 No 151 s 8(2)

Section 91L: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91M Power to exclude aircraft in use for military purposes

- (1) The Governor-General may from time to time, by Order in Council, direct that subsection (2) applies or ceases to apply to New Zealand or any other State specified in the order.
- (2) The Montreal Convention or the amended Convention do not apply to the carriage of persons, cargo, and baggage for the military authorities of a State to which this subsection applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by, or on behalf of, those authorities.

Compare: 1967 No 151 s 13

Section 91M: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91M(2): amended, on 4 November 2003, by section 34 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Transitional provisions

Heading: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91N Occurrences before commencement of this Part

This Part does not apply so as to affect rights or liabilities arising out of an occurrence before the commencement of this Part.

Compare: 1967 No 151 s 15(1)

Section 91N: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91O High Contracting Parties not Party to Hague Protocol

- (1) Subsection (2) applies where, by reason of the fact that any High Contracting Party to the Warsaw Convention is not a Party to the Hague Protocol, the amended Convention is not applicable to any carriage by air.
- (2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the Carriage by Air Act 1940 (as it read immediately before its repeal) had continued in force.
- (3) Despite subsection (2), if the Guadalajara Convention applies to carriage by air where that subsection applies, the applicable law includes the provisions of that Convention which have the force of law in New Zealand under section 91C.
- (4) For the purposes of subsections (2) and (3), section 3 of the Carriage by Air Act 1940 applies as if the reference to the provisions of Article 28 of the Warsaw Convention included a reference to Article VIII of the Guadalajara Convention.
- (5) Despite subsection (2), if Additional Protocol No 1 applies to carriage by air where that subsection applies, the applicable law includes—
 - (a) the provisions of Article 22 of the Warsaw Convention as substituted by Additional Protocol No 1; and
 - (b) the provisions of section 91H.

Compare: 1967 No 151 s 15(2), (3)

Section 91O: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91P High Contracting Parties not Party to Montreal Protocols

- (1) Subsection (2) applies where, by reason of the fact that any High Contracting Party or Party, as the case may be, to the Warsaw Convention and the Hague Protocol is not a Party to

any of Additional Protocols Nos 1 and 2 and Protocol No 4, the amended Convention is not applicable to any carriage by air.

- (2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if Part 1 and Schedules 1 and 2 of the Carriage by Air Act 1967 (as they read immediately before their repeal) had continued in force.

Section 91P: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91Q High Contracting Parties not Party to Protocol No 4

- (1) Subsection (2) applies where, by reason of the fact that any High Contracting Party or Party, as the case may be, to the Warsaw Convention and the Hague Protocol is a Party to Additional Protocol No 2 but not Protocol No 4, Protocol No 4 is not applicable to any carriage by air.

- (2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted by Protocol No 4.

Section 91Q: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91R High Contracting Parties not Party to Protocol No 2

- (1) Subsection (2) applies where, by reason of the fact that any High Contracting Party or Party, as the case may be, to the Warsaw Convention and the Hague Protocol is a Party to Protocol No 4 but not Additional Protocol No 2, Additional Protocol No 2 is not applicable to any carriage by air.

- (2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted by Protocol No 2.

Section 91R: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91RA High Contracting Party or Party not Party to Montreal Convention

- (1) Subsection (2) applies if, by reason of the fact that any High Contracting Party or Party, as the case may be, is not a party to the Montreal Convention, the Montreal Convention does not apply.
- (2) If this subsection applies and the High Contracting Party or Party referred to in subsection (1) is a party to the Warsaw Convention or to the Hague Protocol or to Additional Protocol No 1 or Additional Protocol No 2 or to Protocol 4, the law applicable to any carriage by air is the law referred to in whichever of the following sections that is applicable to that High Contracting Party or Party:
 - (a) sections 91A to 91M (as they read immediately before the commencement of sections 25 to 37 of the Civil Aviation Amendment Act 2002); or
 - (b) section 91O; or
 - (c) section 91P; or
 - (d) section 91Q; or
 - (e) section 91R.
- (3) Subsection (4) applies if a High Contracting Party to the amended Convention is not a party to the Montreal Convention.
- (4) If this subsection applies,—
 - (a) the law applicable to any carriage by air is the law set out in the amended Convention; and
 - (b) each version of Article 22 of the amended Convention set out in Schedule 4 applies in the circumstances outlined in the heading of that version.

Section 91RA: inserted, on 4 November 2003, by section 35 of the Civil Aviation Amendment Act 2002 (2002 No 15).

91S Currency equivalent notices

- (1) The Minister of Finance may from time to time, by notice in the *Gazette*, specify the respective amounts which for the purpose of Article 22 of the Warsaw Convention (as amended by the Hague Protocol and as set out in Schedule 1 of the Carriage by Air Act 1967), and in particular of paragraph 5 of that

Article, are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.

- (2) The Carriage by Air (New Zealand Currency Equivalents) Notice (No 2) 1998 (SR 1998/347) continues in force as if it had been made under subsection (1) until replaced under that subsection.

Compare: 1967 No 151 s 10(4)

Section 91S: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

91T Regulations

- (1) The Governor-General may from time to time, by Order in Council,—
- (a) prescribe any advance payments for compensation that carriers must make to natural persons under Article 28 of the Montreal Convention:
 - (b) prescribe any arrangements for making advance payments for compensation that carriers must make to natural persons under Article 28 of the Montreal Convention:
 - (c) amend Schedule 6 by making such amendments to the text of the Montreal Convention set out in that schedule as are required to bring that text up to date:
 - (d) revoke Schedule 6, and substitute a new schedule setting out, in an up-to-date form, the text of the Montreal Convention.
- (2) Any order made under subsection (1) is a regulation for the purposes of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.
- (3) The Governor-General may from time to time, by Order in Council, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part and for its due administration.

Section 91T: inserted, on 1 December 1999, by section 3 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Section 91T(1)(a): substituted, on 4 November 2003, by section 36 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91T(1)(b): substituted, on 4 November 2003, by section 36 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91T(1)(c): substituted, on 4 November 2003, by section 36 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 91T(1)(d): substituted, on 4 November 2003, by section 36 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Part 9B

Domestic carriage by air

Part 9B: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91U Interpretation

(1) In this Part, unless the context otherwise requires,—

actual carrier means a person, other than the contracting carrier, who—

- (a) performs the whole or part of the carriage contracted for by the contracting carrier with the authority of the contracting carrier; but
- (b) is not, in relation to that carriage, a successive carrier

aeroplane means a power-driven heavier-than-air aircraft deriving its lift in flight chiefly from aerodynamic reactions on surfaces that remain fixed under given conditions of flight

carrier includes a contracting carrier and an actual carrier

contract includes an arrangement made without consideration

contracting carrier—

- (a) means a person who, as a principal, makes a contract for carriage with a passenger, or with a person acting on behalf of the passenger; and
- (b) includes a successive carrier

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

- (a) within the territories of 2 countries; or
- (b) within the territory of a single country if there is an agreed stopping place within the territory of another country

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

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

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

- (a) is performed by 2 or more persons in successive stages; and
- (b) has been regarded by the parties as a single operation, whether it has been agreed on by a single contract or by 2 or more contracts.

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

Compare: 1967 No 151 s 18

Section 91U: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91V Application of this Part

- (1) This Part applies to any carriage by air (other than international carriage) in which, according to the contract between the parties,—
 - (a) the place of departure and the place of destination are both in New Zealand; and
 - (b) there is no agreed stopping place outside New Zealand.
- (2) Subsection (1) applies even if—
 - (a) the aeroplane in which the carriage takes place is at the same time engaged in international carriage; or
 - (b) the contract for the carriage of any passenger is made without consideration.
- (3) This section applies subject to section 91W.

Compare: 1967 No 151 s 19(1)

Section 91V: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91W Exclusions

- (1) This Part does not apply to any carriage by air by an aeroplane while it is being used solely for military purposes by the Armed Forces.
- (2) This Part does not apply to any carriage by air on a single flight in respect of which, according to the contract between the parties, the place of departure and the intended place of destination are the same.

Compare: 1967 No 151 s 19(3), (4)

Section 91W: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91X Provisions if carriage performed by actual carrier

- (1) If the whole or any part of any carriage to which this Part applies is performed by an actual carrier,—
 - (a) both the contracting carrier and the actual carrier are subject to any liability imposed by this Part as follows:
 - (i) the contracting carrier is liable in respect of the whole of the carriage contemplated in the contract between the contracting carrier and the passenger; and
 - (ii) the actual carrier is liable solely in respect of the carriage that the actual carrier performs:
 - (b) the acts and omissions of the actual carrier, and of the actual carrier's servants and agents acting within the scope of their employment, must, in relation to the carriage performed by the actual carrier, be treated as also those of the contracting carrier:
 - (c) the acts and omissions of the contracting carrier, and of the contracting carrier's servants and agents acting within the scope of their employment, must, in relation to the carriage performed by the actual carrier, be treated as also those of the actual carrier:
 - (d) any special agreement under which the contracting carrier assumes obligations not imposed by this Part, or any waiver of rights conferred by this Part, does not affect the actual carrier unless agreed to by the actual carrier.

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

Compare: 1967 No 151 s 20

Section 91X: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91Y Provisions if carriage performed by successive carriers

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

Compare: 1967 No 151 s 21

Section 91Y: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91Z Liability of carrier in respect of delay

- (1) A carrier is liable for damage caused by delay in the carriage of passengers.
- (2) Despite subsection (1), a carrier is not liable for damage caused by delay if the carrier proves that the delay—
- (a) arose by reason of—
 - (i) meteorological conditions; or
 - (ii) compliance with instructions, advice, or information given by an air traffic control service; or
 - (iii) obedience to orders or directions given by a lawful authority; or
 - (b) was made necessary by *force majeure*; or
 - (c) was necessary for the purpose of saving or attempting to save life.

Compare: 1967 No 151 s 25

Section 91Z: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZA Avoidance of liability

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

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

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

Compare: 1967 No 151 s 26

Section 91ZA: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZB Contributory negligence

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

Compare: 1967 No 151 s 27

Section 91ZB: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZC Limitation of liability

- (1) The liability of the carrier in respect of damage caused by delay is limited to the lesser of—
- (a) the amount of damage proved to have been sustained as a result of the delay; or
 - (b) an amount representing 10 times the sum paid for the carriage.
- (2) Despite subsection (1), the carrier may, by special contract, increase the amount of the carrier's liability under that subsection.
- (3) This Part does not affect any rule of law relating to remoteness of damage.

Compare: 1967 No 151 s 28

Section 91ZC: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZD Contracting out

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

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

Compare: 1967 No 151 s 30

Section 91ZD: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZE Wilful or reckless misconduct

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

Compare: 1967 No 151 s 31

Section 91ZE: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZF Servants or agents of carrier

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

Compare: 1967 No 151 s 32

Section 91ZF: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZG Aggregation of damages

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

Compare: 1967 No 151 s 33

Section 91ZG: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZH Aggregate liability

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

Compare: 1967 No 151 s 34

Section 91ZH: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZI Just and equitable orders and awards

- (1) A court before which proceedings are brought to enforce a liability that is limited by this Part may, at any stage of the proceedings, make any order that appears to the court to be just and equitable in view of—
 - (a) the provisions of this Part; and
 - (b) any other proceedings that have been, or are likely to be, commenced in New Zealand or elsewhere to enforce the liability in whole or in part.
- (2) Without limiting subsection (1), a court before which proceedings are brought to enforce a liability that is limited by this Part may, if the liability is, or may be, enforceable in other proceedings in New Zealand or elsewhere,—

- (a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or
- (b) make any part of its award conditional on the result of any other proceedings.

Compare: 1967 No 151 s 35

Section 91ZI: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZJ Tortfeasors

- (1) The limitations on liability referred to in section 91ZC apply if—
 - (a) proceedings are brought by a tortfeasor to obtain a contribution from another tortfeasor; and
 - (b) the tortfeasor from whom contribution is sought is the carrier, or a servant or agent of the carrier.
- (2) Proceedings to which subsection (1) applies may not be brought by a tortfeasor to obtain a contribution from another tortfeasor after 2 years from the time when judgment is obtained against the tortfeasor seeking to obtain the contribution.
- (3) This Part does not affect proceedings brought against any tortfeasor (other than the carrier or its servant or agent).

Compare: 1967 No 151 s 36

Section 91ZJ: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZK Relationship between carriers

This Part does not—

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

Compare: 1967 No 151 s 37

Section 91ZK: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZL Limitation of actions

- (1) An action may not be brought under this Part against a carrier, or a servant or agent of a carrier acting within the scope of his

or her employment, after 2 years from the later of the following dates:

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

Compare: 1967 No 151 s 39

Section 91ZL: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

91ZM Combined carriage

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

Compare: 1967 No 151 s 40

Section 91ZM: inserted, on 1 June 2004, by section 37 of the Civil Aviation Amendment Act 2004 (2004 No 8).

Part 10

Aerodromes, facilities, and joint venture airports

92 Definition of joint venture airport

In this Part, the expression **joint venture airport** means an aerodrome or airport that is established, maintained, operated, or managed as a joint venture by and between the Crown and an Airport Authority under this Act and the Airport Authorities Act 1966.

Compare: 1964 No 68 s 13B(1); 1971 No 22 s 3

93 Powers of Minister in respect of aerodromes and facilities

- (1) The Minister may for the purposes of civil aviation establish, maintain, and operate aerodromes and services and facilities in connection with the operation of any aerodrome or with the operation of aircraft engaged in civil aviation.
- (2) All works undertaken under the authority of this section shall be public works within the meaning of the Public Works Act 1981.
- (3) Subject to the provisions of this Act, the Minister may do all that is necessary, convenient, or incidental to the establishment, maintenance, and operation of any aerodrome under his or her complete or partial control or of any services or facilities in connection with the operation of any such aerodrome in all respects as if the operation of the aerodrome or of the services or facilities were a commercial undertaking, and, in particular, may himself or herself carry out any work or undertaking in respect of which he or she is authorised to enter into any agreement under section 94.
- (4) Any power given to the Minister under this Act in respect of any aerodrome or any facilities in connection with any aerodrome may be exercised by him or her whether or not the aerodrome or the facilities had been established by him or her under this Act.
- (5) The powers conferred by this section are in addition to and not in derogation of any powers conferred by any other enactment and nothing in this section shall be construed to limit or affect

the powers conferred on any person or authority by any other enactment.

- (6) The Minister shall not take over the operation of any aerodrome that is owned or operated by any person other than the Crown, except by agreement with the owner or operator.

Compare: 1964 No 68 ss 11, 12(1), (2)

94 Joint ventures

- (1) The Minister and any 1 or more local authorities, bodies, or persons may from time to time enter into and carry out such agreements for the execution, control, operation, or management of any work or undertaking authorised by this Act as may to them seem most suited to the circumstances.
- (2) Any agreement entered into under subsection (1) may provide for all or any of the following:
- (a) for the establishment, maintenance, or operation of any aerodrome or services and facilities in connection with the operation of the aerodrome as a joint venture between the Minister and any other party or parties to the agreement:
 - (b) for the vesting of aerodrome buildings and facilities in trust for aerodrome purposes in any authority, body, or person approved by the Minister in that behalf:
 - (c) for the exchange, leasing, or subleasing of land or buildings vested in the Crown for the purposes of this Act and not immediately required for those purposes:
 - (d) for the transfer of the management of any aerodrome under the control of the Minister, or of any facilities connected with the operation of any such aerodrome, from the Minister to any other party or parties to the agreement at such times and subject to such terms and conditions as may be agreed upon:
 - (e) for the transfer to the Minister of the control, management, or operation of any aerodrome, or any facilities in connection with the operation of any aerodrome, under the control of any authority, body, or person, and for the vesting in or leasing to the Minister of any real or personal property necessary for the purpose of any such transfer:

- (f) for the control of access to aerodromes by any persons or aircraft and for the prohibition or control of the use of aerodromes for any purpose not related to civil aviation:
 - (g) for the establishment, maintenance, management, and operation at any aerodrome of refreshment rooms, bookstalls, booking offices, travel agencies, and such other facilities as may be considered necessary or convenient for the operation of the aerodrome or for the convenience of persons using the aerodrome:
 - (h) for contributions by parties to the agreement in respect of the cost of any work or undertaking to which the agreement relates:
 - (i) for the apportionment or allocation between parties to the agreement of the cost of any work or undertaking to which the agreement relates:
 - (j) for the payment of grants or subsidies or the making of advances to any party to the agreement in respect of any work or undertaking to which the agreement relates:
 - (k) for the entering into contracts of insurance by any party to the agreement in respect of such matters in relation to the agreement as may require the provision of insurance.
- (3) Any agreement entered into under subsection (1) may from time to time be varied by the parties to the agreement or may be terminated in accordance with the terms of the agreement.
- (4) Any agreement relating to the development or reconstruction of an aerodrome entered into by the Crown under section 224 of the Public Works Act 1981 may include any provision referred to in subsection (2).

Compare: 1964 No 68 s 12(3)–(6)

95 Retention of Crown money in joint venture airport accounts

- (1) Any money standing to the credit of or held on behalf of the Crown in the accounts of a joint venture airport as a result of the operations of that airport, together with any money representing the Crown's share of the proceeds of any fees or charges imposed under this Act may, with the approval of the Minister of Finance, instead of being paid into a Crown Bank

Account, be retained on behalf of the Crown in the accounts of that joint venture airport, and may, without further authority than this section, be used for such purposes in connection with the operation and development of that airport as may be authorised by the Minister with the concurrence of the Minister of Finance.

- (2) Notwithstanding any other enactment, rule of law, deed, or agreement, the Minister may require any money standing to the credit of or held on behalf of the Crown in the accounts of a joint venture airport as a result of the operations of that airport, together with any money representing the Crown's share of the proceeds of any fees or charges imposed under this Act, to be paid to the Crown.
- (3) Any money paid to the Crown under subsection (2) may, notwithstanding any other enactment, rule of law, deed, or agreement, be used for such purposes (whether or not related to the airport) as the Minister thinks fit.
- (4) Notwithstanding any other enactment, rule of law, deed, or agreement, any money standing to the credit of or held on behalf of an airport authority in the accounts of a joint venture airport as a result of the operations of that airport, together with any money representing the airport authority's share of the proceeds of any fees or charges imposed under this Act, may be withdrawn by the airport authority; and, subject to the liability (if any) of the airport authority under any enactment, deed, or agreement to pay any part of such money to any other body or person, may be used for such purposes (whether or not related to the airport) as the airport authority thinks fit.
- (5) If any money withdrawn under subsection (4) is paid by an airport authority, pursuant to the liability of the airport authority under any enactment, deed, or agreement, to any other body or person, it may be used for such purposes (whether or not related to the airport) as the body or person receiving it thinks fit.

Compare: 1964 No 68 s 13B; 1986 No 128 s 8(4); 1987 No 195 s 15

Section 95(1): amended, on 25 January 2005, pursuant to section 65R(3) of the Public Finance Act 1989 (1989 No 44).

Part 11

Miscellaneous provisions

96 Sale of liquor at international airports

- (1) Liquor may be sold at international airports to passengers on aircraft departing from or arriving in New Zealand, being passengers who have attained the age of 18 years, but any liquor so sold shall not be delivered by or on behalf of the purchaser to any other person within New Zealand or consumed within New Zealand unless it has been entered by the passenger for home consumption in accordance with the Customs and Excise Act 1996.
- (2) The Governor-General may, from time to time, by Order in Council, make regulations for either or both of the following purposes:
 - (a) prescribing the circumstances and conditions relating to the control of the sale of liquor at international airports to passengers on aircraft departing from or arriving in New Zealand, being passengers who have attained the age of 18 years:
 - (b) prescribing offences in respect of the contravention of or non-compliance with any provision of any regulations made under this section, and prescribing fines, not exceeding \$1,000, that may, on summary conviction, be imposed in respect of any such offence.
- (3) Every person who does any act in contravention of this section commits an offence and is liable to a fine not exceeding \$1,000.
- (4) Nothing in the Sale of Liquor Act Act 1989 shall apply to the sale of liquor pursuant to the authority of this section or of any regulations made under this section.

Compare: 1964 No 68 s 25; 1989 No 146 s 2

Section 96(1): amended, on 1 April 2000, by section 119 of the Sale of Liquor Amendment Act 1999 (1999 No 92).

Section 96(1): amended, on 1 October 1996, by section 289(1) of the Customs and Excise Act 1996 (1996 No 27).

Section 96(2)(a): amended, on 1 April 2000, by section 119 of the Sale of Liquor Amendment Act 1999 (1999 No 92).

96A Minister may prohibit smoking on international air routes

- (1) For the purposes of this section and sections 96B and 96C,—

New Zealand international airline means a New Zealand air transport enterprise that is offering or operating a scheduled international air service or a non-scheduled international flight
to smoke means to smoke, hold, or otherwise have control over an ignited product, weed, or plant; and **smoked** and **smoking** have corresponding meanings.

- (2) The Minister may from time to time, by notice in the *Gazette*,—
 - (a) designate any 1 or more international air routes, or class or classes of international air routes, or all international air routes generally, as non-smoking routes; and
 - (b) exempt any specified route or part of a route from any designation imposed by the Minister in accordance with paragraph (a), subject to any conditions that the Minister thinks fit.
- (3) The Minister shall, before giving any notice under subsection (2), consult with New Zealand international airlines.
- (4) A New Zealand international airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall ensure that—
 - (a) there are prominent notices displayed in the aircraft indicating that smoking is not permitted; and
 - (b) an announcement is made to passengers on the aircraft at the commencement of each journey on the route advising that smoking is not permitted.
- (5) No New Zealand international airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall permit any person to smoke on that aircraft.
- (6) No person shall smoke while on any aircraft operated by a New Zealand international airline carrying passengers on any route designated as a non-smoking route pursuant to this section.

Section 96A: inserted, on 13 August 1996, by section 31 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 96A(1) **to smoke**: amended, on 1 June 2004, by section 38 of the Civil Aviation Amendment Act 2004 (2004 No 8).

96B Offences in respect of smoking on international flights

- (1) Every person commits an offence who, being a New Zealand international airline, without reasonable excuse, fails to comply with the requirements of section 96A(4).
- (2) Every person commits an offence who, being a New Zealand international airline, without reasonable excuse permits any person to smoke in contravention of section 96A(5).
- (3) *[Repealed]*
- (4) Every person who commits an offence against subsection (1) or subsection (2) is liable to a fine not exceeding \$4,000.
- (5) *[Repealed]*

Section 96B: inserted, on 13 August 1996, by section 31 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 96B(3): repealed, on 1 June 2004, by section 40(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 96B(5): repealed, on 1 June 2004, by section 40(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

96C Procedure for offence of smoking on international flight

[Repealed]

Section 96C: repealed, on 1 June 2004, by section 40(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

96D Form of infringement notice

[Repealed]

Section 96D: repealed, on 1 June 2004, by section 40(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

96E Payment of fees

[Repealed]

Section 96E: repealed, on 1 June 2004, by section 40(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

96F Filing of notices

[Repealed]

Section 96F: repealed, on 1 June 2004, by section 40(1) of the Civil Aviation Amendment Act 2004 (2004 No 8).

97 Nuisance, trespass, and responsibility for damage

- (1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, if the noise or vibration is of a kind specified in any rules made under section 28 or section 29 or section 30, so long as the provisions of the rules are duly complied with.
- (2) No action shall lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather, and all the circumstances of the case is reasonable, so long as the provisions of this Act and of any rules made under this Act are duly complied with.
- (3) Where material damage or loss is caused to property on land or water by an aircraft in flight, taking off, landing, or alighting, or by any person or article in or falling from any such aircraft, damages shall be recoverable from the owner of the aircraft, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by his or her fault, except where the damage or loss was caused by or contributed to by the fault of the person by whom the same was suffered.
- (4) Where damage or loss is caused in the manner described in subsection (3) and in circumstances in which—
 - (a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of subsection (3); and
 - (b) some person other than the owner is liable to pay damages in respect of the damage or loss,—the owner shall be entitled to be indemnified by that other person against any claim in respect of the damage or loss.
- (5) Where damage or loss is contributed to by the fault of the person by whom the same was suffered, the provisions of the Contributory Negligence Act 1947 as to apportionment shall apply.
- (6) Damages shall not be recoverable under subsection (4) from the owner of an aircraft in respect of damage or loss caused by a person descending from the aircraft by parachute. Damages shall be recoverable from the person descending and the provisions of subsection (4) shall, with the necessary modifications, apply as if the person descending were the owner of

the aircraft. This subsection shall not apply in respect of damage or loss caused by a person descending from an aircraft by parachute where the descent is required to avoid injury or death.

- (7) Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, commander, navigator, or operative member of the crew of the aircraft is in the employment of the owner, this section shall apply as though every reference to the owner were a reference to the person to whom the aircraft has been so hired out.
- (8) For the purposes of this section, the term **fault** means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from the Contributory Negligence Act 1947, give rise to the defence of contributory negligence.

Compare: 1964 No 68 s 23

98 Indemnity in respect of certain messages

[Repealed]

Section 98: repealed, on 10 August 1992, by section 34 of the Civil Aviation Amendment Act 1992 (1992 No 75).

99 Airways Corporation to be sole provider of certain airways services

- (1) Subject to the Civil Defence Emergency Management Act 2002, Airways Corporation of New Zealand Limited shall be the only person entitled to provide the following aviation services in New Zealand:
 - (a) area control services:
 - (b) approach control services:
 - (c) flight information services.
- (2) Nothing in this section shall apply to aerodrome control services or aerodrome flight information services.

Section 99(1): amended, on 1 December 2002, by section 117 of the Civil Defence Emergency Management Act 2002 (2002 No 33).

99A Regulations relating to information disclosure

Without limiting section 100, the Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:

- (a) requiring every holder of an aviation document relating to an air traffic service to publish in the prescribed manner information in relation to the provision of that service by that holder; and prescribing the information, including prices, terms, and conditions, that the holder shall make available, which information shall include—
 - (i) prices, terms, and conditions:
 - (ii) pricing policies and methodologies:
 - (iii) costs:
 - (iv) cost allocation policies and methodologies:
- (b) requiring every holder of an aviation document relating to an air traffic service to make publicly available prescribed financial statements that follow generally accepted accounting principles (including statements of financial performance and statements of financial position and statements of accounting principles) in respect of that holder, or any of that holder's subsidiaries, or any part or division of the person as if the holder or the subsidiary or a part or division of the holder, as the case may be, were independent and unrelated companies:
- (c) prescribing the form and manner in which the financial statements required by any regulations made under paragraph (b) shall be made available:
- (d) prescribing the form of statutory declaration and by whom it shall be made for the purpose of section 99B:
- (e) prescribing the time limits within which the information disclosure required by any regulations made under this section shall be made to the public.

Section 99A: inserted, on 10 August 1992, by section 36 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 99A(b): amended, on 1 October 1997, pursuant to section 6(1) of the Financial Reporting Amendment Act 1997 (1997 No 17).

Section 99A(b): amended, on 1 October 1997, pursuant to section 6(2) of the Financial Reporting Amendment Act 1997 (1997 No 17).

99B Information to be supplied to Secretary

- (1) Every person who is required by regulations made under section 99A to make available statements and information shall supply to the Secretary—
 - (a) a copy of all statements and information, made available to the public pursuant to regulations made under that section:
 - (b) any further statements, reports, agreements, particulars, and other information requested in writing by the Secretary for the purpose of monitoring the person's compliance with those regulations within 30 days of receipt of such request.
- (2) All statements, reports, agreements, particulars, and information supplied to the Secretary under paragraph (a) or paragraph (b) of subsection (1) shall be verified by statutory declaration in the form and by the persons prescribed by regulations made under section 99A(d).

Section 99B: inserted, on 10 August 1992, by section 36 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 99B heading: amended, on 1 June 2002, by section 40 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 99B(1): amended, on 1 June 2002, by section 40 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 99B(1)(b): amended, on 1 June 2002, by section 40 of the Civil Aviation Amendment Act 2002 (2002 No 15).

Section 99B(2): amended, on 1 June 2002, by section 40 of the Civil Aviation Amendment Act 2002 (2002 No 15).

99C Offences

- (1) Every person commits an offence against this section who—
 - (a) fails, without reasonable excuse, to comply with any information disclosure requirements prescribed in regulations made under section 99A; or
 - (b) fails, without reasonable excuse, to comply with the requirements of paragraph (a) or paragraph (b) of section 99B(1).
- (2) Every person commits an offence against this section who makes a false declaration when supplying any statement, report, agreement, particulars, or information pursuant to section 99B.

- (3) Every person who commits an offence against subsection (1) is liable to a fine not exceeding \$200,000 and, if the offence is a continuing one, to a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.
- (4) Every person who commits an offence against subsection (2) is liable to a fine not exceeding \$20,000.

Section 99C: inserted, on 10 August 1992, by section 36 of the Civil Aviation Amendment Act 1992 (1992 No 75).

99D Administration of sections 99A to 99C

[Repealed]

Section 99D: repealed, on 1 June 2002, by section 41 of the Civil Aviation Amendment Act 2002 (2002 No 15).

100 Regulations

- (1) The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes:
- (a) prescribing, or providing for the fixing of, fees and charges payable under this Act:
 - (b) prescribing those breaches of rules made under this Act that constitute offences against this Act:
 - (ba) prescribing those breaches of regulations made under paragraph (ee) that constitute offences under this Act:
 - (c) prescribing those breaches of rules made under this Act that constitute infringement offences against this Act:
 - (ca) prescribing those breaches of regulations made under paragraph (ee) that constitute infringement offences against this Act:
 - (d) prescribing the penalty for each offence prescribed under paragraph (b), which,—
 - (i) in the case of an individual, shall be a fine not exceeding \$10,000; or
 - (ii) in the case of a body corporate, shall be a fine not exceeding \$50,000:
 - (e) prescribing the infringement fee for each offence prescribed under paragraph (c), which,—

- (i) in the case of an individual, shall not exceed \$2,000; or
 - (ii) in the case of a body corporate, shall not exceed \$12,000:
- (ea) prescribing the matters in respect of which fees or charges are to be payable under Part 8A, the amount of the fees or charges, and the persons liable to pay them:
 - (eb) providing for the refund or waiver of any fee or charge payable under Part 8A, in whole or in part, in any specified case or class of cases:
 - (ec) prescribing the information and documents that may be required to be supplied by applicants for scheduled international air services licences under Part 8A, and the time within which such information or documents must be supplied:
 - (ed) specifying, for the purposes of Part 1A, the agreements or arrangements between the Governments of Australia and New Zealand regarding mutual recognition of aviation-related certification:
 - (ee) assisting aviation security, including (but not limited to)—
 - (i) the specification and application of security controls for—
 - (A) screening:
 - (B) searching:
 - (C) seizing items and substances:
 - (ii) any matter for which—
 - (A) rules may be made under section 28, 29, 29A, or 30:
 - (B) directions may be made under section 77A:
 - (iii) the revocation, substitution, or amendment of any—
 - (A) rule made under section 28, 29, 29A, or 30; or
 - (B) direction made under section 77A:
 - (f) such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

- (2) Any regulations made under this Act may be so made that different regulations shall apply with respect to different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, or aeronautical procedures, or with respect to the same class of person, aerodrome, aircraft, aeronautical product, aviation related service, or aeronautical procedure in different circumstances.
- (3) To the extent that a rule made under section 28, 29, 29A, or 30 or a direction made under section 77A is inconsistent with a regulation made under subsection (1)(ee), the rule or direction is subject to the regulation.
- (4) No regulation made under subsection (1)(ee) may be considered invalid because it confers any discretion upon or allows any matter to be determined or approved by the Authority or the Director or any other person, or allows the Authority or the Director or any other person to impose requirements as to the performance of any activities.
- (5) So far as the bylaws of any local authority are inconsistent with or repugnant to any regulation made under subsection (1)(ee) in force in the same locality, the bylaws must be construed subject to the regulations made under subsection (1)(ee).

Compare: 1964 No 68 s 29(2)

Section 100(1)(ba): inserted, on 26 September 2007, by section 17(1) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 100(1)(ca): inserted, on 26 September 2007, by section 17(2) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 100(1)(d): amended, on 28 November 1991, by section 6(a) of the Civil Aviation Amendment Act 1991 (1991 No 116).

Section 100(1)(d)(i): amended, on 1 June 2004, by section 39(1)(a) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 100(1)(d)(ii): amended, on 1 June 2004, by section 39(1)(b) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 100(1)(d)(ii): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 100(1)(e): amended, on 28 November 1991, by section 6(b) of the Civil Aviation Amendment Act 1991 (1991 No 116).

Section 100(1)(e)(ii): amended, on 10 August 1992, by section 41 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Section 100(1)(ea): inserted, on 13 August 1996, by section 32 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 100(1)(eb): inserted, on 13 August 1996, by section 32 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 100(1)(ec): inserted, on 13 August 1996, by section 32 of the Civil Aviation Amendment Act 1996 (1996 No 91).

Section 100(1)(ed): inserted, on 1 June 2004, by section 39(2) of the Civil Aviation Amendment Act 2004 (2004 No 8).

Section 100(1)(ee): inserted, on 26 September 2007, by section 17(3) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 100(3): added, on 26 September 2007, by section 17(4) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 100(4): added, on 26 September 2007, by section 17(4) of the Civil Aviation Amendment Act 2007 (2007 No 89).

Section 100(5): added, on 26 September 2007, by section 17(4) of the Civil Aviation Amendment Act 2007 (2007 No 89).

101 Repeals, revocation, amendments, and savings

- (1) The enactments specified in Schedule 1 are hereby repealed.
- (2) The Civil Aviation (Accident Investigation) Regulations 1978 (SR 1978/112) are hereby revoked.
- (3) The enactments specified in Schedule 2 are hereby amended in the manner indicated in that schedule.
- (4) Nothing in subsection (1) shall affect any amendment made by section 6 of the Civil Aviation Amendment Act 1976.

102 Transitional provisions

- (1) Every reference to the Minister of Civil Aviation or the Minister of Civil Aviation and Meteorological Services in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement of this Act, shall, unless the context otherwise requires, be read as a reference to the Minister of Transport.
- (2) *[Repealed]*
- (3) Unless the context otherwise requires, in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement of this Act,—
 - (a) every reference to the Office of Air Accidents Investigation shall be read as a reference to the Transport Accident Investigation Commission:

- (b) every reference to the Chief Inspector of Air Accidents or an Inspector of Air Accidents shall be read as a reference to a person appointed by the Transport Accident Investigation Commission to investigate any matter under the Transport Accident Investigation Commission Act 1990.
- (4) *[Repealed]*
- (5) Every licence, rating, certificate, permit, authorisation, approval, or other document issued under the Civil Aviation Regulations 1953, that is in force immediately before the commencement of this Act, shall be deemed to be an aviation document issued under this Act, and shall have effect and be subject to the provisions of this Act accordingly.
- (6) Every authorisation given under section 29A or section 29C of the Civil Aviation Act 1964, and every commission regime issued under section 29C of that Act, that is in force immediately before the commencement of this Act, shall be deemed to have been given or issued, as the case may be, under Part 9, and shall have effect and be subject to the provisions of that Part accordingly.
- (7) *[Repealed]*
- Section 102(2): repealed, on 10 August 1992, by section 37 of the Civil Aviation Amendment Act 1992 (1992 No 75).
- Section 102(4): repealed, on 10 August 1992, by section 37 of the Civil Aviation Amendment Act 1992 (1992 No 75).
- Section 102(7): repealed, on 10 August 1992, by section 37 of the Civil Aviation Amendment Act 1992 (1992 No 75).

103 Effect of Act on Civil Aviation Regulations

[Repealed]

Section 103: repealed, on 28 November 1991, by section 7 of the Civil Aviation Amendment Act 1991 (1991 No 116).

Part 12 Cape Town Convention and Aircraft Protocol

Part 12: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

104 Interpretation

(1) In this Part, unless the context otherwise requires,—

Aircraft Protocol means the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment done at Cape Town on 16 November 2001 (a copy of the English text of which is set out in Schedule 8)

Cape Town Convention means the Convention on International Interests in Mobile Equipment done at Cape Town on 16 November 2001 (a copy of the English text of which is set out in Schedule 7)

Contracting State means a State that is a party to the Cape Town Convention and the Aircraft Protocol

declaration means a declaration made by New Zealand under the Cape Town Convention or the Aircraft Protocol

de-registration request means a request for the removal of the registration of an aircraft from the New Zealand Aircraft Register

removal request means a request for the removal of an irrevocable de-registration and export request authorisation from the New Zealand Aircraft Register.

(2) In this Part, any term defined in the Cape Town Convention or the Aircraft Protocol and used in this Part has the same meaning as in the Cape Town Convention or the Aircraft Protocol.

Compare: 1996 No 40 s 2

Section 104: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

105 Cape Town Convention and Aircraft Protocol to have force of law

The provisions of the Cape Town Convention and the Aircraft Protocol, subject to any declaration that New Zealand has made under the Convention or the Protocol, have the force of law in New Zealand.

Compare: 1994 No 60 s 4; 1990 No 98 s 91C

Section 105: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

106 Cape Town Convention and Aircraft Protocol to have effect in place of New Zealand law in certain circumstances

The provisions of the Cape Town Convention and the Aircraft Protocol, subject to any declaration that New Zealand has made under the Convention or the Protocol, have effect in place of any other New Zealand law to the extent that the Convention or the Protocol applies to a matter to which the other law applies.

Section 106: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

107 Governor-General may issue copies of declarations

- (1) If New Zealand makes a declaration under the Cape Town Convention or the Aircraft Protocol, the Governor-General may, by Order in Council, issue a copy of the declaration.
- (2) An Order in Council made under subsection (1) must state the date on which—
 - (a) New Zealand made the relevant declaration; and
 - (b) the declaration takes or took effect.
- (3) An Order in Council made, or a declaration issued, under subsection (1) is a regulation for the purposes of the Acts and Regulations Publication Act 1989, but is not a regulation for the purposes of the Regulations (Disallowance) Act 1989.

Section 107: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

108 Certificates about Contracting States

- (1) The Secretary of Foreign Affairs and Trade, or a Deputy Secretary of Foreign Affairs and Trade, may sign a certificate that states whether, in respect of any specified day or period,—
 - (a) a State is a Contracting State;
 - (b) a declaration made under the Cape Town Convention or the Aircraft Protocol is effective in respect of a Contracting State and, if so, that specifies the contents of that declaration.

- (2) A certificate signed under subsection (1) is conclusive evidence for all purposes of the matters stated in the certificate.

Compare: 1994 No 60 s 6

Section 108: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

109 Irrevocable de-registration and export request authorisations

- (1) A debtor must submit an irrevocable de-registration and export request authorisation to the Director if the debtor—
- (a) is the holder of a certificate of registration for a New Zealand registered aircraft; and
 - (b) issues an irrevocable de-registration and export request authorisation substantially in the form annexed to the Aircraft Protocol.
- (2) A submission under subsection (1) must be accompanied by the prescribed fee (if any).
- (3) If the Director receives a submission under subsection (1), the Authority must record the irrevocable de-registration and export request authorisation on the New Zealand Register of Aircraft.

Section 109: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

110 De-registration requests

- (1) An authorised party (or the authorised party's certified designee) may, in accordance with the relevant irrevocable de-registration and export request authorisation recorded under section 109(3), submit a de-registration request in the prescribed form to the Director.
- (2) In a request submitted under subsection (1), the authorised party must certify in writing that—
- (a) the aircraft is not subject to any registered interest that ranks in priority to the international interest that the authorised party holds in the aircraft; or
 - (b) if the aircraft is subject to a registered interest that ranks in priority to the international interest that the authorised party holds in the aircraft, the holder of the

higher-ranking registered interest has consented to the de-registration and exportation of the aircraft.

- (3) A request under subsection (1) must be accompanied by the prescribed fee (if any).
- (4) If the Director receives a de-registration request under subsection (1) that is accompanied by the statement specified in subsection (2), the Director must, as soon as practicable but, in any event, within 5 working days of receiving the request, revoke the relevant certificate of registration.
- (5) If the Director revokes a certificate of registration under subsection (4), the Authority must remove the registration from the New Zealand Register of Aircraft.

Section 110: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

111 Removal requests

- (1) An authorised party (or the authorised party's certified designee) may, in accordance with the relevant irrevocable de-registration and export request authorisation recorded under section 109(3), submit a removal request in writing to the Director.
- (2) A debtor may, in accordance with the relevant irrevocable de-registration and export request authorisation recorded under section 109(3), submit a removal request in writing to the Director if the debtor—
 - (a) has obtained the written consent of the authorised party to do so; and
 - (b) provides a copy of the written consent to the Director with the removal request.
- (3) A removal request under subsection (1) or (2) must be accompanied by the prescribed fee (if any).
- (4) If the Director receives a removal request under subsection (1) or (2), the Director must, as soon as practicable but, in any event, within 5 working days of receiving the request, revoke the relevant irrevocable de-registration and export request authorisation.
- (5) If the Director revokes an irrevocable de-registration and export request authorisation under subsection (4), the Authority

must remove the authorisation from the New Zealand Register of Aircraft.

Section 111: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

112 Director must prescribe and publish forms for de-registration requests

The Director must prescribe and publish the forms that an authorised party (or the authorised party's certified designee) must use to make a request for the de-registration of an aircraft under section 110.

Section 112: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

113 Director may not exercise certain powers

The Director may not exercise any power that the Director may exercise under this Act in relation to a certificate of registration if the exercise of that power would interfere with, or be contrary to, any right or obligation arising under this Part.

Section 113: added, on 1 November 2010, by section 12 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

Schedule 1
Enactments repealed

s 101(1)

Air Services Licensing Act 1983 (1983 No 36)**Air Services Licensing Amendment Act 1986 (1986 No 32)****Civil Aviation Act 1964 (1964 No 68) (RS Vol 16, p 41)****Civil Aviation Amendment Act 1969 (1969 No 9) (RS Vol 16,
p 76)****Civil Aviation Amendment Act 1970 (1970 No 52) (RS Vol 16,
p 77)****Civil Aviation Amendment Act 1971 (1971 No 22) (RS Vol 16,
p 77)****Civil Aviation Amendment Act (No 2) 1971 (1971 No 85) (RS
Vol 16, p 78)****Civil Aviation Amendment Act 1975 (1975 No 34) (RS Vol 16,
p 78)****Civil Aviation Amendment Act 1976 (1976 No 153) (RS Vol 16,
p 79)****Civil Aviation Amendment Act 1977 (1977 No 146) (RS Vol 16,
p 80)****Civil Aviation Amendment Act 1982 (1982 No 175) (RS Vol 16,
p 80)****Civil Aviation Amendment Act 1987 (1987 No 12)****Civil Aviation Amendment Act (No 2) 1987 (1987 No 108)****Civil Aviation Amendment Act 1988 (1988 No 53)**

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1 July 2011

Civil Aviation Act 1990

Schedule 1

Civil Aviation Amendment Act 1989 (1989 No 146)

Schedule 2

s 101(3)

Enactments amended

Airport Authorities Act 1966 (1966 No 51) (RS Vol 71, p 1)

Amendment(s) incorporated in the Act(s).

Crown Proceedings Act 1950 (1950 No 54)

Amendment(s) incorporated in the Act(s).

**International Air Services Licensing Act 1947 (1947 No 17) (RS
Vol 7, p 501)**

Amendment(s) incorporated in the Act(s).

Schedule 3
Provisions relating to Civil Aviation
Authority of New Zealand

s 72A(12)

Schedule 3: added, on 10 August 1992, by section 38 of the Civil Aviation Amendment Act 1992 (1992 No 75).

Membership
[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

1

[Repealed]

Schedule 3 clause 1: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

2

[Repealed]

Schedule 3 clause 2: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

3

[Repealed]

Schedule 3 clause 3: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

4

[Repealed]

Schedule 3 clause 4: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

5

[Repealed]

Schedule 3 clause 5: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

6

[Repealed]

Schedule 3 clause 6: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

7*[Repealed]*

Schedule 3 clause 7: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

8*[Repealed]*

Schedule 3 clause 8: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Remuneration and expenses of Authority members

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

9*[Repealed]*

Schedule 3 clause 9: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Meetings

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

10*[Repealed]*

Schedule 3 clause 10: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

11*[Repealed]*

Schedule 3 clause 11: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

12*[Repealed]*

Schedule 3 clause 12: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

13

[Repealed]

Schedule 3 clause 13: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

13A

[Repealed]

Schedule 3 clause 13A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

13B

[Repealed]

Schedule 3 clause 13B: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

14

[Repealed]

Schedule 3 clause 14: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Disclosure of interest

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

15

[Repealed]

Schedule 3 clause 15: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

16

[Repealed]

Schedule 3 clause 16: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

17

[Repealed]

Schedule 3 clause 17: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

18

[Repealed]

Schedule 3 clause 18: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

19

[Repealed]

Schedule 3 clause 19: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

19A

[Repealed]

Schedule 3 clause 19A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

19B

[Repealed]

Schedule 3 clause 19B: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Committees

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

20

[Repealed]

Schedule 3 clause 20: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Execution of documents

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

20A

[Repealed]

Schedule 3 clause 20A: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

20B

[Repealed]

Schedule 3 clause 20B: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

20C

[Repealed]

Schedule 3 clause 20C: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Powers to borrow, etc

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

21

[Repealed]

Schedule 3 clause 21: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Director

[Repealed]

Heading: repealed, on 25 January 2005, pursuant to section 200 of the Crown Entities Act 2004 (2004 No 115).

22

[Repealed]

Schedule 3 clause 22: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

23

[Repealed]

Schedule 3 clause 23: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

General Manager

Heading: inserted, on 20 August 1993, by section 16(4) of the Civil Aviation Amendment Act 1993 (1993 No 90).

23A

The terms and conditions of employment of the General Manager appointed under section 72L shall be determined from time to time by the Authority.

Schedule 3 clause 23A: inserted, on 20 August 1993, by section 16(4) of the Civil Aviation Amendment Act 1993 (1993 No 90).

23B

[Repealed]

Schedule 3 clause 23B: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Appointment of staff

24

The Director may appoint such employees, including employees on secondment from other organisations, as he or she thinks necessary for the efficient performance of the Authority's functions.

25

Subject to the terms and conditions of employment, the Director may at any time terminate or suspend the employment of any of the Authority's employees.

25A

In respect of the functions of the Authority in relation to employees in the Aviation Security Service, the references in clauses 24 and 25 to the Director shall be read as references to the General Manager.

Schedule 3 clause 25A: inserted, on 20 August 1993, by section 16(5) of the Civil Aviation Amendment Act 1993 (1993 No 90).

25B

No person employed in the Aviation Security Service may hold any other office with the Authority whether as an employee, consultant, agent, or otherwise without the written approval of the Minister.

Schedule 3 clause 25B: inserted, on 20 August 1993, by section 16(5) of the Civil Aviation Amendment Act 1993 (1993 No 90).

26

[Repealed]

Schedule 3 clause 26: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

27

[Repealed]

Schedule 3 clause 27: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

28

[Repealed]

Schedule 3 clause 28: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

29

[Repealed]

Schedule 3 clause 29: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

30

[Repealed]

Schedule 3 clause 30: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Superannuation or retiring allowances

31

[Repealed]

Schedule 3 clause 31: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

32

Notwithstanding anything in this Act, a person who, immediately before becoming an employee of the Authority, is a contributor to the Government Superannuation Fund under Part 2 or Part 2A of the Government Superannuation Fund Act 1956 shall, for the purposes of that Act, be deemed to be employed in the Government service so long as that person continues to be an employee of the Authority; and that Act shall apply to

that person in all respects as if that person's service as an employee of the Authority is Government service.

33

Nothing in clause 32 entitles any person to become a contributor to the Government Superannuation Fund after that person has once ceased to be a contributor.

34

For the purposes of applying the Government Superannuation Fund Act 1956, in accordance with clause 32, to an employee of the Authority who is a contributor to the Government Superannuation Fund, the term **controlling authority**, in relation to that employee, means the Authority.

35

[Repealed]

Schedule 3 clause 35: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Consultants, agents, etc

36

The Director or the General Manager may from time to time appoint consultants, agents, specialists, and advisory committees to advise it or him or her in relation to the exercise of its or his or her functions and powers, and to exercise such functions and powers as may be delegated under this Act to such persons or committees.

Schedule 3 clause 36: substituted, on 20 August 1993, by section 16(6) of the Civil Aviation Amendment Act 1993 (1993 No 90).

Schedule 3 clause 36: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

37

The Director or the General Manager may—

- (a) pay to any such persons or members of committees so appointed such remuneration by way of fees, salary or allowances, and such travelling allowances and ex-

penses, as the Director or the General Manager thinks fit; and

- (b) contribute towards the remuneration, travelling allowances, and expenses of any such persons or members of committees, whose employers provide services for the Director or the General Manager.

Schedule 3 clause 37: substituted, on 20 August 1993, by section 16(6) of the Civil Aviation Amendment Act 1993 (1993 No 90).

Schedule 3 clause 37: amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 3 clause 37(a): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 3 clause 37(b): amended, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Annual report

38

[Repealed]

Schedule 3 clause 38: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

38A

The annual report shall separately identify all financial and performance matters that relate to the Aviation Security Service (including any direction given under section 72CA) and shall include a statement by the General Manager in relation to those matters.

Schedule 3 clause 38A: inserted, on 20 August 1993, by section 16(7) of the Civil Aviation Amendment Act 1993 (1993 No 90).

39

[Repealed]

Schedule 3 clause 39: repealed, on 25 January 2005, by section 200 of the Crown Entities Act 2004 (2004 No 115).

Schedule 4

s 91A

**The Warsaw Convention as amended
by the Hague Protocol of 1955 and the
Montreal Additional Protocols Nos 1 and
2 and Protocol No 4 of 1975**

Schedule 4: added, on 1 December 1999, by section 4 of the Civil Aviation Amendment Act 1999 (1999 No 70).

**Convention for the Unification of Certain
Rules Relating to International Carriage
by Air****Chapter 1****Scope—Definitions****Article 1**

- (1) This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.
- (2) For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two High Contracting Parties or within the territory of a single High Contracting Party if there is an agreed stopping place within the territory of another State, even if that State is not a High Contracting Party. Carriage between two points within the territory of a single High Contracting Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.
- (3) Carriage to be performed by several successive air carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter 1—*continued*

a series of contracts is to be performed entirely within the territory of the same State.

Article 2

- (1) This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
- (2) In the carriage of postal items the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.
- (3) Except as provided in paragraph (2) of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

Chapter II

Documents of carriage

Section 1—Passenger ticket

Article 3

- (1) In respect of the carriage of passengers a ticket shall be delivered containing:
 - (a) an indication of the places of departure and destination;
 - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
 - (c) a notice to the effect that, if the passenger's journey involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers for death or

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Chapter II—*continued*
Section 1—*continued*

personal injury and in respect of loss of or damage to baggage.

- (2) The passenger ticket shall constitute *prima facie* evidence of the conclusion and conditions of the contract of carriage. The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if, with the consent of the carrier, the passenger embarks without a passenger ticket having been delivered, or if the ticket does not include the notice required by paragraph (1)(c) of this Article, the carrier shall not be entitled to avail himself of the provisions of Article 22.

Section 2—Baggage check

Article 4

- (1) In respect of the carriage of registered baggage, a baggage check shall be delivered, which, unless combined with or incorporated in a passenger ticket which complies with the provisions of Article 3, paragraph (1), shall contain:
- (a) an indication of the places of departure and destination;
 - (b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place;
 - (c) a notice to the effect that, if the carriage involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention may be applicable and that the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to baggage.
- (2) The baggage check shall constitute *prima facie* evidence of the registration of the baggage and of the conditions of the

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter II—*continued*
Section 2—*continued*

contract of carriage. The absence, irregularity or loss of the baggage check does not affect the existence or the validity of the contract of carriage which shall, none the less, be subject to the rules of this Convention. Nevertheless, if the carrier takes charge of the baggage without a baggage check having been delivered or if the baggage check (unless combined with or incorporated in the passenger ticket which complies with the provisions of Article 3, paragraph (1)(c)) does not include the notice required by paragraph (1)(c) of this Article, he shall not be entitled to avail himself of the provisions of Article 22, paragraph (2).

*Section III—Documentation relating to
cargo*

Article 5

1. In respect of the carriage of cargo an air waybill shall be delivered.
2. Any other means which would preserve a record of the carriage to be performed may, with the consent of the consignor, be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a receipt for the cargo permitting identification of the consignment and access to the information contained in the record preserved by such other means.
3. The impossibility of using, at points of transit and destination, the other means which would preserve the record of the carriage referred to in paragraph 2 of this Article does not entitle the carrier to refuse to accept the cargo for carriage.

Article 6

1. The air waybill shall be made out by the consignor in three original parts.

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Relating to International Carriage by Air—*continued*
Chapter II—*continued*
Section III—*continued*

2. The first part shall be marked “for the carrier”; it shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier and handed by him to the consignor after the cargo has been accepted.
3. The signature of the carrier and that of the consignor may be printed or stamped.
4. If, at the request of the consignor, the carrier makes out the air waybill, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Article 7

When there is more than one package:

- a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- b) the consignor has the right to require the carrier to deliver separate receipts when the other means referred to in paragraph 2 of Article 5 are used.

Article 8

The air waybill and the receipt for the cargo shall contain:

- a) an indication of the places of departure and destination;
- b) if the places of departure and destination are within the territory of a single High Contracting Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and
- c) an indication of the weight of the consignment.

Article 9

Non-compliance with the provisions of Articles 5 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, none the less, be subject to the rules of this Convention including those relating to limitation of liability.

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Relating to International Carriage by Air—*continued*
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Section III—*continued*

Article 10

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by him or on his behalf in the air waybill or furnished by him or on his behalf to the carrier for insertion in the receipt for the cargo or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 5.
2. The consignor shall indemnify the carrier against all damage suffered by him, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on his behalf.
3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by him, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the carrier or on his behalf in the receipt for the cargo or in the record preserved by the other means referred to in paragraph 2 of Article 5.

Article 11

1. The air waybill or the receipt for the cargo is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.
2. Any statements in the air waybill or the receipt for the cargo relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill to have been, checked by him in the

Convention for the Unification of Certain Rules
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Chapter II—*continued*
Section III—*continued*

presence of the consignor, or relate to the apparent condition of the cargo.

Article 12

1. Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.
3. If the carrier obeys the orders of the consignor for the disposition of the cargo without requiring the production of the part of the air waybill or the receipt for the cargo delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the receipt for the cargo.
4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or if he cannot be communicated with, the consignor resumes his right of disposition.

Article 13

1. Except when the consignor has exercised his right under Article 12, the consignee is entitled, on arrival of the cargo at the

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Chapter II—*continued*
Section III—*continued*

place of destination, to require the carrier to deliver the cargo to him, on payment of the charges due and on complying with the conditions of carriage.

2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14

The consignor and the consignee can respectively enforce all the rights given them by Articles 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract of carriage.

Article 15

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the receipt for the cargo.

Article 16

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, octroi or police before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any

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Chapter II—*continued*
Section III—*continued*

such information or documents, unless the damage is due to the fault of the carrier, his servants or agents.

2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

Chapter III
Liability of the carrier

Article 17

The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

Article 18

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, any registered baggage, if the occurrence which caused the damage so sustained took place during the carriage by air.
2. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the occurrence which caused the damage so sustained took place during the carriage by air.
3. However, the carrier is not liable if he proves that the destruction, loss of, or damage to, the cargo resulted solely from one or more of the following:
 - a) inherent defect, quality or vice of that cargo;
 - b) defective packing of that cargo performed by a person other than the carrier or his servants or agents;
 - c) an act of war or an armed conflict;
 - d) an act of public authority carried out in connexion with the entry, exit or transit of the cargo.

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Relating to International Carriage by Air—*continued*
Chapter III—*continued*

4. The carriage by air within the meaning of the preceding paragraphs of this Article comprises the period during which the baggage or cargo is in the charge of the carrier, whether in an airport or on board an aircraft, or, in the case of a landing outside an airport, in any place whatsoever.
5. The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an airport. If, however, such carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

Article 19

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo.

Article 20

In the carriage of passengers and baggage, and in the case of damage occasioned by delay in the carriage of cargo, the carrier shall not be liable if he proves that he and his servants and agents have taken all necessary measures to avoid the damage or that it was impossible for them to take such measures.

Article 21

1. In the carriage of passengers and baggage, if the carrier proves that the damage was caused by or contributed to by the negligence of the person suffering the damage the Court may, in accordance with the provisions of its own law, exonerate the carrier wholly or partly from his liability.
2. In the carriage of cargo, if the carrier proves that the damage was caused by or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he derives his rights, the car-

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Chapter III—*continued*

rier shall be wholly or partly exonerated from his liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage.

Article 22 (as it reads where Additional Protocol
No. 1 applies)

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 8 300 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
2. In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.
3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights per passenger.
4. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be cal-

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Relating to International Carriage by Air—*continued*
Chapter III—*continued*

culated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 125 000 monetary units per passenger with respect to paragraph 1 of Article 22; 250 monetary units per kilogramme with respect to paragraph 2 of Article 22; and 5 000 monetary units per passenger with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

Article 22 (as it reads where Additional Protocol
No. 2 applies but not Protocol No. 4)

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16 600 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

2. a) In the carriage of registered baggage and of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.
- b) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered baggage or cargo or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights per passenger.
4. The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

5. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.
Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 a) and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 250 000 monetary units per passenger with respect to paragraph 1 of Article 22; 250 monetary units per kilogramme with respect to paragraph 2 a) of Article 22; and 5 000 monetary units per passenger with respect to paragraph 3 of Article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

Article 22 (as it reads where Additional Protocol
No. 2 and Protocol No. 4 apply)

1. In the carriage of persons the liability of the carrier for each passenger is limited to the sum of 16 600 Special Drawing Rights. Where, in accordance with the law of the court seised of the case, damages may be awarded in the form of periodic payments, the equivalent capital value of the said payments shall not exceed this limit. Nevertheless, by special contract, the carrier and the passenger may agree to a higher limit of liability.
2. a) In the carriage of registered baggage, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the passenger or consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the passenger's or consignor's actual interest in delivery at destination.
b) In the carriage of cargo, the liability of the carrier is limited to a sum of 17 Special Drawing Rights per kilogramme, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the consignor's actual interest in delivery at destination.
c) In the case of loss, damage or delay of part of registered baggage or cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the loss, damage or delay of a part of the registered bag-

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

gage or cargo or of an object contained therein, affects the value of other packages covered by the same baggage check or the same air waybill, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

3. As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 332 Special Drawing Rights per passenger.
4. The limits prescribed in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff. The foregoing provision shall not apply if the amount of the damage awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.
5. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraphs 1, 2 a) and 3 of Article 22 may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of 250 000 monetary units per passenger with respect to paragraph 1 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 2 a) of Article 22 and 5000 monetary units per passenger with respect to paragraph 3 of article 22. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

6. The sums mentioned in terms of the Special Drawing Right in this Article shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgment. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgment, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a High Contracting Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that High Contracting Party.

Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 2 b) of Article 22

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier in judicial proceedings in their territories is fixed at a sum of two hundred and fifty monetary units per kilogramme. This monetary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. This sum may be converted into the national currency concerned in round figures. The conversion of this sum into the national currency shall be made according to the law of the State concerned.

Article 23

- (1) Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.
- (2) Paragraph (1) of this Article shall not apply to provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.

Article 24

1. In the carriage of passengers and baggage, any action for damages, however founded, can only be brought subject to the conditions and limits set out in this Convention, without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights.
2. In the carriage of cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and limits of liability set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. Such limits of liability constitute maximum limits and may not be

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

exceeded whatever the circumstances which gave rise to the liability.

Article 25

In the carriage of passengers and baggage, the limits of liability specified in Article 22 shall not apply if it is proved that the damage resulted from an act or omission of the carrier, his servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that he was acting within the scope of his employment.

Article 25A

- (1) If an action is brought against a servant or agent of the carrier arising out of damage to which this Convention relates, such servant or agent, if he proves that he acted within the scope of his employment, shall be entitled to avail himself of the limits of liability which that carrier himself is entitled to invoke under Article 22.
- (2) The aggregate of the amounts recoverable from the carrier, his servants and agents, in that case, shall not exceed the said limits.
3. In the carriage of passengers and baggage, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 26

- (1) Receipt by the person entitled to delivery of baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

- (2) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his disposal.
- (3) Every complaint must be made in writing upon the document of carriage or by separate notice in writing, despatched within the times aforesaid.
- (4) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

Article 27

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his estate.

Article 28

- (1) An action for damages must be brought, at the option of the plaintiff, in the territory of one of the High Contracting Parties, either before the court having jurisdiction where the carrier is ordinarily resident, or has his principal place of business, or has an establishment by which the contract has been made or before the court having jurisdiction at the place of destination.
- (2) Questions of procedure shall be governed by the law of the court seised of the case.

Article 29

- (1) The right to damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter III—*continued*

- (2) The method of calculating the period of limitation shall be determined by the law of the court seised of the case.

Article 30

- (1) In the case of carriage to be performed by various successive carriers and falling within the definition set-out in the third paragraph of Article 1, each carrier who accepts passengers, baggage or cargo is subjected to the rules set out in this Convention, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.
- (2) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier assumed liability for the whole journey.
- (3) As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 30A

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*

Chapter IV

Provisions relating to combined carriage

Article 31

- (1) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.
- (2) Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V

General and final provisions

Article 32

Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place within one of the jurisdictions referred to in the first paragraph of Article 28.

Article 33

Except as provided in paragraph 3 of Article 5, nothing in this Convention shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Convention.

Article 34

The provisions of Articles 3 to 8 inclusive relating to documents of carriage shall not apply in the case of carriage performed in extra-

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter V—*continued*

ordinary circumstances outside the normal scope of an air carrier's business.

Article 35

The expression “days” when used in this Convention means current days not working days.

Article 36

The Convention is drawn up in French in a single copy which shall remain deposited in the archives of the Ministry for Foreign Affairs of Poland and of which one duly certified copy shall be sent by the Polish Government to the Government of each of the High Contracting Parties.

Article 37

- (1) This Convention shall be ratified. The instruments of ratification shall be deposited in the archives of the Ministry for Foreign Affairs of Poland, which will notify the deposit to the Government of each of the High Contracting Parties.
- (2) As soon as this Convention shall have been ratified by five of the High Contracting Parties it shall come into force as between them on the ninetieth day after the deposit of the fifth ratification. Thereafter it shall come into force between the High Contracting Parties who shall have ratified and the High Contracting Party who deposits his instrument of ratification on the ninetieth day after the deposit.
- (3) It shall be the duty of the Government of the Republic of Poland to notify to the Government of each of the High Contracting Parties the date on which this Convention comes into force as well as the date of the deposit of each ratification.

Article 38

- (1) This Convention shall, after it has come into force, remain open for accession by any State.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter V—*continued*

- (2) The accession shall be effected by a notification addressed to the Government of the Republic of Poland, which will inform the Government of each of the High Contracting Parties thereof.
- (3) The accession shall take effect as from the ninetieth day after the notification made to the Government of the Republic of Poland.

Article 39

- (1) Any one of the High Contracting Parties may denounce this Convention by a notification addressed to the Government of the Republic of Poland, which will at once inform the Government of each of the High Contracting Parties.
- (2) Denunciation shall take effect six months after the notification of denunciation, and shall operate only as regards the Party who shall have proceeded to denunciation.

Article 40

- (1) Any High Contracting Party may, at the time of signature or of deposit of ratification or of accession declare that the acceptance which he gives to this Convention does not apply to all or any of his colonies, protectorates, territories under mandate, or any other territory subject to his sovereignty or his authority, or any territory under his suzerainty.
- (2) Accordingly any High Contracting Party may subsequently accede separately in the name of all or any of his colonies, protectorates, territories under mandate or any other territory subject to his sovereignty or to his authority or any territory under his suzerainty which has been thus excluded by his original declaration.
- (3) Any High Contracting Party may denounce this Convention, in accordance with its provisions, separately or for all or any of his colonies, protectorates, territories under mandate or any

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Chapter V—*continued*

other territory subject to his sovereignty or to his authority, or any other territory under his suzerainty.

Article 40A

- (1) In Article 37 paragraph 2, and Article 40, paragraph 1, the expression a *High Contracting Party* shall mean a *State*. In all other cases, the expression *High Contracting Party* shall mean a State whose ratification of or adherence to the Convention has become effective and whose denunciation thereof has not become effective.
- (2) For the purposes of the Convention the word *territory* means not only the metropolitan territory of a State but also all other territories for the foreign relations of which that State is responsible.

Article 41

Any High Contracting Party shall be entitled not earlier than two years after the coming into force of this Convention to call for the assembling of a new international Conference in order to consider any improvements which may be made in this Convention. To this end he will communicate with the Government of the French Republic which will take the necessary measures to make preparations for such Conference.

This Convention done at Warsaw on the 12th October, 1929, shall remain open for signature until the 31st January, 1930.

(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Convention was signed.)

Additional Protocol

(With reference to Article 2)

The High Contracting Parties reserve to themselves the right to declare at the time of ratification or of accession that the first paragraph of Article 2 of this Convention shall not apply to international car-

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Protocol—*continued*

riage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority.

**Additional Provisions of the Hague
Protocol Affecting the Warsaw
Convention**

Chapter II

Scope of application of the Convention as
amended

Article XVIII

The Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two parties to this Protocol or within the territory of a single party to this Protocol with an agreed stopping place within the territory of another State.

Chapter III

Final clauses

Article XIX

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the Warsaw Convention as amended at The Hague, 1955.

Article XX

Until the date on which this Protocol comes into force in accordance with the provisions of Article XXII, paragraph 1, it shall remain open for signature on behalf of any State which up to that date has ratified or adhered to the Convention or which has participated in the Conference at which this Protocol was adopted.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of the Hague Protocol
Affecting the Warsaw Convention—*continued*
Chapter III—*continued*

Article XXI

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. The instruments of ratification shall be deposited with the Government of the People's Republic of Poland.

Article XXII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the People's Republic of Poland.

Article XXIII

1. This Protocol shall, after it has come into force, be open for adherence by any non-signatory State.
2. Adherence to this Protocol by any State which is not a Party to the Convention shall have the effect of adherence to the Convention as amended by this Protocol.
3. Adherence shall be effected by the deposit of an instrument of adherence with the Government of the People's Republic of Poland and shall take effect on the ninetieth day after the deposit.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of the Hague Protocol
Affecting the Warsaw Convention—*continued*
Chapter III—*continued*

Article XXIV

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the People's Republic of Poland.
2. Denunciation shall take effect six months after the date of receipt by the Government of the People's Republic of Poland of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article XXV

1. This Protocol shall apply to all territories for the foreign relations of which a State Party to this Protocol is responsible, with the exception of territories in respect of which a declaration has been made in accordance with paragraph 2 of this Article.
2. Any State may, at the time of deposit of its instrument of ratification or adherence, declare that its acceptance of this Protocol does not apply to any one or more of the territories for the foreign relations of which such State is responsible.
3. Any State may subsequently, by notification to the Government of the People's Republic of Poland, extend the application of this Protocol to any or all of the territories regarding which it has made a declaration in accordance with paragraph 2 of this Article. The notification shall take effect on the ninetieth day after its receipt by that Government.
4. Any State Party to this Protocol may denounce it, in accordance with the provisions of Article XXIV, paragraph 1, separately for any or all of the territories for the foreign relations of which such State is responsible.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of the Hague Protocol
Affecting the Warsaw Convention—*continued*
Chapter III—*continued*

Article XXVI

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the People's Republic of Poland that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

Article XXVII

The Government of the People's Republic of Poland shall give immediate notice to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organization or of the United Nations and to the International Civil Aviation Organization:

- (a) of any signature of this Protocol and the date thereof;
- (b) of the deposit of any instrument of ratification or adherence in respect of this Protocol and the date thereof;
- (c) of the date on which this Protocol comes into force in accordance with Article XXII, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article XXV and the date thereof; and
- (f) of the receipt of any notification made under Article XXVI and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of the Hague Protocol
Affecting the Warsaw Convention—*continued*

DONE at The Hague on the twenty-eighth day of the month of September of the year One Thousand Nine Hundred and Fifty-five, in three authentic texts in the English, French and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Convention was drawn up, shall prevail.

This Protocol shall be deposited with the Government of the People's Republic of Poland with which, in accordance with Article XX, it shall remain open for signature, and that Government shall send certified copies thereof to the Governments of all States signatories to the Convention or this Protocol, all States Parties to the Convention or this Protocol, and all States Members of the International Civil Aviation Organisation or of the United Nations, and to the International Civil Aviation Organisation.

(Here follow the signatures of the Plenipotentiaries of the States on behalf of which the Protocol was signed.)

**Additional Provisions of Additional
Protocol No. 1 Affecting the Warsaw
Convention**

Chapter II

Scope of application of the Convention as
amended

Article III

The Warsaw Convention as amended by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the place of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol, or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Additional Protocol No. 1
Affecting the Warsaw Convention—*continued*

Chapter III
Final clauses

Article IV

As between the Parties to this Protocol, the Convention and the Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended by Additional Protocol No. 1 of Montreal, 1975*.

Article V

Until the date on which this Protocol comes into force in accordance with the provisions of Article VII, it shall remain open for signature by any State.

Article VI

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention shall have the effect of accession to the Convention as amended by this Protocol.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

Article VII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the Polish People's Republic.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Additional Protocol No. 1
Affecting the Warsaw Convention—*continued*
Chapter III—*continued*

Article VIII

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.
2. Accession to this Protocol by any State which is not a Party to the Convention shall have the effect of accession to the Convention as amended by this Protocol.
3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

Article IX

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.
2. Denunciation shall take effect six months after the receipt by the Government of the Polish People's Republic of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 39 thereof shall not be construed in any way as a denunciation of the Convention as amended by this Protocol.

Article X

No reservation may be made to this Protocol.

Article XI

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or of that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organization, of the date of each signature, the date of deposit of each instrument of rati-

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Additional Protocol No. 1
Affecting the Warsaw Convention—*continued*
Chapter III—*continued*

fication or accession, the date of coming into force of this Protocol and other relevant information.

Article XII

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the “Guadalajara Convention”) any reference to the “Warsaw Convention” contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended by Additional Protocol No. 1 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

Article XIII

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organization and thereafter until it comes into force in accordance with Article VII at the Ministry for Foreign Affairs of the Polish People’s Republic. The International Civil Aviation Organization shall promptly inform the Government of the Polish People’s Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organization.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Montreal on the twenty-fifth day of the month of September of the year One Thousand Nine Hundred and Seventy-five in four au-

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Additional Protocol No. 1
Affecting the Warsaw Convention—*continued*

thentic texts in the English, French, Russian and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail.

**Additional Provisions of Additional
Protocol No. 2 Affecting the Warsaw
Convention**

Chapter II

Scope of application of the Convention as
amended

Article III

The Warsaw Convention as amended at The Hague in 1955 and by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State.

Chapter III

Final clauses

Article IV

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Additional Protocol No. 2
Affecting the Warsaw Convention—*continued*
Chapter III—*continued*

Article V

Until the date on which this Protocol enters into force in accordance with the provisions of Article VII, it shall remain open for signature by any State.

Article VI

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

Article VII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the Polish People's Republic.

Article VIII

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Additional Protocol No. 2
Affecting the Warsaw Convention—*continued*
Chapter III—*continued*

2. Accession to this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*.
3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

Article IX

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.
2. Denunciation shall take effect six months after the date of receipt by the Government of the Polish People's Republic of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Warsaw Convention in accordance with Article 39 thereof or of The Hague Protocol in accordance with Article XXIV thereof shall not be construed in any way as a denunciation of the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*.

Article X

No reservation may be made to this Protocol except that a State may at any time declare by a notification addressed to the Government of the Polish People's Republic that the Convention as amended by this Protocol shall not apply to the carriage of persons, cargo and baggage for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Additional Protocol No. 2
Affecting the Warsaw Convention—*continued*
Chapter III—*continued*

Article XI

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or to that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organization, of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

Article XII

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Convention" contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended at The Hague, 1955, and by Additional Protocol No. 2 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph b) of the Guadalajara Convention is governed by this Protocol.

Article XIII

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organization and thereafter until it comes into force in accordance with Article VII at the Ministry for Foreign Affairs of the Polish People's Republic. The International Civil Aviation Organization shall promptly inform the Government of the Polish People's Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organization.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Additional Protocol No. 2
Affecting the Warsaw Convention—*continued*

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE at Montreal on the twenty-fifth day of the month of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail.

**Additional Provisions of Protocol No. 4
Affecting the Warsaw Convention**

Chapter II

Scope of Application of the Convention as
Amended

Article XIV

The Warsaw Convention as amended at The Hague in 1955 and by this Protocol shall apply to international carriage as defined in Article 1 of the Convention, provided that the places of departure and destination referred to in that Article are situated either in the territories of two Parties to this Protocol or within the territory of a single Party to this Protocol with an agreed stopping place in the territory of another State.

Chapter III

Final Clauses

Article XV

As between the Parties to this Protocol, the Warsaw Convention as amended at The Hague in 1955 and this Protocol shall be read and interpreted together as one single instrument and shall be known as the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Protocol No. 4 Affecting
the Warsaw Convention—*continued*
Chapter III—*continued*

Article XVI

Until the date on which this Protocol enters into force in accordance with the provisions of Article XVIII, it shall remain open for signature by any State.

Article XVII

1. This Protocol shall be subject to ratification by the signatory States.
2. Ratification of this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.
3. The instruments of ratification shall be deposited with the Government of the Polish People's Republic.

Article XVIII

1. As soon as thirty signatory States have deposited their instruments of ratification of this Protocol, it shall come into force between them on the ninetieth day after the deposit of the thirtieth instrument of ratification. It shall come into force for each State ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Protocol comes into force it shall be registered with the United Nations by the Government of the Polish People's Republic.

Article XIX

1. This Protocol, after it has come into force, shall be open for accession by any non-signatory State.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Protocol No. 4 Affecting
the Warsaw Convention—*continued*
Chapter III—*continued*

2. Accession to this Protocol by any State which is not a Party to the Warsaw Convention or by any State which is not a Party to the Warsaw Convention as amended at The Hague, 1955, shall have the effect of accession to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.
3. Accession shall be effected by the deposit of an instrument of accession with the Government of the Polish People's Republic and shall take effect on the ninetieth day after the deposit.

Article XX

1. Any Party to this Protocol may denounce the Protocol by notification addressed to the Government of the Polish People's Republic.
2. Denunciation shall take effect six months after the date of receipt by the Government of the Polish People's Republic of the notification of denunciation.
3. As between the Parties to this Protocol, denunciation by any of them of the Warsaw Convention in accordance with Article 39 thereof or of The Hague Protocol in accordance with Article XXIV thereof shall not be construed in any way as a denunciation of the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*.

Article XXI

1. Only the following reservations may be made to this Protocol:—
 - a) a State may at any time declare by a notification addressed to the Government of the Polish People's Republic that the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, shall not apply to the carriage of persons, baggage and

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Protocol No. 4 Affecting
the Warsaw Convention—*continued*
Chapter III—*continued*

- cargo for its military authorities on aircraft, registered in that State, the whole capacity of which has been reserved by or on behalf of such authorities; and
- b) any State may declare at the time of ratification of or accession to the Additional Protocol No. 3 of Montreal, 1975, or at any time thereafter, that it is not bound by the provisions of the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, in so far as they relate to the carriage of passengers and baggage. Such declaration shall have effect ninety days after the date of receipt of the declaration by the Government of the Polish People's Republic.
2. Any State having made a reservation in accordance with the preceding paragraph may at any time withdraw such reservation by notification to the Government of the Polish People's Republic.

Article XXII

The Government of the Polish People's Republic shall promptly inform all States Parties to the Warsaw Convention or to that Convention as amended, all signatory or acceding States to the present Protocol, as well as the International Civil Aviation Organization, of the date of each signature, the date of deposit of each instrument of ratification or accession, the date of coming into force of this Protocol, and other relevant information.

Article XXIII

As between the Parties to this Protocol which are also Parties to the Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier, signed at Guadalajara on 18 September 1961 (hereinafter referred to as the "Guadalajara Convention") any reference to the "Warsaw Conven-

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Protocol No. 4 Affecting
the Warsaw Convention—*continued*
Chapter III—*continued*

tion” contained in the Guadalajara Convention shall include reference to the *Warsaw Convention as amended at The Hague, 1955, and by Protocol No. 4 of Montreal, 1975*, in cases where the carriage under the agreement referred to in Article 1, paragraph (b) of the Guadalajara Convention is governed by this Protocol.

Article XXIV

If two or more States are Parties both to this Protocol and to the Guatemala City Protocol, 1971, or to the Additional Protocol No. 3 of Montreal, 1975, the following rules shall apply between them:

- (a) the provisions resulting from the system established by this Protocol, concerning cargo and postal items, shall prevail over the provisions resulting from the system established by the Guatemala City Protocol, 1971, or by the Additional Protocol No. 3 of Montreal, 1975;
- (b) the provisions resulting from the system established by the Guatemala City Protocol, 1971, or by the Additional Protocol No. 3 of Montreal, 1975, concerning passengers and baggage, shall prevail over the provisions resulting from the system established by this Protocol.

Article XXV

This Protocol shall remain open for signature until 1 January 1976 at the Headquarters of the International Civil Aviation Organization and thereafter until it comes into force in accordance with Article XVIII at the Ministry for Foreign Affairs of the Polish People’s Republic. The International Civil Aviation Organization shall promptly inform the Government of the Polish People’s Republic of any signature and the date thereof during the time that the Protocol shall be open for signature at the Headquarters of the International Civil Aviation Organization.

Convention for the Unification of Certain Rules
Relating to International Carriage by Air—*continued*
Additional Provisions of Protocol No. 4 Affecting
the Warsaw Convention—*continued*

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Protocol.

DONE AT MONTREAL on the twenty-fifth day of September of the year One Thousand Nine Hundred and Seventy-five in four authentic texts in the English, French, Russian and Spanish languages. In the case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail.

Schedule 5

s 91A

The Guadalajara Convention

Schedule 5: added, on 1 December 1999, by section 4 of the Civil Aviation Amendment Act 1999 (1999 No 70).

Part 1

The English Text

Convention,

**Supplementary to the Warsaw Convention, for
the Unification of Certain Rules Relating to
International Carriage by Air Performed by a
Person Other Than the Contracting Carrier.**

The States signatory to the present Convention

NOTING that the Warsaw Convention does not contain particular rules relating to international carriage by air performed by a person who is not a party to the agreement for carriage

CONSIDERING that it is therefore desirable to formulate rules to apply in such circumstances

HAVE AGREED AS FOLLOWS:

Article I

In this Convention:

- (a) “Warsaw Convention” means the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed at Warsaw on 12 October 1929, or the Warsaw Convention as amended at The Hague, 1955, according to whether the carriage under the agreement referred to in paragraph (b) is governed by the one or by the other;
- (b) “contracting carrier” means a person who as a principal makes an agreement for carriage governed by the Warsaw Convention with a passenger or consignor or with a person acting on behalf of the passenger or consignor;
- (c) “actual carrier” means a person, other than the contracting carrier, who, by virtue of authority from the contracting carrier, performs the whole or part of the carriage contemplated in paragraph (b) but who is not with respect to such part a successive carrier within the meaning of the Warsaw Convention.

Such authority is presumed in the absence of proof to the contrary.

Article II

If an actual carrier performs the whole or part of carriage which, according to the agreement referred to in Article I, paragraph (b), is governed by the Warsaw Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Convention, be subject to the rules of the Warsaw Convention, the former for the whole of the carriage contemplated in the agreement, the latter solely for the carriage which he performs.

Article III

1. The acts and omissions of the actual carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
2. The acts and omissions of the contracting carrier and of his servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the limits specified in Article 22 of the Warsaw Convention. Any special agreement under which the contracting carrier assumes obligations not imposed by the Warsaw Convention or any waiver of rights conferred by that Convention or any special declaration of interest in delivery at destination contemplated in Article 22 of the said Convention, shall not affect the actual carrier unless agreed to by him.

Article IV

Any complaint to be made or order to be given under the Warsaw Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, orders referred to in Article 12 of the Warsaw Convention shall only be effective if addressed to the contracting carrier.

Article V

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if he proves that he acted within the scope of his employment, be entitled to avail himself of the limits of liability which are applicable under this Convention to the carrier whose servant or agent he is unless it is proved that he acted in a manner which, under the Warsaw Convention, prevents the limits of liability from being invoked.

Article VI

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to him.

Article VII

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Article VIII

Any action for damages contemplated in Article VII of this Convention must be brought, at the option of the plaintiff, either before a court in which an action may be brought against the contracting carrier, as provided in Article 28 of the Warsaw Convention, or before the court having jurisdiction at the place where the actual carrier is ordinarily resident or has his principal place of business.

Article IX

1. Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Convention or to fix a lower limit than that which is applicable according to this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole agreement, which shall remain subject to the provisions of this Convention.
2. In respect of the carriage performed by the actual carrier, the preceding paragraph shall not apply to contractual provisions governing loss or damage resulting from the inherent defect, quality or vice of the cargo carried.
3. Any clause contained in an agreement for carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void. Nevertheless, for the carriage of cargo arbitration clauses are allowed, subject to this Convention, if the arbitration is to take place in one of the jurisdictions referred to in Article VIII.

Article X

Except as provided in Article VII, nothing in this Convention shall affect the rights and obligations of the two carriers between themselves.

Article XI

Until the date on which this Convention comes into force in accordance with the provisions of Article XIII, it shall remain open for signature on behalf of any State which at that date is a Member of the United Nations or of any of the Specialised Agencies.

Article XII

1. This Convention shall be subject to ratification by the signatory States.
2. The instruments of ratification shall be deposited with the Government of the United States of Mexico.

Article XIII

1. As soon as five of the signatory States have deposited their instruments of ratification of this Convention, it shall come into force between them on the ninetieth day after the date of the deposit of the fifth instrument of ratification. It shall come into force for each state ratifying thereafter on the ninetieth day after the deposit of its instrument of ratification.
2. As soon as this Convention comes into force, it shall be registered with the United Nations and the International Civil Aviation Organisation by the Government of the United States of Mexico.

Article XIV

1. This Convention shall, after it has come into force, be open for accession by any State Member of the United Nations or any of the Specialised Agencies.
2. The accession of a State shall be effected by the deposit of an instrument of accession with the Government of the United States of Mexico and shall take effect as from the ninetieth day after the date of such deposit.

Article XV

1. Any Contracting State may denounce this Convention by notification addressed to the Government of the United States of Mexico.
2. The Denunciation shall take effect six months after the date of receipt by the Government of the United States of Mexico of the notification of denunciation.

Article XVI

1. Any Contracting State may at the time of its ratification of or accession to this Convention or at any time thereafter declare by notification to the Government of the United States of Mexico that the Convention shall extend to any of the territories for whose international relations it is responsible.

2. The Convention shall, ninety days after the date of the receipt of such notification by the Government of the United States of Mexico, extend to the territories named therein.
3. Any Contracting State may denounce this Convention in accordance with the provisions of Article XV separately for any or all of the territories for the international relations of which such State is responsible.

Article XVII

No reservation may be made to this Convention.

Article XVIII

The Government of the United States of Mexico shall give notice to the International Civil Aviation Organisation and to all States Members of the United Nations or of any of the Specialised Agencies:

- (a) of any signature of this Convention and the date thereof;
- (b) of the deposit of any instrument of ratification or accession and the date thereof;
- (c) of the date on which this Convention comes into force in accordance with Article XIII, paragraph 1;
- (d) of the receipt of any notification of denunciation and the date thereof;
- (e) of the receipt of any declaration or notification made under Article XVI and the date thereof.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Guadalajara on the eighteenth day of September One Thousand Nine Hundred and Sixty-one in three authentic texts drawn up in the English, French and Spanish languages. In case of any inconsistency, the text in the French language, in which language the Warsaw Convention of 12 October 1929 was drawn up, shall prevail. The Government of the United States of Mexico will establish an official translation of the text of the Convention in the Russian language.

This Convention shall be deposited with the Government of the United States of Mexico with which, in accordance with Article

XI, it shall remain open for signature, and that Government shall send certified copies thereof to the International Civil Aviation Organisation and to all States Members of the United Nations or of any Specialised Agency.

(Here follow signatures.)

Schedule 6
The Montreal Convention

s 91A(2)

Schedule 6: added, on 4 November 2003, by section 37 of the Civil Aviation Amendment Act 2002 (2002 No 15).

The English Text

Convention for the Unification of Certain Rules
For International Carriage by Air

The States Parties To This Convention

RECOGNIZING the significant contribution of the Convention for the Unification of Certain Rules Relating to International Carriage by Air signed in Warsaw on 12 October 1929, hereinafter referred to as the “Warsaw Convention”, and other related instruments to the harmonization of private international air law;

RECOGNIZING the need to modernize and consolidate the Warsaw Convention and related instruments;

RECOGNIZING the importance of ensuring protection of the interests of consumers in international carriage by air and the need for equitable compensation based on the principle of restitution;

REAFFIRMING the desirability of an orderly development of international air transport operations and the smooth flow of passengers, baggage and cargo in accordance with the principles and objectives of the Convention on International Civil Aviation, done at Chicago on 7 December 1944;

CONVINCED that collective State action for further harmonization and codification of certain rules governing international carriage by air through a new Convention is the most adequate means of achieving an equitable balance of interests;

HAVE AGREED AS FOLLOWS:

Chapter I
General provisions

Article 1—Scope of application

1. This Convention applies to all international carriage of persons, baggage or cargo performed by aircraft for reward. It applies equally to gratuitous carriage by aircraft performed by an air transport undertaking.

Chapter I—*continued*

Article 1—*continued*

2. For the purposes of this Convention, the expression *international carriage* means any carriage in which, according to the agreement between the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transshipment, are situated either within the territories of two States Parties, or within the territory of a single State Party if there is an agreed stopping place within the territory of another State, even if that State is not a State Party. Carriage between two points within the territory of a single State Party without an agreed stopping place within the territory of another State is not international carriage for the purposes of this Convention.
3. Carriage to be performed by several successive carriers is deemed, for the purposes of this Convention, to be one undivided carriage if it has been regarded by the parties as a single operation, whether it had been agreed upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within the territory of the same State.
4. This Convention applies also to carriage as set out in Chapter V, subject to the terms contained therein.

*Article 2—Carriage performed by State and
carriage of postal items*

1. This Convention applies to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in Article 1.
2. In the carriage of postal items, the carrier shall be liable only to the relevant postal administration in accordance with the rules applicable to the relationship between the carriers and the postal administrations.
3. Except as provided in paragraph 2 of this Article, the provisions of this Convention shall not apply to the carriage of postal items.

Chapter II
Documentation and duties of the parties
relating to the carriage of passengers,
baggage and cargo

Article 3—Passengers and baggage

1. In respect of carriage of passengers, an individual or collective document of carriage shall be delivered containing:
 - (a) an indication of the places of departure and destination;
 - (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place.
2. Any other means which preserves the information indicated in paragraph 1 may be substituted for the delivery of the document referred to in that paragraph. If any such other means is used, the carrier shall offer to deliver to the passenger a written statement of the information so preserved.
3. The carrier shall deliver to the passenger a baggage identification tag for each piece of checked baggage.
4. The passenger shall be given written notice to the effect that where this Convention is applicable it governs and may limit the liability of carriers in respect of death or injury and for destruction or loss of, or damage to, baggage, and for delay.
5. Non-compliance with the provisions of the foregoing paragraphs shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 4—Cargo

1. In respect of the carriage of cargo, an air waybill shall be delivered.
2. Any other means which preserves a record of the carriage to be performed may be substituted for the delivery of an air waybill. If such other means are used, the carrier shall, if so requested by the consignor, deliver to the consignor a cargo receipt permitting identification of the consignment and access

Chapter II—*continued*

Article 4—*continued*

to the information contained in the record preserved by such other means.

Article 5—Contents of air waybill or cargo receipt

The air waybill or the cargo receipt shall include:

- (a) an indication of the places of departure and destination;
- (b) if the places of departure and destination are within the territory of a single State Party, one or more agreed stopping places being within the territory of another State, an indication of at least one such stopping place; and
- (c) an indication of the weight of the consignment.

Article 6—Document relating to the nature of the cargo

The consignor may be required, if necessary, to meet the formalities of customs, police and similar public authorities to deliver a document indicating the nature of the cargo. This provision creates for the carrier no duty, obligation or liability resulting therefrom.

Article 7—Description of air waybill

1. The air waybill shall be made out by the consignor in three original parts.
2. The first part shall be marked “for the carrier”; it shall be signed by the consignor. The second part shall be marked “for the consignee”; it shall be signed by the consignor and by the carrier. The third part shall be signed by the carrier who shall hand it to the consignor after the cargo has been accepted.
3. The signature of the carrier and that of the consignor may be printed or stamped.
4. If, at the request of the consignor, the carrier makes out the air waybill, the carrier shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

Chapter II—*continued**Article 8—Documentation for multiple packages*

When there is more than one package:

- (a) the carrier of cargo has the right to require the consignor to make out separate air waybills;
- (b) the consignor has the right to require the carrier to deliver separate cargo receipts when the other means referred to in paragraph 2 of Article 4 are used.

Article 9—Non-compliance with documentary requirements

Non-compliance with the provisions of Articles 4 to 8 shall not affect the existence or the validity of the contract of carriage, which shall, nonetheless, be subject to the rules of this Convention including those relating to limitation of liability.

Article 10—Responsibility for particulars of documentation

1. The consignor is responsible for the correctness of the particulars and statements relating to the cargo inserted by it or on its behalf in the air waybill or furnished by it or on its behalf to the carrier for insertion in the cargo receipt or for insertion in the record preserved by the other means referred to in paragraph 2 of Article 4. The foregoing shall also apply where the person acting on behalf of the consignor is also the agent of the carrier.
2. The consignor shall indemnify the carrier against all damage suffered by it, or by any other person to whom the carrier is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements furnished by the consignor or on its behalf.
3. Subject to the provisions of paragraphs 1 and 2 of this Article, the carrier shall indemnify the consignor against all damage suffered by it, or by any other person to whom the consignor is liable, by reason of the irregularity, incorrectness or incompleteness of the particulars and statements inserted by the car-

Chapter II—*continued*

Article 10—*continued*

rier or on its behalf in the cargo receipt or in the record preserved by the other means referred to in paragraph 2 of Article 4.

*Article 11—Evidentiary value of
documentation*

1. The air waybill or the cargo receipt is *prima facie* evidence of the conclusion of the contract, of the acceptance of the cargo and of the conditions of carriage mentioned therein.
2. Any statements in the air waybill or the cargo receipt relating to the weight, dimensions and packing of the cargo, as well as those relating to the number of packages, are *prima facie* evidence of the facts stated; those relating to the quantity, volume and condition of the cargo do not constitute evidence against the carrier except so far as they both have been, and are stated in the air waybill or the cargo receipt to have been, checked by it in the presence of the consignor, or relate to the apparent condition of the cargo.

Article 12—Right of disposition of cargo

1. Subject to its liability to carry out all its obligations under the contract of carriage, the consignor has the right to dispose of the cargo by withdrawing it at the airport of departure or destination, or by stopping it in the course of the journey on any landing, or by calling for it to be delivered at the place of destination or in the course of the journey to a person other than the consignee originally designated, or by requiring it to be returned to the airport of departure. The consignor must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and must reimburse any expenses occasioned by the exercise of this right.
2. If it is impossible to carry out the instructions of the consignor, the carrier must so inform the consignor forthwith.
3. If the carrier carries out the instructions of the consignor for the disposition of the cargo without requiring the production of

Chapter II—*continued*Article 12—*continued*

the part of the air waybill or the cargo receipt delivered to the latter, the carrier will be liable, without prejudice to its right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air waybill or the cargo receipt.

4. The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with Article 13. Nevertheless, if the consignee declines to accept the cargo, or cannot be communicated with, the consignor resumes its right of disposition.

Article 13—Delivery of the cargo

1. Except when the consignor has exercised its right under Article 12, the consignee is entitled, on arrival of the cargo at the place of destination, to require the carrier to deliver the cargo to it, on payment of the charges due and on complying with the conditions of carriage.
2. Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the cargo arrives.
3. If the carrier admits the loss of the cargo, or if the cargo has not arrived at the expiration of seven days after the date on which it ought to have arrived, the consignee is entitled to enforce against the carrier the rights which flow from the contract of carriage.

Article 14—Enforcement of the rights of consignor and consignee

The consignor and the consignee can respectively enforce all the rights given to them by Articles 12 and 13, each in its own name, whether it is acting in its own interest or in the interest of another, provided that it carries out the obligations imposed by the contract of carriage.

Chapter II—*continued*

Article 15—Relations of consignor and consignee or mutual relations of third parties

1. Articles 12, 13 and 14 do not affect either the relations of the consignor and the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.
2. The provisions of Articles 12, 13 and 14 can only be varied by express provision in the air waybill or the cargo receipt.

Article 16—Formalities of Customs, Police or other public authorities

1. The consignor must furnish such information and such documents as are necessary to meet the formalities of customs, police and any other public authorities before the cargo can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier, its servants or agents.
2. The carrier is under no obligation to enquire into the correctness or sufficiency of such information or documents.

Chapter III

Liability of the carrier and extent of compensation for damage

Article 17—Death and injury of passengers—Damage to baggage

1. The carrier is liable for damage sustained in case of death or bodily injury of a passenger upon condition only that the accident which caused the death or injury took place on board the aircraft or in the course of any of the operations of embarking or disembarking.
2. The carrier is liable for damage sustained in case of destruction or loss of, or of damage to, checked baggage upon condition only that the event which caused the destruction, loss or

Chapter III—*continued*Article 17—*continued*

damage took place on board the aircraft or during any period within which the checked baggage was in the charge of the carrier. However, the carrier is not liable if and to the extent that the damage resulted from the inherent defect, quality or vice of the baggage. In the case of unchecked baggage, including personal items, the carrier is liable if the damage resulted from its fault or that of its servants or agents.

3. If the carrier admits the loss of the checked baggage, or if the checked baggage has not arrived at the expiration of twenty-one days after the date on which it ought to have arrived, the passenger is entitled to enforce against the carrier the rights which flow from the contract of carriage.
4. Unless otherwise specified, in this Convention the term “baggage” means both checked baggage and unchecked baggage.

Article 18—Damage to cargo

1. The carrier is liable for damage sustained in the event of the destruction or loss of, or damage to, cargo upon condition only that the event which caused the damage so sustained took place during the carriage by air.
2. However, the carrier is not liable if and to the extent it proves that the destruction, or loss of, or damage to, the cargo resulted from one or more of the following:
 - (a) inherent defect, quality or vice of that cargo;
 - (b) defective packaging of that cargo performed by a person other than the carrier or its servants or agents;
 - (c) an act of war or an armed conflict;
 - (d) an act of public authority carried out in connection with the entry, exit or transit of the cargo.
3. The carriage by air within the meaning of paragraph 1 of this Article comprises the period during which the cargo is in the charge of the carrier.
4. The period of the carriage by air does not extend to any carriage by land, by sea or by inland waterway performed outside an airport. If, however, such carriage takes place in the per-

Chapter III—*continued*

Article 18—*continued*

formance of a contract for carriage by air, for the purpose of loading, delivery or transshipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air. If a carrier, without the consent of the consignor, substitutes carriage by another mode of transport for the whole or part of a carriage intended by the agreement between the parties to be carriage by air, such carriage by another mode of transport is deemed to be within the period of carriage by air.

Article 19—Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 20—Exoneration

If the carrier proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of the person claiming compensation, or the person from whom he or she derives his or her rights, the carrier shall be wholly or partly exonerated from its liability to the claimant to the extent that such negligence or wrongful act or omission caused or contributed to the damage. When by reason of death or injury of a passenger compensation is claimed by a person other than the passenger, the carrier shall likewise be wholly or partly exonerated from its liability to the extent that it proves that the damage was caused or contributed to by the negligence or other wrongful act or omission of that passenger. This Article applies to all the liability provisions in the Convention, including paragraph 1 of Article 21.

Chapter III—*continued**Article 21—Compensation in case of death
or injury of passengers*

1. For damages arising under paragraph 1 of Article 17 not exceeding 113 000 Special Drawing Rights for each passenger, the carrier shall not be able to exclude or limit its liability.
2. The carrier shall not be liable for damages arising under paragraph 1 of Article 17 to the extent that they exceed for each passenger 113 000 Special Drawing Rights if the carrier proves that:
 - (a) such damage was not due to the negligence or other wrongful act or omission of the carrier or its servants or agents; or
 - (b) such damage was solely due to the negligence or other wrongful act or omission of a third party.

Schedule 6 Article 21(1): amended, on 1 December 2010, by clause 4(1) of the Civil Aviation (Montreal Convention) Order 2010 (SR 2010/367).

Schedule 6 Article 21(2): amended, on 1 December 2010, by clause 4(2) of the Civil Aviation (Montreal Convention) Order 2010 (SR 2010/367).

*Article 22—Limits of liability in relation to
delay, baggage and cargo*

1. In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to 4 694 Special Drawing Rights.
2. In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage or delay is limited to 1 131 Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.
3. In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage or delay is limited to a sum of 19 Special Drawing Rights per kilogramme, unless the con-

Chapter III—*continued*

Article 22—*continued*

signor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.

4. In the case of destruction, loss, damage or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.
5. The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.
6. The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing

Chapter III—*continued*Article 22—*continued*

the damage, or before the commencement of the action, if that is later.

Schedule 6 Article 22(1): amended, on 1 December 2010, by clause 4(3) of the Civil Aviation (Montreal Convention) Order 2010 (SR 2010/367).

Schedule 6 Article 22(2): amended, on 1 December 2010, by clause 4(4) of the Civil Aviation (Montreal Convention) Order 2010 (SR 2010/367).

Schedule 6 Article 22(3): amended, on 1 December 2010, by clause 4(5) of the Civil Aviation (Montreal Convention) Order 2010 (SR 2010/367).

Article 23—Conversion of Monetary Units

1. The sums mentioned in terms of Special Drawing Right in this Convention shall be deemed to refer to the Special Drawing Right as defined by the International Monetary Fund. Conversion of the sums into national currencies shall, in case of judicial proceedings, be made according to the value of such currencies in terms of the Special Drawing Right at the date of the judgement. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is a Member of the International Monetary Fund, shall be calculated in accordance with the method of valuation applied by the International Monetary Fund, in effect at the date of the judgement, for its operations and transactions. The value of a national currency, in terms of the Special Drawing Right, of a State Party which is not a Member of the International Monetary Fund, shall be calculated in a manner determined by that State.
2. Nevertheless, those States which are not Members of the International Monetary Fund and whose law does not permit the application of the provisions of paragraph 1 of this Article may, at the time of ratification or accession or at any time thereafter, declare that the limit of liability of the carrier prescribed in Article 21 is fixed at a sum of 1 500 000 monetary units per passenger in judicial proceedings in their territories; 62 500 monetary units per passenger with respect to paragraph 1 of Article 22; 15 000 monetary units per passenger with respect to paragraph 2 of Article 22; and 250 monetary units per kilogramme with respect to paragraph 3 of Article 22. This mon-

Chapter III—*continued*

Article 23—*continued*

etary unit corresponds to sixty-five and a half milligrammes of gold of millesimal fineness nine hundred. These sums may be converted into the national currency concerned in round figures. The conversion of these sums into national currency shall be made according to the law of the State concerned.

3. The calculation mentioned in the last sentence of paragraph 1 of this Article and the conversion method mentioned in paragraph 2 of this Article shall be made in such manner as to express in the national currency of the State Party as far as possible the same real value for the amounts in Articles 21 and 22 as would result from the application of the first three sentences of paragraph 1 of this Article. States Parties shall communicate to the depositary the manner of calculation pursuant to paragraph 1 of this Article, or the result of the conversion in paragraph 2 of this Article as the case may be, when depositing an instrument of ratification, acceptance, approval of or accession to this Convention and whenever there is a change in either.

Article 24—Review of Limits

1. Without prejudice to the provisions of Article 25 of this Convention and subject to paragraph 2 below, the limits of liability prescribed in Articles 21, 22 and 23 shall be reviewed by the Depositary at five-year intervals, the first such review to take place at the end of the fifth year following the date of entry into force of this Convention, or if the Convention does not enter into force within five years of the date it is first open for signature, within the first year of its entry into force, by reference to an inflation factor which corresponds to the accumulated rate of inflation since the previous revision or in the first instance since the date of entry into force of the Convention. The measure of the rate of inflation to be used in determining the inflation factor shall be the weighted average of the annual rates of increase or decrease in the Consumer Price Indices of the States whose currencies comprise the Special Drawing Right mentioned in paragraph 1 of Article 23.

Chapter III—*continued*Article 24—*continued*

2. If the review referred to in the preceding paragraph concludes that the inflation factor has exceeded 10 per cent, the Depositary shall notify States Parties of a revision of the limits of liability. Any such revision shall become effective six months after its notification to the States Parties. If within three months after its notification to the States Parties a majority of the States Parties register their disapproval, the revision shall not become effective and the Depositary shall refer the matter to a meeting of the States Parties. The Depositary shall immediately notify all States Parties of the coming into force of any revision.
3. Notwithstanding paragraph 1 of this Article, the procedure referred to in paragraph 2 of this Article shall be applied at any time provided that one-third of the States Parties express a desire to that effect and upon condition that the inflation factor referred to in paragraph 1 has exceeded 30 per cent since the previous revision or since the date of entry into force of this Convention if there has been no previous revision. Subsequent reviews using the procedure described in paragraph 1 of this Article will take place at five-year intervals starting at the end of the fifth year following the date of the reviews under the present paragraph.

Article 25—Stipulation on limits

A carrier may stipulate that the contract of carriage shall be subject to higher limits of liability than those provided for in this Convention or to no limits of liability whatsoever.

Article 26—Invalidity of contractual provisions

Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in this Convention shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Convention.

Chapter III—*continued*

Article 27—Freedom to contract

Nothing contained in this Convention shall prevent the carrier from refusing to enter into any contract of carriage, from waiving any defences available under the Convention, or from laying down conditions which do not conflict with the provisions of this Convention.

Article 28—Advance payments

In the case of aircraft accidents resulting in death or injury of passengers, the carrier shall, if required by its national law, make advance payments without delay to a natural person or persons who are entitled to claim compensation in order to meet the immediate economic needs of such persons. Such advance payments shall not constitute a recognition of liability and may be offset against any amounts subsequently paid as damages by the carrier.

Article 29—Basis of claims

In the carriage of passengers, baggage and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary or any other non-compensatory damages shall not be recoverable.

*Article 30—Servants, agents—Aggregation
of claims*

1. If an action is brought against a servant or agent of the carrier arising out of damage to which the Convention relates, such servant or agent, if they prove that they acted within the scope of their employment, shall be entitled to avail themselves of the conditions and limits of liability which the carrier itself is entitled to invoke under this Convention.
2. The aggregate of the amounts recoverable from the carrier, its servants and agents, in that case, shall not exceed the said limits.

Chapter III—*continued*Article 30—*continued*

3. Save in respect of the carriage of cargo, the provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result.

Article 31—Timely notice of complaints

1. Receipt by the person entitled to delivery of checked baggage or cargo without complaint is *prima facie* evidence that the same has been delivered in good condition and in accordance with the document of carriage or with the record preserved by the other means referred to in paragraph 2 of Article 3 and paragraph 2 of Article 4.
2. In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within seven days from the date of receipt in the case of checked baggage and fourteen days from the date of receipt in the case of cargo. In the case of delay, the complaint must be made at the latest within twenty-one days from the date on which the baggage or cargo have been placed at his or her disposal.
3. Every complaint must be made in writing and given or dispatched within the times aforesaid.
4. If no complaint is made within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on its part.

Article 32—Death of person liable

In the case of the death of the person liable, an action for damages lies in accordance with the terms of this Convention against those legally representing his or her estate.

Article 33—Jurisdiction

1. An action for damages must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before the court of the domicile of the carrier or of its principal

Chapter III—*continued*

Article 33—*continued*

place of business, or where it has a place of business through which the contract has been made or before the court at the place of destination.

2. In respect of damage resulting from the death or injury of a passenger, an action may be brought before one of the courts mentioned in paragraph 1 of this Article, or in the territory of a State Party in which at the time of the accident the passenger has his or her principal and permanent residence and to or from which the carrier operates services for the carriage of passengers by air, either on its own aircraft, or on another carrier's aircraft pursuant to a commercial agreement, and in which that carrier conducts its business of carriage of passengers by air from premises leased or owned by the carrier itself or by another carrier with which it has a commercial agreement.
3. For the purposes of paragraph 2,
 - (a) "commercial agreement" means an agreement, other than an agency agreement, made between carriers and relating to the provision of their joint services for carriage of passengers by air;
 - (b) "principal and permanent residence" means the one fixed and permanent abode of the passenger at the time of the accident. The nationality of the passenger shall not be the determining factor in this regard.
4. Questions of procedure shall be governed by the law of the court seised of the case.

Article 34—Arbitration

1. Subject to the provisions of this Article, the parties to the contract of carriage for cargo may stipulate that any dispute relating to the liability of the carrier under this Convention shall be settled by arbitration. Such agreement shall be in writing.
2. The arbitration proceedings shall, at the option of the claimant, take place within one of the jurisdictions referred to in Article 33.

Chapter III—*continued*Article 34—*continued*

3. The arbitrator or arbitration tribunal shall apply the provisions of this Convention.
4. The provisions of paragraphs 2 and 3 of this Article shall be deemed to be part of every arbitration clause or agreement, and any term of such clause or agreement which is inconsistent therewith shall be null and void.

Article 35—Limitation of actions

1. The right to damages shall be extinguished if an action is not brought within a period of two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.
2. The method of calculating that period shall be determined by the law of the court seised of the case.

Article 36—Successive carriage

1. In the case of carriage to be performed by various successive carriers and falling within the definition set out in paragraph 3 of Article 1, each carrier which accepts passengers, baggage or cargo is subject to the rules set out in this Convention and is deemed to be one of the parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under its supervision.
2. In the case of carriage of this nature, the passenger or any person entitled to compensation in respect of him or her can take action only against the carrier which performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.
3. As regards baggage or cargo, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier which performed the carriage during which

Chapter III—*continued*

Article 36—*continued*

the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

Article 37—Right of recourse against third parties

Nothing in this Convention shall prejudice the question whether a person liable for damage in accordance with its provisions has a right of recourse against any other person.

Chapter IV

Combined carriage

Article 38—Combined carriage

1. In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Convention shall, subject to paragraph 4 of Article 18, apply only to the carriage by air, provided that the carriage by air falls within the terms of Article 1.
2. Nothing in this Convention shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Convention are observed as regards the carriage by air.

Chapter V

Carriage by air performed by a person other than the contracting carrier

Article 39—Contracting carrier—Actual carrier

The provisions of this Chapter apply when a person (hereinafter referred to as “the contracting carrier”) as a principal makes a contract of carriage governed by this Convention with a passenger or consignor or with a person acting on behalf of the passenger or con-

Chapter V—*continued*Article 39—*continued*

signor, and another person (hereinafter referred to as “the actual carrier”) performs, by virtue of authority from the contracting carrier, the whole or part of the carriage, but is not with respect to such part a successive carrier within the meaning of this Convention. Such authority shall be presumed in the absence of proof to the contrary.

*Article 40—Respective liability of
contracting and actual carriers*

If an actual carrier performs the whole or part of carriage which, according to the contract referred to in Article 39, is governed by this Convention, both the contracting carrier and the actual carrier shall, except as otherwise provided in this Chapter, be subject to the rules of this Convention, the former for the whole of the carriage contemplated in the contract, the latter solely for the carriage which it performs.

Article 41—Mutual liability

1. The acts and omissions of the actual carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the contracting carrier.
2. The acts and omissions of the contracting carrier and of its servants and agents acting within the scope of their employment shall, in relation to the carriage performed by the actual carrier, be deemed to be also those of the actual carrier. Nevertheless, no such act or omission shall subject the actual carrier to liability exceeding the amounts referred to in Articles 21, 22, 23 and 24. Any special agreement under which the contracting carrier assumes obligations not imposed by this Convention or any waiver of rights or defences conferred by this Convention or any special declaration of interest in delivery at destination contemplated in Article 22 shall not affect the actual carrier unless agreed to by it.

Chapter V—*continued*

Article 42—Addressee of complaints and instructions

Any complaint to be made or instruction to be given under this Convention to the carrier shall have the same effect whether addressed to the contracting carrier or to the actual carrier. Nevertheless, instructions referred to in Article 12 shall only be effective if addressed to the contracting carrier.

Article 43—Servants and agents

In relation to the carriage performed by the actual carrier, any servant or agent of that carrier or of the contracting carrier shall, if they prove that they acted within the scope of their employment, be entitled to avail themselves of the conditions and limits of liability which are applicable under this Convention to the carrier whose servant or agent they are, unless it is proved that they acted in a manner that prevents the limits of liability from being invoked in accordance with this Convention.

Article 44—Aggregation of damages

In relation to the carriage performed by the actual carrier, the aggregate of the amounts recoverable from that carrier and the contracting carrier, and from their servants and agents acting within the scope of their employment, shall not exceed the highest amount which could be awarded against either the contracting carrier or the actual carrier under this Convention, but none of the persons mentioned shall be liable for a sum in excess of the limit applicable to that person.

Article 45—Addressee of claims

In relation to the carriage performed by the actual carrier, an action for damages may be brought, at the option of the plaintiff, against that carrier or the contracting carrier, or against both together or separately. If the action is brought against only one of those carriers, that carrier shall have the right to require the other carrier to be joined in the proceedings, the procedure and effects being governed by the law of the court seised of the case.

Chapter V—*continued**Article 46—Additional jurisdiction*

Any action for damages contemplated in Article 45 must be brought, at the option of the plaintiff, in the territory of one of the States Parties, either before a court in which an action may be brought against the contracting carrier, as provided in Article 33, or before the court having jurisdiction at the place where the actual carrier has its domicile or its principal place of business.

Article 47—Invalidity of contractual provisions

Any contractual provision tending to relieve the contracting carrier or the actual carrier of liability under this Chapter or to fix a lower limit than that which is applicable according to this Chapter shall be null and void, but the nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Chapter.

Article 48—Mutual relations of contracting and actual carriers

Except as provided in Article 45, nothing in this Chapter shall affect the rights and obligations of the carriers between themselves, including any right of recourse or indemnification.

Chapter VI
Other provisions*Article 49—Mandatory application*

Any clause contained in the contract of carriage and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Convention, whether by deciding the law to be applied, or by altering the rules as to jurisdiction, shall be null and void.

Article 50—Insurance

States Parties shall require their carriers to maintain adequate insurance covering their liability under this Convention. A carrier may be

Chapter VI—*continued*

Article 50—*continued*

required by the State Party into which it operates to furnish evidence that it maintains adequate insurance covering its liability under this Convention.

*Article 51—Carriage performed in
extraordinary circumstances*

The provisions of Articles 3 to 5, 7 and 8 relating to the documentation of carriage shall not apply in the case of carriage performed in extraordinary circumstances outside the normal scope of a carrier's business.

Article 52—Definition of days

The expression "days" when used in this Convention means calendar days, not working days.

Chapter VII

Final clauses

*Article 53—Signature, ratification and entry
into force*

1. This Convention shall be open for signature in Montreal on 28 May 1999 by States participating in the International Conference on Air Law held at Montreal from 10 to 28 May 1999. After 28 May 1999, the Convention shall be open to all States for signature at the Headquarters of the International Civil Aviation Organization in Montreal until it enters into force in accordance with paragraph 6 of this Article.
2. The Convention shall similarly be open for signature by Regional Economic Integration Organisations. For the purpose of this Convention, a "Regional Economic Integration Organisation" means any organisation which is constituted by sovereign States of a given region which has competence in respect of certain matters governed by this Convention and has been duly authorized to sign and to ratify, accept, approve or accede to this Convention. A reference to a "State

Chapter VII—*continued*Article 53—*continued*

Party” or “States Parties” in this Convention, otherwise than in paragraph 2 of Article 1, paragraph 1(b) of Article 3, paragraph (b) of Article 5, Articles 23, 33, 46 and paragraph (b) of Article 57, applies equally to a Regional Economic Integration Organisation. For the purpose of Article 24, the references to “a majority of the States Parties” and “one-third of the States Parties” shall not apply to a Regional Economic Integration Organisation.

3. This Convention shall be subject to ratification by States and by Regional Economic Integration Organisations which have signed it.
4. Any State or Regional Economic Integration Organisation which does not sign this Convention may accept, approve or accede to it at any time.
5. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Civil Aviation Organization, which is hereby designated the Depositary.
6. This Convention shall enter into force on the sixtieth day following the date of deposit of the thirtieth instrument of ratification, acceptance, approval or accession with the Depositary between the States which have deposited such instrument. An instrument deposited by a Regional Economic Integration Organisation shall not be counted for the purpose of this paragraph.
7. For other States and for other Regional Economic Integration Organisations, this Convention shall take effect sixty days following the date of deposit of the instrument of ratification, acceptance, approval or accession.
8. The Depositary shall promptly notify all signatories and States Parties of:
 - (a) each signature of this Convention and date thereof;
 - (b) each deposit of an instrument of ratification, acceptance, approval or accession and date thereof;
 - (c) the date of entry into force of this Convention;

Chapter VII—*continued*

Article 53—*continued*

- (d) the date of the coming into force of any revision of the limits of liability established under this Convention;
- (e) any denunciation under Article 54.

Article 54—Denunciation

1. Any State Party may denounce this Convention by written notification to the Depositary.
2. Denunciation shall take effect one hundred and eighty days following the date on which notification is received by the Depositary.

*Article 55—Relationship with other Warsaw
Convention Instruments*

This Convention shall prevail over any rules which apply to international carriage by air:

1. between State Parties to this Convention by virtue of those States commonly being Party to
 - (a) the *Convention for the Unification of Certain Rules Relating to International Carriage by Air* Signed at Warsaw on 12 October 1929 (hereinafter called the Warsaw Convention);
 - (b) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929*, Done at The Hague on 28 September 1955 (hereinafter called The Hague Protocol);
 - (c) the *Convention, Supplementary to the Warsaw Convention, for the Unification of Certain Rules Relating to International Carriage by Air Performed by a Person Other than the Contracting Carrier*, signed at Guadalajara on 18 September 1961 (hereinafter called the Guadalajara Convention);
 - (d) the *Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air Signed at Warsaw on 12 October 1929 as*

Chapter VII—*continued*Article 55—*continued*

Amended by the Protocol Done at The Hague on 28 September 1955 Signed at Guatemala City on 8 March 1971 (hereinafter called the Guatemala City Protocol);

- (e) Additional Protocol Nos. 1 to 3 and Montreal Protocol No. 4 to amend the Warsaw Convention as amended by The Hague Protocol or the Warsaw Convention as amended by both The Hague Protocol and the Guatemala City Protocol Signed at Montreal on 25 September 1975 (hereinafter called the Montreal Protocols); or
2. within the territory of any single State Party to this Convention by virtue of that State being Party to one or more of the instruments referred to in sub-paragraphs (a) to (e) above.

*Article 56—States with more than one
System of Law*

1. If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.
2. Any such declaration shall be notified to the Depositary and shall state expressly the territorial units to which the Convention applies.
3. In relation to a State Party which has made such a declaration:
 - (a) references in Article 23 to “national currency” shall be construed as referring to the currency of the relevant territorial unit of that State; and
 - (b) the reference in Article 28 to “national law” shall be construed as referring to the law of the relevant territorial unit of that State.

Chapter VII—*continued*

Article 57—Reservations

No reservation may be made to this Convention except that a State Party may at any time declare by a notification addressed to the Depositary that this Convention shall not apply to:

- (a) international carriage by air performed and operated directly by that State Party for non-commercial purposes in respect to its functions and duties as a sovereign State; and/or
- (b) the carriage of persons, cargo and baggage for its military authorities on aircraft registered in or leased by that State Party, the whole capacity of which has been reserved by or on behalf of such authorities.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorized, have signed this Convention.

DONE at Montreal on the 28th day of May of the year one thousand nine hundred and ninety-nine in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic. This Convention shall remain deposited in the archives of the International Civil Aviation Organization, and certified copies thereof shall be transmitted by the Depositary to all States Parties to this Convention, as well as to all States Parties to the Warsaw Convention, The Hague Protocol, the Guadalajara Convention, the Guatemala City Protocol, and the Montreal Protocols.

Schedule 7

s 104

**Convention on International Interests in
Mobile Equipment**

Schedule 7: added, on 1 November 2010, by section 13 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

THE STATES PARTIES TO THIS CONVENTION,

AWARE of the need to acquire and use mobile equipment of high value or particular economic significance and to facilitate the financing of the acquisition and use of such equipment in an efficient manner,

RECOGNISING the advantages of asset-based financing and leasing for this purpose and desiring to facilitate these types of transaction by establishing clear rules to govern them,

MINDFUL of the need to ensure that interests in such equipment are recognised and protected universally,

DESIRING to provide broad and mutual economic benefits for all interested parties,

BELIEVING that such rules must reflect the principles underlying asset-based financing and leasing and promote the autonomy of the parties necessary in these transactions,

CONSCIOUS of the need to establish a legal framework for international interests in such equipment and for that purpose to create an international registration system for their protection,

TAKING INTO CONSIDERATION the objectives and principles enunciated in existing Conventions relating to such equipment,

HAVE AGREED upon the following provisions:

Chapter I**Sphere of application and general provisions***Article 1—Definitions*

In this Convention, except where the context otherwise requires, the following terms are employed with the meanings set out below:

- (a) “agreement” means a security agreement, a title reservation agreement or a leasing agreement;

Chapter I—*continued*

Article 1—*continued*

- (b) “assignment” means a contract which, whether by way of security or otherwise, confers on the assignee associated rights with or without a transfer of the related international interest;
- (c) “associated rights” means all rights to payment or other performance by a debtor under an agreement which are secured by or associated with the object;
- (d) “commencement of the insolvency proceedings” means the time at which the insolvency proceedings are deemed to commence under the applicable insolvency law;
- (e) “conditional buyer” means a buyer under a title reservation agreement;
- (f) “conditional seller” means a seller under a title reservation agreement;
- (g) “contract of sale” means a contract for the sale of an object by a seller to a buyer which is not an agreement as defined in (a) above;
- (h) “court” means a court of law or an administrative or arbitral tribunal established by a Contracting State;
- (i) “creditor” means a chargee under a security agreement, a conditional seller under a title reservation agreement or a lessor under a leasing agreement;
- (j) “debtor” means a chargor under a security agreement, a conditional buyer under a title reservation agreement, a lessee under a leasing agreement or a person whose interest in an object is burdened by a registrable non-consensual right or interest;
- (k) “insolvency administrator” means a person authorised to administer the reorganisation or liquidation, including one authorised on an interim basis, and includes a debtor in possession if permitted by the applicable insolvency law;
- (l) “insolvency proceedings” means bankruptcy, liquidation or other collective judicial or administrative proceedings, including interim proceedings, in which the assets and affairs of the debtor are subject to control or supervision by a court for the purposes of reorganisation or liquidation;
- (m) “interested persons” means:
 - (i) the debtor;

Chapter I—*continued*Article 1—*continued*

- (ii) any person who, for the purpose of assuring performance of any of the obligations in favour of the creditor, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (iii) any other person having rights in or over the object;
- (n) “internal transaction” means a transaction of a type listed in Article 2(2)(a) to (c) where the centre of the main interests of all parties to such transaction is situated, and the relevant object located (as specified in the Protocol), in the same Contracting State at the time of the conclusion of the contract and where the interest created by the transaction has been registered in a national registry in that Contracting State which has made a declaration under Article 50(1);
- (o) “international interest” means an interest held by a creditor to which Article 2 applies;
- (p) “International Registry” means the international registration facilities established for the purposes of this Convention or the Protocol;
- (q) “leasing agreement” means an agreement by which one person (the lessor) grants a right to possession or control of an object (with or without an option to purchase) to another person (the lessee) in return for a rental or other payment;
- (r) “national interest” means an interest held by a creditor in an object and created by an internal transaction covered by a declaration under Article 50(1);
- (s) “non-consensual right or interest” means a right or interest conferred under the law of a Contracting State which has made a declaration under Article 39 to secure the performance of an obligation, including an obligation to a State, State entity or an intergovernmental or private organisation;
- (t) “notice of a national interest” means notice registered or to be registered in the International Registry that a national interest has been created;
- (u) “object” means an object of a category to which Article 2 applies;

Chapter I—*continued*

Article 1—*continued*

- (v) “pre-existing right or interest” means a right or interest of any kind in or over an object created or arising before the effective date of this Convention as defined by Article 60(2)(a);
- (w) “proceeds” means money or non-money proceeds of an object arising from the total or partial loss or physical destruction of the object or its total or partial confiscation, condemnation or requisition;
- (x) “prospective assignment” means an assignment that is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (y) “prospective international interest” means an interest that is intended to be created or provided for in an object as an international interest in the future, upon the occurrence of a stated event (which may include the debtor’s acquisition of an interest in the object), whether or not the occurrence of the event is certain;
- (z) “prospective sale” means a sale which is intended to be made in the future, upon the occurrence of a stated event, whether or not the occurrence of the event is certain;
- (aa) “Protocol” means, in respect of any category of object and associated rights to which this Convention applies, the Protocol in respect of that category of object and associated rights;
- (bb) “registered” means registered in the International Registry pursuant to Chapter V;
- (cc) “registered interest” means an international interest, a registrable non-consensual right or interest or a national interest specified in a notice of a national interest registered pursuant to Chapter V;
- (dd) “registrable non-consensual right or interest” means a non-consensual right or interest registrable pursuant to a declaration deposited under Article 40;
- (ee) “Registrar” means, in respect of the Protocol, the person or body designated by that Protocol or appointed under Article 17(2)(b);

Chapter I—*continued*Article 1—*continued*

- (ff) “regulations” means regulations made or approved by the Supervisory Authority pursuant to the Protocol;
- (gg) “sale” means a transfer of ownership of an object pursuant to a contract of sale;
- (hh) “secured obligation” means an obligation secured by a security interest;
- (ii) “security agreement” means an agreement by which a chargor grants or agrees to grant to a chargee an interest (including an ownership interest) in or over an object to secure the performance of any existing or future obligation of the chargor or a third person;
- (jj) “security interest” means an interest created by a security agreement;
- (kk) “Supervisory Authority” means, in respect of the Protocol, the Supervisory Authority referred to in Article 17(1);
- (ll) “title reservation agreement” means an agreement for the sale of an object on terms that ownership does not pass until fulfilment of the condition or conditions stated in the agreement;
- (mm) “unregistered interest” means a consensual interest or non-consensual right or interest (other than an interest to which Article 39 applies) which has not been registered, whether or not it is registrable under this Convention; and
- (nn) “writing” means a record of information (including information communicated by teletransmission) which is in tangible or other form and is capable of being reproduced in tangible form on a subsequent occasion and which indicates by reasonable means a person’s approval of the record.

Article 2—The international interest

1. This Convention provides for the constitution and effects of an international interest in certain categories of mobile equipment and associated rights.
2. For the purposes of this Convention, an international interest in mobile equipment is an interest, constituted under Article 7,

Chapter I—*continued*

Article 2—*continued*

in a uniquely identifiable object of a category of such objects listed in paragraph 3 and designated in the Protocol:

- (a) granted by the chargor under a security agreement;
- (b) vested in a person who is the conditional seller under a title reservation agreement; or
- (c) vested in a person who is the lessor under a leasing agreement.

An interest falling within sub-paragraph (a) does not also fall within sub-paragraph (b) or (c).

3. The categories referred to in the preceding paragraphs are:
 - (a) airframes, aircraft engines and helicopters;
 - (b) railway rolling stock; and
 - (c) space assets.
4. The applicable law determines whether an interest to which paragraph 2 applies falls within sub-paragraph (a), (b) or (c) of that paragraph.
5. An international interest in an object extends to proceeds of that object.

Article 3—Sphere of application

1. This Convention applies when, at the time of the conclusion of the agreement creating or providing for the international interest, the debtor is situated in a Contracting State.
2. The fact that the creditor is situated in a non-Contracting State does not affect the applicability of this Convention.

Article 4—Where debtor is situated

1. For the purposes of Article 3(1), the debtor is situated in any Contracting State:
 - (a) under the law of which it is incorporated or formed;

Chapter I—*continued*Article 4—*continued*

- (b) where it has its registered office or statutory seat;
 - (c) where it has its centre of administration; or
 - (d) where it has its place of business.
2. A reference in sub-paragraph (d) of the preceding paragraph to the debtor's place of business shall, if it has more than one place of business, mean its principal place of business or, if it has no place of business, its habitual residence.

Article 5—Interpretation and applicable law

1. In the interpretation of this Convention, regard is to be had to its purposes as set forth in the preamble, to its international character and to the need to promote uniformity and predictability in its application.
2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the applicable law.
3. References to the applicable law are to the domestic rules of the law applicable by virtue of the rules of private international law of the forum State.
4. Where a State comprises several territorial units, each of which has its own rules of law in respect of the matter to be decided, and where there is no indication of the relevant territorial unit, the law of that State decides which is the territorial unit whose rules shall govern. In the absence of any such rule, the law of the territorial unit with which the case is most closely connected shall apply.

Chapter I—*continued*

*Article 6—Relationship between the
Convention and the Protocol*

1. This Convention and the Protocol shall be read and interpreted together as a single instrument.
2. To the extent of any inconsistency between this Convention and the Protocol, the Protocol shall prevail.

Chapter II

Constitution of an international interest

Article 7—Formal requirements

An interest is constituted as an international interest under this Convention where the agreement creating or providing for the interest:

- (a) is in writing;
- (b) relates to an object of which the chargor, conditional seller or lessor has power to dispose;
- (c) enables the object to be identified in conformity with the Protocol; and
- (d) in the case of a security agreement, enables the secured obligations to be determined, but without the need to state a sum or maximum sum secured.

Chapter III

Default remedies

Article 8—Remedies of chargee

1. In the event of default as provided in Article 11, the chargee may, to the extent that the chargor has at any time so agreed and subject to any declaration that may be made by a Contracting State under Article 54, exercise any one or more of the following remedies:
 - (a) take possession or control of any object charged to it;
 - (b) sell or grant a lease of any such object;
 - (c) collect or receive any income or profits arising from the management or use of any such object.

Chapter III—*continued*Article 8—*continued*

2. The chargee may alternatively apply for a court order authorising or directing any of the acts referred to in the preceding paragraph.
3. Any remedy set out in sub-paragraph (a), (b) or (c) of paragraph 1 or by Article 13 shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in conformity with a provision of the security agreement except where such a provision is manifestly unreasonable.
4. A chargee proposing to sell or grant a lease of an object under paragraph 1 shall give reasonable prior notice in writing of the proposed sale or lease to:
 - (a) interested persons specified in Article 1(m)(i) and (ii); and
 - (b) interested persons specified in Article 1(m)(iii) who have given notice of their rights to the chargee within a reasonable time prior to the sale or lease.
5. Any sum collected or received by the chargee as a result of exercise of any of the remedies set out in paragraph 1 or 2 shall be applied towards discharge of the amount of the secured obligations.
6. Where the sums collected or received by the chargee as a result of the exercise of any remedy set out in paragraph 1 or 2 exceed the amount secured by the security interest and any reasonable costs incurred in the exercise of any such remedy, then unless otherwise ordered by the court the chargee shall distribute the surplus among holders of subsequently ranking interests which have been registered or of which the chargee has been given notice, in order of priority, and pay any remaining balance to the chargor.

Chapter III—*continued*

*Article 9—Vesting of object in satisfaction;
redemption*

1. At any time after default as provided in Article 11, the chargee and all the interested persons may agree that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.
2. The court may on the application of the chargee order that ownership of (or any other interest of the chargor in) any object covered by the security interest shall vest in the chargee in or towards satisfaction of the secured obligations.
3. The court shall grant an application under the preceding paragraph only if the amount of the secured obligations to be satisfied by such vesting is commensurate with the value of the object after taking account of any payment to be made by the chargee to any of the interested persons.
4. At any time after default as provided in Article 11 and before sale of the charged object or the making of an order under paragraph 2, the chargor or any interested person may discharge the security interest by paying in full the amount secured, subject to any lease granted by the chargee under Article 8(1)(b) or ordered under Article 8(2). Where, after such default, the payment of the amount secured is made in full by an interested person other than the debtor, that person is subrogated to the rights of the chargee.
5. Ownership or any other interest of the chargor passing on a sale under Article 8(1)(b) or passing under paragraph 1 or 2 of this Article is free from any other interest over which the chargee's security interest has priority under the provisions of Article 29.

Chapter III—*continued**Article 10—Remedies of conditional seller
or lessor*

In the event of default under a title reservation agreement or under a leasing agreement as provided in Article 11, the conditional seller or the lessor, as the case may be, may:

- (a) subject to any declaration that may be made by a Contracting State under Article 54, terminate the agreement and take possession or control of any object to which the agreement relates; or
- (b) apply for a court order authorising or directing either of these acts.

Article 11—Meaning of default

1. The debtor and the creditor may at any time agree in writing as to the events that constitute a default or otherwise give rise to the rights and remedies specified in Articles 8 to 10 and 13.
2. Where the debtor and the creditor have not so agreed, “default” for the purposes of Articles 8 to 10 and 13 means a default which substantially deprives the creditor of what it is entitled to expect under the agreement.

Article 12—Additional remedies

Any additional remedies permitted by the applicable law, including any remedies agreed upon by the parties, may be exercised to the extent that they are not inconsistent with the mandatory provisions of this Chapter as set out in Article 15.

*Article 13—Relief pending final
determination*

1. Subject to any declaration that it may make under Article 55, a Contracting State shall ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form

Chapter III—*continued*

Article 13—*continued*

of such one or more of the following orders as the creditor requests:

- (a) preservation of the object and its value;
- (b) possession, control or custody of the object;
- (c) immobilisation of the object; and
- (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the object and the income therefrom.

2. In making any order under the preceding paragraph, the court may impose such terms as it considers necessary to protect the interested persons in the event that the creditor:
 - (a) in implementing any order granting such relief, fails to perform any of its obligations to the debtor under this Convention or the Protocol; or
 - (b) fails to establish its claim, wholly or in part, on the final determination of that claim.
3. Before making any order under paragraph 1, the court may require notice of the request to be given to any of the interested persons.
4. Nothing in this Article affects the application of Article 8(3) or limits the availability of forms of interim relief other than those set out in paragraph 1.

Article 14—Procedural requirements

Subject to Article 54(2), any remedy provided by this Chapter shall be exercised in conformity with the procedure prescribed by the law of the place where the remedy is to be exercised.

Article 15—Derogation

In their relations with each other, any two or more of the parties referred to in this Chapter may at any time, by agreement in writing,

Chapter III—*continued*Article 15—*continued*

derogate from or vary the effect of any of the preceding provisions of this Chapter except Articles 8(3) to (6), 9(3) and (4), 13(2) and 14.

Chapter IV

The international registration system

Article 16—The International Registry

1. An International Registry shall be established for registrations of:
 - (a) international interests, prospective international interests and registrable non-consensual rights and interests;
 - (b) assignments and prospective assignments of international interests;
 - (c) acquisitions of international interests by legal or contractual subrogations under the applicable law;
 - (d) notices of national interests; and
 - (e) subordinations of interests referred to in any of the preceding sub-paragraphs.
2. Different international registries may be established for different categories of object and associated rights.
3. For the purposes of this Chapter and Chapter V, the term “registration” includes, where appropriate, an amendment, extension or discharge of a registration.

Article 17—The Supervisory Authority and the Registrar

1. There shall be a Supervisory Authority as provided by the Protocol.
2. The Supervisory Authority shall:
 - (a) establish or provide for the establishment of the International Registry;

Chapter IV—*continued*

Article 17—*continued*

- (b) except as otherwise provided by the Protocol, appoint and dismiss the Registrar;
 - (c) ensure that any rights required for the continued effective operation of the International Registry in the event of a change of Registrar will vest in or be assignable to the new Registrar;
 - (d) after consultation with the Contracting States, make or approve and ensure the publication of regulations pursuant to the Protocol dealing with the operation of the International Registry;
 - (e) establish administrative procedures through which complaints concerning the operation of the International Registry can be made to the Supervisory Authority;
 - (f) supervise the Registrar and the operation of the International Registry;
 - (g) at the request of the Registrar, provide such guidance to the Registrar as the Supervisory Authority thinks fit;
 - (h) set and periodically review the structure of fees to be charged for the services and facilities of the International Registry;
 - (i) do all things necessary to ensure that an efficient notice-based electronic registration system exists to implement the objectives of this Convention and the Protocol; and
 - (j) report periodically to Contracting States concerning the discharge of its obligations under this Convention and the Protocol.
3. The Supervisory Authority may enter into any agreement requisite for the performance of its functions, including any agreement referred to in Article 27(3).
4. The Supervisory Authority shall own all proprietary rights in the data bases and archives of the International Registry.

Chapter IV—*continued*Article 17—*continued*

5. The Registrar shall ensure the efficient operation of the International Registry and perform the functions assigned to it by this Convention, the Protocol and the regulations.

Chapter V

Other matters relating to registration

Article 18—Registration requirements

1. The Protocol and regulations shall specify the requirements, including the criteria for the identification of the object:
 - (a) for effecting a registration (which shall include provision for prior electronic transmission of any consent from any person whose consent is required under Article 20);
 - (b) for making searches and issuing search certificates, and, subject thereto;
 - (c) for ensuring the confidentiality of information and documents of the International Registry other than information and documents relating to a registration.
2. The Registrar shall not be under a duty to enquire whether a consent to registration under Article 20 has in fact been given or is valid.
3. Where an interest registered as a prospective international interest becomes an international interest, no further registration shall be required provided that the registration information is sufficient for a registration of an international interest.
4. The Registrar shall arrange for registrations to be entered into the International Registry data base and made searchable in chronological order of receipt, and the file shall record the date and time of receipt.

Chapter V—*continued*

Article 18—*continued*

5. The Protocol may provide that a Contracting State may designate an entity or entities in its territory as the entry point or entry points through which the information required for registration shall or may be transmitted to the International Registry. A Contracting State making such a designation may specify the requirements, if any, to be satisfied before such information is transmitted to the International Registry.

Article 19—Validity and time of registration

1. A registration shall be valid only if made in conformity with Article 20.
2. A registration, if valid, shall be complete upon entry of the required information into the International Registry data base so as to be searchable.
3. A registration shall be searchable for the purposes of the preceding paragraph at the time when:
 - (a) the International Registry has assigned to it a sequentially ordered file number; and
 - (b) the registration information, including the file number, is stored in durable form and may be accessed at the International Registry.
4. If an interest first registered as a prospective international interest becomes an international interest, that international interest shall be treated as registered from the time of registration of the prospective international interest provided that the registration was still current immediately before the international interest was constituted as provided by Article 7.
5. The preceding paragraph applies with necessary modifications to the registration of a prospective assignment of an international interest.

Chapter V—*continued*Article 19—*continued*

6. A registration shall be searchable in the International Registry data base according to the criteria prescribed by the Protocol.

Article 20—Consent to registration

1. An international interest, a prospective international interest or an assignment or prospective assignment of an international interest may be registered, and any such registration amended or extended prior to its expiry, by either party with the consent in writing of the other.
2. The subordination of an international interest to another international interest may be registered by or with the consent in writing at any time of the person whose interest has been subordinated.
3. A registration may be discharged by or with the consent in writing of the party in whose favour it was made.
4. The acquisition of an international interest by legal or contractual subrogation may be registered by the subrogee.
5. A registrable non-consensual right or interest may be registered by the holder thereof.
6. A notice of a national interest may be registered by the holder thereof.

Article 21—Duration of registration

Registration of an international interest remains effective until discharged or until expiry of the period specified in the registration.

Article 22—Searches

1. Any person may, in the manner prescribed by the Protocol and regulations, make or request a search of the International

Chapter V—*continued*

Article 22—*continued*

Registry by electronic means concerning interests or prospective international interests registered therein.

2. Upon receipt of a request therefor, the Registrar, in the manner prescribed by the Protocol and regulations, shall issue a registry search certificate by electronic means with respect to any object:
 - (a) stating all registered information relating thereto, together with a statement indicating the date and time of registration of such information; or
 - (b) stating that there is no information in the International Registry relating thereto.
3. A search certificate issued under the preceding paragraph shall indicate that the creditor named in the registration information has acquired or intends to acquire an international interest in the object but shall not indicate whether what is registered is an international interest or a prospective international interest, even if this is ascertainable from the relevant registration information.

*Article 23—List of declarations and declared
non-consensual rights or interests*

The Registrar shall maintain a list of declarations, withdrawals of declaration and of the categories of nonconsensual right or interest communicated to the Registrar by the Depositary as having been declared by Contracting States in conformity with Articles 39 and 40 and the date of each such declaration or withdrawal of declaration. Such list shall be recorded and searchable in the name of the declaring State and shall be made available as provided in the Protocol and regulations to any person requesting it.

Chapter V—*continued**Article 24—Evidentiary value of certificates*

1. A document in the form prescribed by the regulations which purports to be a certificate issued by the International Registry is prima facie proof:
 - (a) that it has been so issued; and
 - (b) of the facts recited in it, including the date and time of a registration.

Article 25—Discharge of registration

1. Where the obligations secured by a registered security interest or the obligations giving rise to a registered non-consensual right or interest have been discharged, or where the conditions of transfer of title under a registered title reservation agreement have been fulfilled, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.
2. Where a prospective international interest or a prospective assignment of an international interest has been registered, the intending creditor or intending assignee shall, without undue delay, procure the discharge of the registration after written demand by the intending debtor or assignor which is delivered to or received at its address stated in the registration before the intending creditor or assignee has given value or incurred a commitment to give value.
3. Where the obligations secured by a national interest specified in a registered notice of a national interest have been discharged, the holder of such interest shall, without undue delay, procure the discharge of the registration after written demand by the debtor delivered to or received at its address stated in the registration.
4. Where a registration ought not to have been made or is incorrect, the person in whose favour the registration was made

Chapter V—*continued*

Article 25—*continued*

shall, without undue delay, procure its discharge or amendment after written demand by the debtor delivered to or received at its address stated in the registration.

*Article 26—Access to the international
registration facilities*

No person shall be denied access to the registration and search facilities of the International Registry on any ground other than its failure to comply with the procedures prescribed by this Chapter.

Chapter VI

Privileges and immunities of the Supervisory
Authority and the Registrar

Article 27—Legal personality; immunity

1. The Supervisory Authority shall have international legal personality where not already possessing such personality.
2. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal or administrative process as is specified in the Protocol.
3. (a) The Supervisory Authority shall enjoy exemption from taxes and such other privileges as may be provided by agreement with the host State.
(b) For the purposes of this paragraph, “host State” means the State in which the Supervisory Authority is situated.
4. The assets, documents, data bases and archives of the International Registry shall be inviolable and immune from seizure or other legal or administrative process.
5. For the purposes of any claim against the Registrar under Article 28(1) or Article 44, the claimant shall be entitled to access

Chapter VI—*continued*Article 27—*continued*

to such information and documents as are necessary to enable the claimant to pursue its claim.

6. The Supervisory Authority may waive the inviolability and immunity conferred by paragraph 4.

Chapter VII

Liability of the Registrar

*Article 28—Liability and financial
assurances*

1. The Registrar shall be liable for compensatory damages for loss suffered by a person directly resulting from an error or omission of the Registrar and its officers and employees or from a malfunction of the international registration system except where the malfunction is caused by an event of an inevitable and irresistible nature, which could not be prevented by using the best practices in current use in the field of electronic registry design and operation, including those related to back-up and systems security and networking.
2. The Registrar shall not be liable under the preceding paragraph for factual inaccuracy of registration information received by the Registrar or transmitted by the Registrar in the form in which it received that information nor for acts or circumstances for which the Registrar and its officers and employees are not responsible and arising prior to receipt of registration information at the International Registry.
3. Compensation under paragraph 1 may be reduced to the extent that the person who suffered the damage caused or contributed to that damage.
4. The Registrar shall procure insurance or a financial guarantee covering the liability referred to in this Article to the extent

Chapter VII—*continued*

Article 28—*continued*

determined by the Supervisory Authority, in accordance with the Protocol.

Chapter VIII

Effects of an international interest as against
third parties

Article 29—Priority of competing interests

1. A registered interest has priority over any other interest subsequently registered and over an unregistered interest.
2. The priority of the first-mentioned interest under the preceding paragraph applies:
 - (a) even if the first-mentioned interest was acquired or registered with actual knowledge of the other interest; and
 - (b) even as regards value given by the holder of the first-mentioned interest with such knowledge.
3. The buyer of an object acquires its interest in it:
 - (a) subject to an interest registered at the time of its acquisition of that interest; and
 - (b) free from an unregistered interest even if it has actual knowledge of such an interest.
4. The conditional buyer or lessee acquires its interest in or right over that object:
 - (a) subject to an interest registered prior to the registration of the international interest held by its conditional seller or lessor; and
 - (b) free from an interest not so registered at that time even if it has actual knowledge of that interest.
5. The priority of competing interests or rights under this Article may be varied by agreement between the holders of those inter-

Chapter VIII—*continued*Article 29—*continued*

ests, but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

6. Any priority given by this Article to an interest in an object extends to proceeds.
7. This Convention:
 - (a) does not affect the rights of a person in an item, other than an object, held prior to its installation on an object if under the applicable law those rights continue to exist after the installation; and
 - (b) does not prevent the creation of rights in an item, other than an object, which has previously been installed on an object where under the applicable law those rights are created.

Article 30—Effects of insolvency

1. In insolvency proceedings against the debtor an international interest is effective if prior to the commencement of the insolvency proceedings that interest was registered in conformity with this Convention.
2. Nothing in this Article impairs the effectiveness of an international interest in the insolvency proceedings where that interest is effective under the applicable law.
3. Nothing in this Article affects:
 - (a) any rules of law applicable in insolvency proceedings relating to the avoidance of a transaction as a preference or a transfer in fraud of creditors; or
 - (b) any rules of procedure relating to the enforcement of rights to property which is under the control or supervision of the insolvency administrator.

Chapter IX
Assignments of associated rights and
international interests; rights of subrogation

Article 31—Effects of assignment

1. Except as otherwise agreed by the parties, an assignment of associated rights made in conformity with Article 32 also transfers to the assignee:
 - (a) the related international interest; and
 - (b) all the interests and priorities of the assignor under this Convention.
2. Nothing in this Convention prevents a partial assignment of the assignor's associated rights. In the case of such a partial assignment the assignor and assignee may agree as to their respective rights concerning the related international interest assigned under the preceding paragraph but not so as adversely to affect the debtor without its consent.
3. Subject to paragraph 4, the applicable law shall determine the defences and rights of set-off available to the debtor against the assignee.
4. The debtor may at any time by agreement in writing waive all or any of the defences and rights of set-off referred to in the preceding paragraph other than defences arising from fraudulent acts on the part of the assignee.
5. In the case of an assignment by way of security, the assigned associated rights revert in the assignor, to the extent that they are still subsisting, when the obligations secured by the assignment have been discharged.

*Article 32—Formal requirements of
assignment*

1. An assignment of associated rights transfers the related international interest only if it:
 - (a) is in writing;

Chapter IX—*continued*Article 32—*continued*

- (b) enables the associated rights to be identified under the contract from which they arise; and
 - (c) in the case of an assignment by way of security, enables the obligations secured by the assignment to be determined in accordance with the Protocol but without the need to state a sum or maximum sum secured.
2. An assignment of an international interest created or provided for by a security agreement is not valid unless some or all related associated rights also are assigned.
 3. This Convention does not apply to an assignment of associated rights which is not effective to transfer the related international interest.

Article 33—Debtor's duty to assignee

1. To the extent that associated rights and the related international interest have been transferred in accordance with Articles 31 and 32, the debtor in relation to those rights and that interest is bound by the assignment and has a duty to make payment or give other performance to the assignee, if but only if:
 - (a) the debtor has been given notice of the assignment in writing by or with the authority of the assignor; and
 - (b) the notice identifies the associated rights.
2. Irrespective of any other ground on which payment or performance by the debtor discharges the latter from liability, payment or performance shall be effective for this purpose if made in accordance with the preceding paragraph.
3. Nothing in this Article shall affect the priority of competing assignments.

Chapter IX—*continued*

*Article 34—Default remedies in respect of
assignment by way of security*

In the event of default by the assignor under the assignment of associated rights and the related international interest made by way of security, Articles 8, 9 and 11 to 14 apply in the relations between the assignor and the assignee (and, in relation to associated rights, apply in so far as those provisions are capable of application to intangible property) as if references:

- (a) to the secured obligation and the security interest were references to the obligation secured by the assignment of the associated rights and the related international interest and the security interest created by that assignment;
- (b) to the chargee or creditor and chargor or debtor were references to the assignee and assignor;
- (c) to the holder of the international interest were references to the assignee; and
- (d) to the object were references to the assigned associated rights and the related international interest.

*Article 35—Priority of competing
assignments*

1. Where there are competing assignments of associated rights and at least one of the assignments includes the related international interest and is registered, the provisions of Article 29 apply as if the references to a registered interest were references to an assignment of the associated rights and the related registered interest and as if references to a registered or unregistered interest were references to a registered or unregistered assignment.
2. Article 30 applies to an assignment of associated rights as if the references to an international interest were references to an assignment of the associated rights and the related international interest.

Chapter IX—*continued**Article 36—Assignee's priority with respect to associated rights*

1. The assignee of associated rights and the related international interest whose assignment has been registered only has priority under Article 35(1) over another assignee of the associated rights:
 - (a) if the contract under which the associated rights arise states that they are secured by or associated with the object; and
 - (b) to the extent that the associated rights are related to an object.

2. For the purposes of sub-paragraph (b) of the preceding paragraph, associated rights are related to an object only to the extent that they consist of rights to payment or performance that relate to:
 - (a) a sum advanced and utilised for the purchase of the object;
 - (b) a sum advanced and utilised for the purchase of another object in which the assignor held another international interest if the assignor transferred that interest to the assignee and the assignment has been registered;
 - (c) the price payable for the object;
 - (d) the rentals payable in respect of the object; or
 - (e) other obligations arising from a transaction referred to in any of the preceding sub-paragraphs.

3. In all other cases, the priority of the competing assignments of the associated rights shall be determined by the applicable law.

Article 37—Effects of assignor's insolvency

The provisions of Article 30 apply to insolvency proceedings against the assignor as if references to the debtor were references to the assignor.

Chapter IX—*continued*

Article 38—Subrogation

1. Subject to paragraph 2, nothing in this Convention affects the acquisition of associated rights and the related international interest by legal or contractual subrogation under the applicable law.
2. The priority between any interest within the preceding paragraph and a competing interest may be varied by agreement in writing between the holders of the respective interests but an assignee of a subordinated interest is not bound by an agreement to subordinate that interest unless at the time of the assignment a subordination had been registered relating to that agreement.

Chapter X

Rights or interests subject to declarations by
Contracting States

*Article 39—Rights having priority without
registration*

1. A Contracting State may at any time, in a declaration deposited with the Depository of the Protocol declare, generally or specifically:
 - (a) those categories of non-consensual right or interest (other than a right or interest to which Article 40 applies) which under that State's law have priority over an interest in an object equivalent to that of the holder of a registered international interest and which shall have priority over a registered international interest, whether in or outside insolvency proceedings; and
 - (b) that nothing in this Convention shall affect the right of a State or State entity, intergovernmental organisation or other private provider of public services to arrest or detain an object under the laws of that State for payment of amounts owed to such entity, organisation or

Chapter X—*continued*Article 39—*continued*

provider directly relating to those services in respect of that object or another object.

2. A declaration made under the preceding paragraph may be expressed to cover categories that are created after the deposit of that declaration.
3. A non-consensual right or interest has priority over an international interest if and only if the former is of a category covered by a declaration deposited prior to the registration of the international interest.
4. Notwithstanding the preceding paragraph, a Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that a right or interest of a category covered by a declaration made under sub-paragraph (a) of paragraph 1 shall have priority over an international interest registered prior to the date of such ratification, acceptance, approval or accession.

*Article 40—Registrable non-consensual
rights or interests*

A Contracting State may at any time in a declaration deposited with the Depositary of the Protocol list the categories of non-consensual right or interest which shall be registrable under this Convention as regards any category of object as if the right or interest were an international interest and shall be regulated accordingly. Such a declaration may be modified from time to time.

Chapter XI

Application of the Convention to sales

Article 41—Sale and prospective sale

This Convention shall apply to the sale or prospective sale of an object as provided for in the Protocol with any modifications therein.

Chapter XII Jurisdiction

Article 42—Choice of forum

1. Subject to Articles 43 and 44, the courts of a Contracting State chosen by the parties to a transaction have jurisdiction in respect of any claim brought under this Convention, whether or not the chosen forum has a connection with the parties or the transaction. Such jurisdiction shall be exclusive unless otherwise agreed between the parties.
2. Any such agreement shall be in writing or otherwise concluded in accordance with the formal requirements of the law of the chosen forum.

Article 43—Jurisdiction under Article 13

1. The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.
2. Jurisdiction to grant relief under Article 13(1)(d) or other interim relief by virtue of Article 13(4) may be exercised either:
 - (a) by the courts chosen by the parties; or
 - (b) by the courts of a Contracting State on the territory of which the debtor is situated, being relief which, by the terms of the order granting it, is enforceable only in the territory of that Contracting State.
3. A court has jurisdiction under the preceding paragraphs even if the final determination of the claim referred to in Article 13(1) will or may take place in a court of another Contracting State or by arbitration.

Chapter XII—*continued**Article 44—Jurisdiction to make orders
against the Registrar*

1. The courts of the place in which the Registrar has its centre of administration shall have exclusive jurisdiction to award damages or make orders against the Registrar.
2. Where a person fails to respond to a demand made under Article 25 and that person has ceased to exist or cannot be found for the purpose of enabling an order to be made against it requiring it to procure discharge of the registration, the courts referred to in the preceding paragraph shall have exclusive jurisdiction, on the application of the debtor or intending debtor, to make an order directed to the Registrar requiring the Registrar to discharge the registration.
3. Where a person fails to comply with an order of a court having jurisdiction under this Convention or, in the case of a national interest, an order of a court of competent jurisdiction requiring that person to procure the amendment or discharge of a registration, the courts referred to in paragraph 1 may direct the Registrar to take such steps as will give effect to that order.
4. Except as otherwise provided by the preceding paragraphs, no court may make orders or give judgments or rulings against or purporting to bind the Registrar.

*Article 45—Jurisdiction in respect of
insolvency proceedings*

The provisions of this Chapter are not applicable to insolvency proceedings.

Chapter XIII

Relationship with other Conventions

Article 45 bis—Relationship with the United Nations Convention on the Assignment of Receivables in International Trade

This Convention shall prevail over the *United Nations Convention on the Assignment of Receivables in International Trade*, opened for signature in New York on 12 December 2001, as it relates to the assignment of receivables which are associated rights related to international interests in aircraft objects, railway rolling stock and space assets.

Article 46—Relationship with the UNIDROIT Convention on International Financial Leasing

The Protocol may determine the relationship between this Convention and the *UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988.

Chapter XIV

Final provisions

Article 47—Signature, ratification, acceptance, approval or accession

1. This Convention shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, the Convention shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article 49.
2. This Convention shall be subject to ratification, acceptance or approval by States which have signed it.

Chapter XIV—*continued*Article 47—*continued*

3. Any State which does not sign this Convention may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.

*Article 48—Regional Economic Integration
Organisations*

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Convention may similarly sign, accept, approve or accede to this Convention. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Convention. Where the number of Contracting States is relevant in this Convention, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Convention in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Convention applies equally to a Regional Economic Integration Organisation where the context so requires.

Chapter XIV—*continued*

Article 49—Entry into force

1. This Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of the third instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies:
 - (a) as from the time of entry into force of that Protocol;
 - (b) subject to the terms of that Protocol; and
 - (c) as between States Parties to this Convention and that Protocol.
2. For other States this Convention enters into force on the first day of the month following the expiration of three months after the date of the deposit of their instrument of ratification, acceptance, approval or accession but only as regards a category of objects to which a Protocol applies and subject, in relation to such Protocol, to the requirements of sub-paragraphs (a), (b) and (c) of the preceding paragraph.

Article 50—Internal transactions

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that this Convention shall not apply to a transaction which is an internal transaction in relation to that State with regard to all types of objects or some of them.
2. Notwithstanding the preceding paragraph, the provisions of Articles 8(4), 9(1), 16, Chapter V, Article 29, and any provisions of this Convention relating to registered interests shall apply to an internal transaction.
3. Where notice of a national interest has been registered in the International Registry, the priority of the holder of that interest under Article 29 shall not be affected by the fact that such interest has become vested in another person by assignment or subrogation under the applicable law.

Chapter XIV—*continued**Article 51—Future Protocols*

1. The Depositary may create working groups, in co-operation with such relevant non-governmental organisations as the Depositary considers appropriate, to assess the feasibility of extending the application of this Convention, through one or more Protocols, to objects of any category of high-value mobile equipment, other than a category referred to in Article 2(3), each member of which is uniquely identifiable, and associated rights relating to such objects.
2. The Depositary shall communicate the text of any preliminary draft Protocol relating to a category of objects prepared by such a working group to all States Parties to this Convention, all member States of the Depositary, member States of the United Nations which are not members of the Depositary and the relevant intergovernmental organisations, and shall invite such States and organisations to participate in intergovernmental negotiations for the completion of a draft Protocol on the basis of such a preliminary draft Protocol.
3. The Depositary shall also communicate the text of any preliminary draft Protocol prepared by such a working group to such relevant non-governmental organisations as the Depositary considers appropriate. Such non-governmental organisations shall be invited promptly to submit comments on the text of the preliminary draft Protocol to the Depositary and to participate as observers in the preparation of a draft Protocol.
4. When the competent bodies of the Depositary adjudge such a draft Protocol ripe for adoption, the Depositary shall convene a diplomatic conference for its adoption.
5. Once such a Protocol has been adopted, subject to paragraph 6, this Convention shall apply to the category of objects covered thereby.

Chapter XIV—*continued*

Article 51—*continued*

6. Article 45 *bis* of this Convention applies to such a Protocol only if specifically provided for in that Protocol.

Article 52—Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Convention applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Convention shall apply to all territorial units of that State.
4. Where a Contracting State extends this Convention to one or more of its territorial units, declarations permitted under this Convention may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Convention extends to one or more territorial units of a Contracting State:
 - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which this Convention applies or if it has its registered office or statutory seat, centre of administration, place of business or habitual residence in a territorial unit to which this Convention applies;

Chapter XIV—*continued*Article 52—*continued*

- (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which this Convention applies; and
- (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which this Convention applies.

Article 53—Determination of courts

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare the relevant “court” or “courts” for the purposes of Article 1 and Chapter XII of this Convention.

Article 54—Declarations regarding remedies

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that while the charged object is situated within, or controlled from its territory the chargee shall not grant a lease of the object in that territory.
2. A Contracting State shall, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare whether or not any remedy available to the creditor under any provision of this Convention which is not there expressed to require application to the court may be exercised only with leave of the court.

Article 55—Declarations regarding relief pending final determination

A Contracting State may, at the time of ratification, acceptance, approval of, or accession to the Protocol, declare that it will not apply the provisions of Article 13 or Article 43, or both, wholly or in part.

Chapter XIV—*continued*

Article 55—*continued*

The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

Article 56—Reservations and declarations

1. No reservations may be made to this Convention but declarations authorised by Articles 39, 40, 50, 52, 53, 54, 55, 57, 58 and 60 may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Convention shall be notified in writing to the Depositary.

Article 57—Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration authorised under Article 60, at any time after the date on which this Convention has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article 58—Withdrawal of declarations

1. Any State Party having made a declaration under this Convention, other than a declaration authorised under Article 60,

Chapter XIV—*continued*Article 58—*continued*

may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.

2. Notwithstanding the previous paragraph, this Convention shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Article 59—Denunciations

1. Any State Party may denounce this Convention by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date on which notification is received by the Depositary.
3. Notwithstanding the previous paragraphs, this Convention shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

Article 60—Transitional provisions

1. Unless otherwise declared by a Contracting State at any time, the Convention does not apply to a pre-existing right or interest, which retains the priority it enjoyed under the applicable law before the effective date of this Convention.
2. For the purposes of Article 1(v) and of determining priority under this Convention:
 - (a) “effective date of this Convention” means in relation to a debtor the time when this Convention enters into force

Chapter XIV—*continued*

Article 60—*continued*

- or the time when the State in which the debtor is situated becomes a Contracting State, whichever is the later; and
- (b) the debtor is situated in a State where it has its centre of administration or, if it has no centre of administration, its place of business or, if it has more than one place of business, its principal place of business or, if it has no place of business, its habitual residence.
3. A Contracting State may in its declaration under paragraph 1 specify a date, not earlier than three years after the date on which the declaration becomes effective, when this Convention and the Protocol will become applicable, for the purpose of determining priority, including the protection of any existing priority, to pre-existing rights or interests arising under an agreement made at a time when the debtor was situated in a State referred to in sub-paragraph (b) of the preceding paragraph but only to the extent and in the manner specified in its declaration.

*Article 61—Review Conferences,
amendments and related matters*

1. The Depositary shall prepare reports yearly or at such other time as the circumstances may require for the States Parties as to the manner in which the international regimen established in this Convention has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:

Chapter XIV—*continued*Article 61—*continued*

- (a) the practical operation of this Convention and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Convention and the regulations;
 - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the Supervisory Authority, taking into account the reports of the Supervisory Authority; and
 - (d) whether any modifications to this Convention or the arrangements relating to the International Registry are desirable.
3. Subject to paragraph 4, any amendment to this Convention shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when ratified, accepted, or approved by three States in accordance with the provisions of Article 49 relating to its entry into force.
4. Where the proposed amendment to this Convention is intended to apply to more than one category of equipment, such amendment shall also be approved by at least a two-thirds majority of States Parties to each Protocol that are participating in the Conference referred to in paragraph 2.

Article 62—Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.

Chapter XIV—*continued*

Article 62—*continued*

2. The Depositary shall:
- (a) inform all Contracting States of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Convention;
 - (iii) each declaration made in accordance with this Convention, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Convention together with the date thereof and the date on which it takes effect;
 - (b) transmit certified true copies of this Convention to all Contracting States;
 - (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
 - (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned plenipotentiaries, having been duly authorised, have signed this Convention.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of

the Conference within ninety days hereof as to the conformity of the texts with one another.

Schedule 8

s 104

**Protocol to the Convention on
International Interests in Mobile
Equipment on Matters Specific to
Aircraft Equipment**

Schedule 8: added, on 1 November 2010, by section 13 of the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42).

THE STATES PARTIES TO THIS PROTOCOL,

CONSIDERING it necessary to implement the *Convention on International Interests in Mobile Equipment* (hereinafter referred to as “the Convention”) as it relates to aircraft equipment, in the light of the purposes set out in the preamble to the Convention,

MINDFUL of the need to adapt the Convention to meet the particular requirements of aircraft finance and to extend the sphere of application of the Convention to include contracts of sale of aircraft equipment,

MINDFUL of the principles and objectives of the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, HAVE AGREED upon the following provisions relating to aircraft equipment:

Chapter I

Sphere of application and general provisions

Article I—Defined terms

1. In this Protocol, except where the context otherwise requires, terms used in it have the meanings set out in the Convention.
2. In this Protocol the following terms are employed with the meanings set out below:
 - (a) “aircraft” means aircraft as defined for the purposes of the Chicago Convention which are either airframes with aircraft engines installed thereon or helicopters;
 - (b) “aircraft engines” means aircraft engines (other than those used in military, customs or police services) powered by jet propulsion or turbine or piston technology and:

Chapter I—*continued*Article I—*continued*

- (i) in the case of jet propulsion aircraft engines, have at least 1750 lb of thrust or its equivalent; and
 - (ii) in the case of turbine-powered or piston-powered aircraft engines, have at least 550 rated take-off shaft horsepower or its equivalent,
together with all modules and other installed, incorporated or attached accessories, parts and equipment and all data, manuals and records relating thereto;
- (c) “aircraft objects” means airframes, aircraft engines and helicopters;
 - (d) “aircraft register” means a register maintained by a State or a common mark registering authority for the purposes of the Chicago Convention;
 - (e) “airframes” means airframes (other than those used in military, customs or police services) that, when appropriate aircraft engines are installed thereon, are type certified by the competent aviation authority to transport:
 - (i) at least eight (8) persons including crew; or
 - (ii) goods in excess of 2750 kilograms,
together with all installed, incorporated or attached accessories, parts and equipment (other than aircraft engines), and all data, manuals and records relating thereto;
 - (f) “authorised party” means the party referred to in Article XIII(3);
 - (g) “Chicago Convention” means the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944, as amended, and its Annexes;
 - (h) “common mark registering authority” means the authority maintaining a register in accordance with Article 77 of the Chicago Convention as implemented by the Resolution adopted on 14 December 1967 by the Council of the International Civil Aviation Organization on nationality and registration of aircraft operated by international operating agencies;

Chapter I—*continued*

Article I—*continued*

- (i) “de-registration of the aircraft” means deletion or removal of the registration of the aircraft from its aircraft register in accordance with the Chicago Convention;
- (j) “guarantee contract” means a contract entered into by a person as guarantor;
- (k) “guarantor” means a person who, for the purpose of assuring performance of any obligations in favour of a creditor secured by a security agreement or under an agreement, gives or issues a suretyship or demand guarantee or a standby letter of credit or any other form of credit insurance;
- (l) “helicopters” means heavier-than-air machines (other than those used in military, customs or police services) supported in flight chiefly by the reactions of the air on one or more power-driven rotors on substantially vertical axes and which are type certified by the competent aviation authority to transport:
 - (i) at least five (5) persons including crew; or
 - (ii) goods in excess of 450 kilograms,together with all installed, incorporated or attached accessories, parts and equipment (including rotors), and all data, manuals and records relating thereto;
- (m) “insolvency-related event” means:
 - (i) the commencement of the insolvency proceedings; or
 - (ii) the declared intention to suspend or actual suspension of payments by the debtor where the creditor’s right to institute insolvency proceedings against the debtor or to exercise remedies under the Convention is prevented or suspended by law or State action;
- (n) “primary insolvency jurisdiction” means the Contracting State in which the centre of the debtor’s main interests is situated, which for this purpose shall be deemed to be the place of the debtor’s statutory seat or, if there

Chapter I—*continued*Article I—*continued*

is none, the place where the debtor is incorporated or formed, unless proved otherwise;

- (o) “registry authority” means the national authority or the common mark registering authority, maintaining an aircraft register in a Contracting State and responsible for the registration and de-registration of an aircraft in accordance with the Chicago Convention; and
- (p) “State of registry” means, in respect of an aircraft, the State on the national register of which an aircraft is entered or the State of location of the common mark registering authority maintaining the aircraft register.

Article II—Application of Convention as regards aircraft objects

1. The Convention shall apply in relation to aircraft objects as provided by the terms of this Protocol.
2. The Convention and this Protocol shall be known as the Convention on International Interests in Mobile Equipment as applied to aircraft objects.

Article III—Application of Convention to sales

The following provisions of the Convention apply as if references to an agreement creating or providing for an international interest were references to a contract of sale and as if references to an international interest, a prospective international interest, the debtor and the creditor were references to a sale, a prospective sale, the seller and the buyer respectively:

Articles 3 and 4;

Article 16(1)(a);

Article 19(4);

Article 20(1) (as regards registration of a contract of sale or a prospective sale);

Chapter I—*continued*

Article III—*continued*

Article 25(2) (as regards a prospective sale); and
Article 30.

In addition, the general provisions of Article 1, Article 5, Chapters IV to VII, Article 29 (other than Article 29(3) which is replaced by Article XIV(1) and (2)), Chapter X, Chapter XII (other than Article 43), Chapter XIII and Chapter XIV (other than Article 60) shall apply to contracts of sale and prospective sales.

Article IV—Sphere of application

1. Without prejudice to Article 3(1) of the Convention, the Convention shall also apply in relation to a helicopter, or to an airframe pertaining to an aircraft, registered in an aircraft register of a Contracting State which is the State of registry, and where such registration is made pursuant to an agreement for registration of the aircraft it is deemed to have been effected at the time of the agreement.
2. For the purposes of the definition of “internal transaction” in Article 1 of the Convention:
 - (a) an airframe is located in the State of registry of the aircraft of which it is a part;
 - (b) an aircraft engine is located in the State of registry of the aircraft on which it is installed or, if it is not installed on an aircraft, where it is physically located; and
 - (c) a helicopter is located in its State of registry, at the time of the conclusion of the agreement creating or providing for the interest.
3. The parties may, by agreement in writing, exclude the application of Article XI and, in their relations with each other, derogate from or vary the effect of any of the provisions of this Protocol except Article IX (2)-(4).

Chapter I—*continued**Article V—Formalities, effects and registration of contracts of sale*

1. For the purposes of this Protocol, a contract of sale is one which:
 - (a) is in writing;
 - (b) relates to an aircraft object of which the seller has power to dispose; and
 - (c) enables the aircraft object to be identified in conformity with this Protocol.
2. A contract of sale transfers the interest of the seller in the aircraft object to the buyer according to its terms.
3. Registration of a contract of sale remains effective indefinitely. Registration of a prospective sale remains effective unless discharged or until expiry of the period, if any, specified in the registration.

Article VI—Representative capacities

A person may enter into an agreement or a sale, and register an international interest in, or a sale of, an aircraft object, in an agency, trust or other representative capacity. In such case, that person is entitled to assert rights and interests under the Convention.

Article VII—Description of aircraft objects

A description of an aircraft object that contains its manufacturer's serial number, the name of the manufacturer and its model designation is necessary and sufficient to identify the object for the purposes of Article 7(c) of the Convention and Article V(1)(c) of this Protocol.

Article VIII—Choice of law

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).

Chapter I—*continued*
Article VIII—*continued*

2. The parties to an agreement, or a contract of sale, or a related guarantee contract or subordination agreement may agree on the law which is to govern their contractual rights and obligations, wholly or in part.
3. Unless otherwise agreed, the reference in the preceding paragraph to the law chosen by the parties is to the domestic rules of law of the designated State or, where that State comprises several territorial units, to the domestic law of the designated territorial unit.

Chapter II
Default remedies, priorities and assignments
Article IX—Modification of default remedies provisions

1. In addition to the remedies specified in Chapter III of the Convention, the creditor may, to the extent that the debtor has at any time so agreed and in the circumstances specified in that Chapter:
 - (a) procure the de-registration of the aircraft; and
 - (b) procure the export and physical transfer of the aircraft object from the territory in which it is situated.
2. The creditor shall not exercise the remedies specified in the preceding paragraph without the prior consent in writing of the holder of any registered interest ranking in priority to that of the creditor.
3. Article 8(3) of the Convention shall not apply to aircraft objects. Any remedy given by the Convention in relation to an aircraft object shall be exercised in a commercially reasonable manner. A remedy shall be deemed to be exercised in a commercially reasonable manner where it is exercised in con-

Chapter II—*continued*Article IX—*continued*

formity with a provision of the agreement except where such a provision is manifestly unreasonable.

4. A chargee giving ten or more working days' prior written notice of a proposed sale or lease to interested persons shall be deemed to satisfy the requirement of providing "reasonable prior notice" specified in Article 8(4) of the Convention. The foregoing shall not prevent a chargee and a chargor or a guarantor from agreeing to a longer period of prior notice.
5. The registry authority in a Contracting State shall, subject to any applicable safety laws and regulations, honour a request for de-registration and export if:
 - (a) the request is properly submitted by the authorised party under a recorded irrevocable de-registration and export request authorisation; and
 - (b) the authorised party certifies to the registry authority, if required by that authority, that all registered interests ranking in priority to that of the creditor in whose favour the authorisation has been issued have been discharged or that the holders of such interests have consented to the de-registration and export.
6. A chargee proposing to procure the de-registration and export of an aircraft under paragraph 1 otherwise than pursuant to a court order shall give reasonable prior notice in writing of the proposed de-registration and export to:
 - (a) interested persons specified in Article 1(m)(i) and (ii) of the Convention; and
 - (b) interested persons specified in Article 1(m)(iii) of the Convention who have given notice of their rights to the chargee within a reasonable time prior to the de-registration and export.

Chapter II—*continued*

*Article X—Modification of provisions
regarding relief pending final determination*

1. This Article applies only where a Contracting State has made a declaration under Article XXX(2) and to the extent stated in such declaration.
2. For the purposes of Article 13(1) of the Convention, “speedy” in the context of obtaining relief means within such number of working days from the date of filing of the application for relief as is specified in a declaration made by the Contracting State in which the application is made.
3. Article 13(1) of the Convention applies with the following being added immediately after sub-paragraph (d):
“(e) if at any time the debtor and the creditor specifically agree, sale and application of proceeds therefrom”,
and Article 43(2) applies with the insertion after the words “Article 13(1)(d)” of the words “and (e)”.
4. Ownership or any other interest of the debtor passing on a sale under the preceding paragraph is free from any other interest over which the creditor’s international interest has priority under the provisions of Article 29 of the Convention.
5. The creditor and the debtor or any other interested person may agree in writing to exclude the application of Article 13(2) of the Convention.
6. With regard to the remedies in Article IX(1):
 - (a) they shall be made available by the registry authority and other administrative authorities, as applicable, in a Contracting State no later than five working days after the creditor notifies such authorities that the relief specified in Article IX(1) is granted or, in the case of relief granted by a foreign court, recognised by a court of that Contracting State, and that the creditor is entitled to pro-

Chapter II—*continued*Article X—*continued*

- cure those remedies in accordance with the Convention;
and
- (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.
7. Paragraphs 2 and 6 shall not affect any applicable aviation safety laws and regulations.

Article XI—Remedies on insolvency

1. This Article applies only where a Contracting State that is the primary insolvency jurisdiction has made a declaration pursuant to Article XXX(3).

Alternative A

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, shall, subject to paragraph 7, give possession of the aircraft object to the creditor no later than the earlier of:
- (a) the end of the waiting period; and
- (b) the date on which the creditor would be entitled to possession of the aircraft object if this Article did not apply.
3. For the purposes of this Article, the “waiting period” shall be the period specified in a declaration of the Contracting State which is the primary insolvency jurisdiction.
4. References in this Article to the “insolvency administrator” shall be to that person in its official, not in its personal, capacity.
5. Unless and until the creditor is given the opportunity to take possession under paragraph 2:

Chapter II—*continued*

Article XI—*continued*

- (a) the insolvency administrator or the debtor, as applicable, shall preserve the aircraft object and maintain it and its value in accordance with the agreement; and
 - (b) the creditor shall be entitled to apply for any other forms of interim relief available under the applicable law.

- 6. Sub-paragraph (a) of the preceding paragraph shall not preclude the use of the aircraft object under arrangements designed to preserve the aircraft object and maintain it and its value.

- 7. The insolvency administrator or the debtor, as applicable, may retain possession of the aircraft object where, by the time specified in paragraph 2, it has cured all defaults other than a default constituted by the opening of insolvency proceedings and has agreed to perform all future obligations under the agreement. A second waiting period shall not apply in respect of a default in the performance of such future obligations.

- 8. With regard to the remedies in Article IX(1):
 - (a) they shall be made available by the registry authority and the administrative authorities in a Contracting State, as applicable, no later than five working days after the date on which the creditor notifies such authorities that it is entitled to procure those remedies in accordance with the Convention; and
 - (b) the applicable authorities shall expeditiously co-operate with and assist the creditor in the exercise of such remedies in conformity with the applicable aviation safety laws and regulations.

- 9. No exercise of remedies permitted by the Convention or this Protocol may be prevented or delayed after the date specified in paragraph 2.

Chapter II—*continued*Article XI—*continued*

10. No obligations of the debtor under the agreement may be modified without the consent of the creditor.
11. Nothing in the preceding paragraph shall be construed to affect the authority, if any, of the insolvency administrator under the applicable law to terminate the agreement.
12. No rights or interests, except for non-consensual rights or interests of a category covered by a declaration pursuant to Article 39(1), shall have priority in insolvency proceedings over registered interests.
13. The Convention as modified by Article IX of this Protocol shall apply to the exercise of any remedies under this Article.

Alternative B

2. Upon the occurrence of an insolvency-related event, the insolvency administrator or the debtor, as applicable, upon the request of the creditor, shall give notice to the creditor within the time specified in a declaration of a Contracting State pursuant to Article XXX(3) whether it will:
 - (a) cure all defaults other than a default constituted by the opening of insolvency proceedings and agree to perform all future obligations, under the agreement and related transaction documents; or
 - (b) give the creditor the opportunity to take possession of the aircraft object, in accordance with the applicable law.
3. The applicable law referred to in sub-paragraph (b) of the preceding paragraph may permit the court to require the taking of any additional step or the provision of any additional guarantee.

Chapter II—*continued*

Article XI—*continued*

4. The creditor shall provide evidence of its claims and proof that its international interest has been registered.
5. If the insolvency administrator or the debtor, as applicable, does not give notice in conformity with paragraph 2, or when the insolvency administrator or the debtor has declared that it will give the creditor the opportunity to take possession of the aircraft object but fails to do so, the court may permit the creditor to take possession of the aircraft object upon such terms as the court may order and may require the taking of any additional step or the provision of any additional guarantee.
6. The aircraft object shall not be sold pending a decision by a court regarding the claim and the international interest.

Article XII—Insolvency assistance

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. The courts of a Contracting State in which an aircraft object is situated shall, in accordance with the law of the Contracting State, co-operate to the maximum extent possible with foreign courts and foreign insolvency administrators in carrying out the provisions of Article XI.

*Article XIII—De-registration and export
request authorisation*

1. This Article applies only where a Contracting State has made a declaration pursuant to Article XXX(1).
2. Where the debtor has issued an irrevocable de-registration and export request authorisation substantially in the form annexed to this Protocol and has submitted such authorisation for recor-

Chapter II—*continued*
Article XIII—*continued*

dition to the registry authority, that authorisation shall be so recorded.

3. The person in whose favour the authorisation has been issued (the “authorised party”) or its certified designee shall be the sole person entitled to exercise the remedies specified in Article IX(1) and may do so only in accordance with the authorisation and applicable aviation safety laws and regulations. Such authorisation may not be revoked by the debtor without the consent in writing of the authorised party. The registry authority shall remove an authorisation from the registry at the request of the authorised party.
4. The registry authority and other administrative authorities in Contracting States shall expeditiously co-operate with and assist the authorised party in the exercise of the remedies specified in Article IX.

Article XIV—Modification of priority provisions

1. A buyer of an aircraft object under a registered sale acquires its interest in that object free from an interest subsequently registered and from an unregistered interest, even if the buyer has actual knowledge of the unregistered interest.
2. A buyer of an aircraft object acquires its interest in that object subject to an interest registered at the time of its acquisition.
3. Ownership of or another right or interest in an aircraft engine shall not be affected by its installation on or removal from an aircraft.
4. Article 29(7) of the Convention applies to an item, other than an object, installed on an airframe, aircraft engine or helicopter.

Chapter II—*continued*

Article XV—Modification of assignment provisions

Article 33(1) of the Convention applies as if the following were added immediately after sub-paragraph (b):

“and (c) the debtor has consented in writing, whether or not the consent is given in advance of the assignment or identifies the assignee.”

Article XVI—Debtor provisions

1. In the absence of a default within the meaning of Article 11 of the Convention, the debtor shall be entitled to the quiet possession and use of the object in accordance with the agreement as against:
 - (a) its creditor and the holder of any interest from which the debtor takes free pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(1) of this Protocol, unless and to the extent that the debtor has otherwise agreed; and
 - (b) the holder of any interest to which the debtor’s right or interest is subject pursuant to Article 29(4) of the Convention or, in the capacity of buyer, Article XIV(2) of this Protocol, but only to the extent, if any, that such holder has agreed.
2. Nothing in the Convention or this Protocol affects the liability of a creditor for any breach of the agreement under the applicable law in so far as that agreement relates to an aircraft object.

Chapter III

Registry provisions relating to international interests in aircraft objects

Article XVII—The Supervisory Authority and the Registrar

1. The Supervisory Authority shall be the international entity designated by a Resolution adopted by the Diplomatic Con-

Chapter III—*continued*
Article XVII—*continued*

ference to Adopt a Mobile Equipment Convention and an Aircraft Protocol.

2. Where the international entity referred to in the preceding paragraph is not able and willing to act as Supervisory Authority, a Conference of Signatory and Contracting States shall be convened to designate another Supervisory Authority.
3. The Supervisory Authority and its officers and employees shall enjoy such immunity from legal and administrative process as is provided under the rules applicable to them as an international entity or otherwise.
4. The Supervisory Authority may establish a commission of experts, from among persons nominated by Signatory and Contracting States and having the necessary qualifications and experience, and entrust it with the task of assisting the Supervisory Authority in the discharge of its functions.
5. The first Registrar shall operate the International Registry for a period of five years from the date of entry into force of this Protocol. Thereafter, the Registrar shall be appointed or reappointed at regular five-yearly intervals by the Supervisory Authority.

Article XVIII—First regulations

The first regulations shall be made by the Supervisory Authority so as to take effect upon the entry into force of this Protocol.

Article XIX—Designated entry points

1. Subject to paragraph 2, a Contracting State may at any time designate an entity or entities in its territory as the entry point or entry points through which there shall or may be transmitted to the International Registry information required for registration other than registration of a notice of a national interest or

Chapter III—*continued*
Article XIX—*continued*

a right or interest under Article 40 in either case arising under the laws of another State.

2. A designation made under the preceding paragraph may permit, but not compel, use of a designated entry point or entry points for information required for registrations in respect of aircraft engines.

*Article XX—Additional modifications to
Registry provisions*

1. For the purposes of Article 19(6) of the Convention, the search criteria for an aircraft object shall be the name of its manufacturer, its manufacturer's serial number and its model designation, supplemented as necessary to ensure uniqueness. Such supplementary information shall be specified in the regulations.
2. For the purposes of Article 25(2) of the Convention and in the circumstances there described, the holder of a registered prospective international interest or a registered prospective assignment of an international interest or the person in whose favour a prospective sale has been registered shall take such steps as are within its power to procure the discharge of the registration no later than five working days after the receipt of the demand described in such paragraph.
3. The fees referred to in Article 17(2)(h) of the Convention shall be determined so as to recover the reasonable costs of establishing, operating and regulating the International Registry and the reasonable costs of the Supervisory Authority associated with the performance of the functions, exercise of the powers, and discharge of the duties contemplated by Article 17(2) of the Convention.

Chapter III—*continued*Article XX—*continued*

4. The centralised functions of the International Registry shall be operated and administered by the Registrar on a twenty-four hour basis. The various entry points shall be operated at least during working hours in their respective territories.
5. The amount of the insurance or financial guarantee referred to in Article 28(4) of the Convention shall, in respect of each event, not be less than the maximum value of an aircraft object as determined by the Supervisory Authority.
6. Nothing in the Convention shall preclude the Registrar from procuring insurance or a financial guarantee covering events for which the Registrar is not liable under Article 28 of the Convention.

Chapter IV

Jurisdiction

Article XXI—Modification of jurisdiction provisions

For the purposes of Article 43 of the Convention and subject to Article 42 of the Convention, a court of a Contracting State also has jurisdiction where the object is a helicopter, or an airframe pertaining to an aircraft, for which that State is the State of registry.

Article XXII—Waivers of sovereign immunity

1. Subject to paragraph 2, a waiver of sovereign immunity from jurisdiction of the courts specified in Article 42 or Article 43 of the Convention or relating to enforcement of rights and interests relating to an aircraft object under the Convention shall be binding and, if the other conditions to such jurisdiction or enforcement have been satisfied, shall be effective to confer jurisdiction and permit enforcement, as the case may be.

Chapter IV—*continued*
Article XXII—*continued*

2. A waiver under the preceding paragraph must be in writing and contain a description of the aircraft object.

Chapter V
Relationship with other conventions
*Article XXIII—Relationship with the
Convention on the International Recognition
of Rights in Aircraft*

The Convention shall, for a Contracting State that is a party to the *Convention on the International Recognition of Rights in Aircraft*, signed at Geneva on 19 June 1948, supersede that Convention as it relates to aircraft, as defined in this Protocol, and to aircraft objects. However, with respect to rights or interests not covered or affected by the present Convention, the Geneva Convention shall not be superseded.

*Article XXIV—Relationship with the
Convention for the Unification of Certain
Rules Relating to the Precautionary
Attachment of Aircraft*

1. The Convention shall, for a Contracting State that is a Party to the *Convention for the Unification of Certain Rules Relating to the Precautionary Attachment of Aircraft*, signed at Rome on 29 May 1933, supersede that Convention as it relates to aircraft, as defined in this Protocol.
2. A Contracting State Party to the above Convention may declare, at the time of ratification, acceptance, approval of, or accession to this Protocol, that it will not apply this Article.

Chapter V—*continued**Article XXV—Relationship with the
UNIDROIT Convention on International
Financial Leasing*

The Convention shall supersede the *UNIDROIT Convention on International Financial Leasing*, signed at Ottawa on 28 May 1988, as it relates to aircraft objects.

Chapter VI
Final provisions*Article XXVI—Signature, ratification,
acceptance, approval or accession*

1. This Protocol shall be open for signature in Cape Town on 16 November 2001 by States participating in the Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol held at Cape Town from 29 October to 16 November 2001. After 16 November 2001, this Protocol shall be open to all States for signature at the Headquarters of the International Institute for the Unification of Private Law (UNIDROIT) in Rome until it enters into force in accordance with Article XXVIII.
2. This Protocol shall be subject to ratification, acceptance or approval by States which have signed it.
3. Any State which does not sign this Protocol may accede to it at any time.
4. Ratification, acceptance, approval or accession is effected by the deposit of a formal instrument to that effect with the Depositary.
5. A State may not become a Party to this Protocol unless it is or becomes also a Party to the Convention.

Chapter VI—*continued*

*Article XXVII—Regional Economic
Integration Organisations*

1. A Regional Economic Integration Organisation which is constituted by sovereign States and has competence over certain matters governed by this Protocol may similarly sign, accept, approve or accede to this Protocol. The Regional Economic Integration Organisation shall in that case have the rights and obligations of a Contracting State, to the extent that that Organisation has competence over matters governed by this Protocol. Where the number of Contracting States is relevant in this Protocol, the Regional Economic Integration Organisation shall not count as a Contracting State in addition to its Member States which are Contracting States.
2. The Regional Economic Integration Organisation shall, at the time of signature, acceptance, approval or accession, make a declaration to the Depositary specifying the matters governed by this Protocol in respect of which competence has been transferred to that Organisation by its Member States. The Regional Economic Integration Organisation shall promptly notify the Depositary of any changes to the distribution of competence, including new transfers of competence, specified in the declaration under this paragraph.
3. Any reference to a “Contracting State” or “Contracting States” or “State Party” or “States Parties” in this Protocol applies equally to a Regional Economic Integration Organisation where the context so requires.

Article XXVIII—Entry into force

1. This Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of the eighth instrument of ratification, acceptance, approval or accession, between the States which have deposited such instruments.

Chapter VI—*continued*
Article XXVIII—*continued*

2. For other States this Protocol enters into force on the first day of the month following the expiration of three months after the date of the deposit of its instrument of ratification, acceptance, approval or accession.

Article XXIX—Territorial units

1. If a Contracting State has territorial units in which different systems of law are applicable in relation to the matters dealt with in this Protocol, it may, at the time of ratification, acceptance, approval or accession, declare that this Protocol is to extend to all its territorial units or only to one or more of them and may modify its declaration by submitting another declaration at any time.
2. Any such declaration shall state expressly the territorial units to which this Protocol applies.
3. If a Contracting State has not made any declaration under paragraph 1, this Protocol shall apply to all territorial units of that State.
4. Where a Contracting State extends this Protocol to one or more of its territorial units, declarations permitted under this Protocol may be made in respect of each such territorial unit, and the declarations made in respect of one territorial unit may be different from those made in respect of another territorial unit.
5. If by virtue of a declaration under paragraph 1, this Protocol extends to one or more territorial units of a Contracting State:
 - (a) the debtor is considered to be situated in a Contracting State only if it is incorporated or formed under a law in force in a territorial unit to which the Convention and this Protocol apply or if it has its registered office or statutory seat, centre of administration, place of busi-

Chapter VI—*continued*
Article XXIX—*continued*

- ness or habitual residence in a territorial unit to which the Convention and this Protocol apply;
- (b) any reference to the location of the object in a Contracting State refers to the location of the object in a territorial unit to which the Convention and this Protocol apply; and
 - (c) any reference to the administrative authorities in that Contracting State shall be construed as referring to the administrative authorities having jurisdiction in a territorial unit to which the Convention and this Protocol apply and any reference to the national register or to the registry authority in that Contracting State shall be construed as referring to the aircraft register in force or to the registry authority having jurisdiction in the territorial unit or units to which the Convention and this Protocol apply.

*Article XXX—Declarations relating to
certain provisions*

1. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply any one or more of Articles VIII, XII and XIII of this Protocol.
2. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply Article X of this Protocol, wholly or in part. If it so declares with respect to Article X(2), it shall specify the time-period required thereby.
3. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will apply the entirety of Alternative A, or the entirety of Alternative B of Article XI and, if so, shall specify the types of insolvency proceeding, if any, to which it will apply Al-

Chapter VI—*continued*
Article XXX—*continued*

ternative A and the types of insolvency proceeding, if any, to which it will apply Alternative B. A Contracting State making a declaration pursuant to this paragraph shall specify the time-period required by Article XI.

4. The courts of Contracting States shall apply Article XI in conformity with the declaration made by the Contracting State which is the primary insolvency jurisdiction.
5. A Contracting State may, at the time of ratification, acceptance, approval of, or accession to this Protocol, declare that it will not apply the provisions of Article XXI, wholly or in part. The declaration shall specify under which conditions the relevant Article will be applied, in case it will be applied partly, or otherwise which other forms of interim relief will be applied.

*Article XXXI—Declarations under the
Convention*

Declarations made under the Convention, including those made under Articles 39, 40, 50, 53, 54, 55, 57, 58 and 60 of the Convention, shall be deemed to have also been made under this Protocol unless stated otherwise.

*Article XXXII—Reservations and
declarations*

1. No reservations may be made to this Protocol but declarations authorised by Articles XXIV, XXIX, XXX, XXXI, XXXIII and XXXIV may be made in accordance with these provisions.
2. Any declaration or subsequent declaration or any withdrawal of a declaration made under this Protocol shall be notified in writing to the Depositary.

Chapter VI—*continued*

Article XXXIII—Subsequent declarations

1. A State Party may make a subsequent declaration, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, at any time after the date on which this Protocol has entered into force for it, by notifying the Depositary to that effect.
2. Any such subsequent declaration shall take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary. Where a longer period for that declaration to take effect is specified in the notification, it shall take effect upon the expiration of such longer period after receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such subsequent declarations had been made, in respect of all rights and interests arising prior to the effective date of any such subsequent declaration.

Article XXXIV—Withdrawal of declarations

1. Any State Party having made a declaration under this Protocol, other than a declaration made in accordance with Article XXXI under Article 60 of the Convention, may withdraw it at any time by notifying the Depositary. Such withdrawal is to take effect on the first day of the month following the expiration of six months after the date of receipt of the notification by the Depositary.
2. Notwithstanding the previous paragraph, this Protocol shall continue to apply, as if no such withdrawal of declaration had been made, in respect of all rights and interests arising prior to the effective date of any such withdrawal.

Chapter VI—*continued**Article XXXV—Denunciations*

1. Any State Party may denounce this Protocol by notification in writing to the Depositary.
2. Any such denunciation shall take effect on the first day of the month following the expiration of twelve months after the date of receipt of the notification by the Depositary.
3. Notwithstanding the previous paragraphs, this Protocol shall continue to apply, as if no such denunciation had been made, in respect of all rights and interests arising prior to the effective date of any such denunciation.

*Article XXXVI—Review Conferences,
amendments and related matters*

1. The Depositary, in consultation with the Supervisory Authority, shall prepare reports yearly, or at such other time as the circumstances may require, for the States Parties as to the manner in which the international regime established in the Convention as amended by this Protocol has operated in practice. In preparing such reports, the Depositary shall take into account the reports of the Supervisory Authority concerning the functioning of the international registration system.
2. At the request of not less than twenty-five per cent of the States Parties, Review Conferences of the States Parties shall be convened from time to time by the Depositary, in consultation with the Supervisory Authority, to consider:
 - (a) the practical operation of the Convention as amended by this Protocol and its effectiveness in facilitating the asset-based financing and leasing of the objects covered by its terms;
 - (b) the judicial interpretation given to, and the application made of the terms of this Protocol and the regulations;
 - (c) the functioning of the international registration system, the performance of the Registrar and its oversight by the

Chapter VI—*continued*
Article XXXVI—*continued*

- Supervisory Authority, taking into account the reports of the Supervisory Authority; and
- (d) whether any modifications to this Protocol or the arrangements relating to the International Registry are desirable.
3. Any amendment to this Protocol shall be approved by at least a two-thirds majority of States Parties participating in the Conference referred to in the preceding paragraph and shall then enter into force in respect of States which have ratified, accepted or approved such amendment when it has been ratified, accepted or approved by eight States in accordance with the provisions of Article XXVIII relating to its entry into force.

Article XXXVII—Depositary and its functions

1. Instruments of ratification, acceptance, approval or accession shall be deposited with the International Institute for the Unification of Private Law (UNIDROIT), which is hereby designated the Depositary.
2. The Depositary shall:
- (a) inform all Contracting States of:
- (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) the date of entry into force of this Protocol;
 - (iii) each declaration made in accordance with this Protocol, together with the date thereof;
 - (iv) the withdrawal or amendment of any declaration, together with the date thereof; and
 - (v) the notification of any denunciation of this Protocol together with the date thereof and the date on which it takes effect;

Chapter VI—*continued*
Article XXXVII—*continued*

- (b) transmit certified true copies of this Protocol to all Contracting States;
- (c) provide the Supervisory Authority and the Registrar with a copy of each instrument of ratification, acceptance, approval or accession, together with the date of deposit thereof, of each declaration or withdrawal or amendment of a declaration and of each notification of denunciation, together with the date of notification thereof, so that the information contained therein is easily and fully available; and
- (d) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, having been duly authorised, have signed this Protocol.

DONE at Cape Town, this sixteenth day of November, two thousand and one, in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic, such authenticity to take effect upon verification by the Joint Secretariat of the Conference under the authority of the President of the Conference within ninety days hereof as to the conformity of the texts with one another.

Annex
Form of Irrevocable De-registration and
Export Request Authorisation

Annex referred to in Article XIII

[Insert Date]

To: [Insert Name of Registry Authority]

Re: Irrevocable De-Registration and Export Request Authorisation

The undersigned is the registered [operator] [owner]* of the [insert the airframe/helicopter manufacturer name and model number] bearing manufacturers serial number [insert manufacturer's serial number] and registration [number] [mark] [insert registration number/mark] (together with all installed, incorporated or attached accessories, parts and equipment, the "aircraft").

This instrument is an irrevocable de-registration and export request authorisation issued by the undersigned in favour of [insert name of creditor] ("the authorised party") under the authority of Article XIII of the Protocol to the Convention on International Interests in Mobile Equipment on Matters specific to Aircraft Equipment. In accordance with that Article, the undersigned hereby requests:

- (i) recognition that the authorised party or the person it certifies as its designee is the sole person entitled to:
 - (a) procure the de-registration of the aircraft from the [insert name of aircraft register] maintained by the [insert name of registry authority] for the purposes of Chapter III of the *Convention on International Civil Aviation*, signed at Chicago, on 7 December 1944, and
 - (b) procure the export and physical transfer of the aircraft from [insert name of country]; and
- (ii) confirmation that the authorised party or the person it certifies as its designee may take the action specified in clause (i) above on written demand without the consent of the undersigned and that, upon such demand, the authorities in [insert name of country] shall co-operate with the authorised party with a view to the speedy completion of such action.

The rights in favour of the authorised party established by this instrument may not be revoked by the undersigned without the written consent of the authorised party.

Annex—continued

*Select the term that reflects the relevant nationality registration criterion.

Please acknowledge your agreement to this request and its terms by appropriate notation in the space provided below and lodging this instrument in [insert name of registry authority].

[insert name of operator/owner]

Agreed to and lodged this By: [insert name of signatory]

[insert date] Its: [insert title of signatory]

[insert relevant notational details]

Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010

Public Act 2010 No 42
Date of assent 30 June 2010
Commencement see section 2

1 Title

This Act is the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010.

2 Commencement

- (1) Sections 12 to 14 come into force on a date appointed by the Governor-General by Order in Council.
- (2) The rest of this Act comes into force on 1 August 2010.

Section 2(1): sections 12–14 brought into force, on 1 November 2010, by the Civil Aviation (Cape Town Convention and Other Matters) Amendment Act Commencement Order 2010 (SR 2010/365).

3 Principal Act amended

This Act amends the Civil Aviation Act 1990.

Part 2

Miscellaneous provisions

15 Savings and transitional provisions

Despite section 9 of this Act, which substitutes a new incorporation by reference provision, section 36 of the Civil Aviation Act 1990, as in force immediately before the commencement of this section, continues to apply to any material incorporated by reference under that section.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes**1 General**

This is a reprint of the Civil Aviation Act 1990. The reprint incorporates all the amendments to the Act as at 1 July 2011, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted.

For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint (most recent first)*

Environmental Protection Authority Act 2011 (2011 No 14): section 53(1)
Civil Aviation (Montreal Convention) Order 2010 (SR 2010/367)
Limitation Act 2010 (2010 No 110): section 58
Civil Aviation (Cape Town Convention and Other Matters) Amendment Act 2010 (2010 No 42)
Immigration Act 2009 (2009 No 51): section 406(1)
Policing Act 2008 (2008 No 72): section 116(a)(ii), (iii), (v), (vii)
Civil Aviation Amendment Act 2007 (2007 No 89)
Summary Proceedings Amendment Act 2006 (2006 No 13): section 32
Crown Entities Act 2004 (2004 No 115): section 200
Maritime Transport Amendment Act 2004 (2004 No 98): section 11(3)
Civil Aviation Amendment Act (No 2) 2004 (2004 No 95)

Civil Aviation Amendment Act 2004 (2004 No 8)
Health Practitioners Competence Assurance Act 2003 (2003 No 48): section 175(1)
District Courts Amendment Act 2002 (2002 No 63): section 4
Civil Defence Emergency Management Act 2002 (2002 No 33): section 117
Civil Aviation Amendment Act 2002 (2002 No 15)
Civil Aviation (Medical Certification) Amendment Act 2001 (2001 No 87)
Transport Accident Investigation Commission Amendment Act 1999 (1999 No 113): section 10
Sale of Liquor Amendment Act 1999 (1999 No 92): section 119
Civil Aviation Amendment Act 1999 (1999 No 70)
District Courts Amendment Act 1998 (1998 No 76): section 7
Financial Reporting Amendment Act 1997 (1997 No 17): section 6
Civil Aviation Amendment Act 1996 (1996 No 91)
Customs and Excise Act 1996 (1996 No 27) section 289(1)
Civil Aviation Amendment Act 1993 (1993 No 90)
Te Ture Whenua Maori Act 1993 (1993 No 4): section 362(2)
Public Finance Amendment Act 1992 (1992 No 142): section 42
Civil Aviation Amendment Act 1992 (1992 No 75)
Civil Aviation Amendment Act 1991 (1991 No 116)
Public Finance Act 1989 (1989 No 44): section 65R(3)
