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From: [REDACTED]
Sent: Monday, 22 July 2019 10:03 PM
To: Civil Aviation Bill
Subject: Civil Aviation Bill Submission
Attachments: civil_aviation_bill_submission_IQ.docx

Thank you for the opportunity to comment on the draft Civil Aviation Exposure Bill.

Golden Bay Air supports the submission made by the Aviation Forum (attached for your reference). We would like to make the following comments:

This Bill has been in progress since 2014. The lack of transparency and proper consultation with industry in the formulation of the policies driving this Bill and a relatively short time to submit on the draft means that we are unable to support the Bill as a whole unless there is significantly more engagement with the sector.

Purpose of the Act: We agree with the Aviation Forum submission on this matter. It seems to us to be a missed opportunity to future proof the legislation and address concerns about the current system, including the scope of the CAA mandate.

Just Culture provisions: We reiterate the concerns of the Aviation Forum in the proposed new Just Culture provisions. In our view these provisions allow a highly subjective interpretation to be made by the regulator by introducing untested terms such as 'public interest' and 'major departure from the standard of care expected of a reasonable person in the circumstances'. Incorporating Just Culture into the Act is an important step to enhancing aviation safety. We strongly recommend that, prior to this matter proceeding to final Bill form, there should be a meeting of all relevant parties to workshop this matter through to ensure that the aviation community understands the proposal and supports it. Without widespread support and a clear understanding of how this piece of the Act will work, there is a very real potential for a critical aspect of aviation safety (namely confidence to report in an open and frank manner) to be ineffective.

- **Drug and Alcohol Provisions:** There should be no differences between the requirements in the Maritime Amendment Act 2017 and the Civil Aviation Amendment Bill in relation to Drug and Alcohol testing. We see absolutely no reason why the Aviation commercial sector should be treated differently to the Maritime commercial sector.
- **Transport Instruments:** We are concerned that this new instrument has the potential to be misused by a regulator and the tests on the Director are too loose to provide adequate protection to industry or the public. We would need to see criteria placed on the Director relating to the need to make a proper assessment of the costs and benefits of the instrument, and clarity on what constitutes 'appropriate' consultation. As it stands, the tests are all about what the Director thinks and whether he or she is satisfied.
- **Fees and Charges:** We are significantly concerned about the proposed removal of protections relating to fees and charges provisions and fully support the Aviation Forum's comments and suggestions. The changes do not reflect the recently released policy for setting fees and charges in the public sector. The provisions remove all protections that CAA customers had against the imposition of unfair and monopolistic charging practices. The changes solely address matters that the official's consider as impairments but do nothing to protect users.

Issues not addressed:

We also agree with the Aviation Forum submission that this Bill is a missed opportunity to address the significant issues and problems in the current aviation system, align better with other statutes such as the Health and Safety legislation and future proof against the significant technological changes that are occurring within aviation.

In particular we would like to see a full policy review of the following:

- The need for increased checks and balances on the Director's decision-making including:

- Who is deemed to be fit and proper, given that it is currently an absolute discretionary power in the legislation and there are numerous examples of highly subjective decision-making by the Director in this area
- The process and criteria that should be applied to the Director's decision-making relating to suspensions, removal and denial of operating and other certificates to ensure a fair and just process is undertaken
- The need to set timeframes on the Director's determinations, and requirements for the Director to justify decisions that are taking longer than the acceptable timeframes
- The need to ensure that the Director properly balances the cost of his or her actions with the level of risk presented by the particular situation
- The need for transparent disclosure by CAA of how it is interpreting its wide mandate
- Requirement for CAA to consult industry on its approach to regulation
- The need for a mechanism to challenge regulator decisions other than the Courts as the current system is not workable. An independent complaints or review authority needs to be established in line with other Government regulators, similar to the Transportation Appeal Tribunal of Canada
- Opportunities for alignment of the Health and Safety legislation with the Civil Aviation legislation
- Opportunities for reducing the cost of regulation to free up the regulator to address the actual safety concerns rather than constant 'certification' paperwork
- Moving beyond simply setting and enforcing standards:
 - The move to proactive risk-based regulation is creating a large number of unanswered questions – how do we make SMS really work? How does this fit with the 'enforcement approach', how does it fit in with a culture of protectionism from liability and the 'political' need to make people accountable after any incident. The proposals in the legislation regarding Just Culture do not properly address this very difficult issue
 - 'Safety II' – looking at what goes right, not what goes wrong and a focus on positive action rather than negative, punitive action
 - Requires open communication and sharing of information
- Reviewing whether the 'closed' system regulatory approach is going to continue working long term. At present entry is only granted to a few participants with a high level of technical skill and knowledge. This approach is not particularly effective when there is a high number of participants – both commercial and non-commercial - with a generally low level of expertise. RPAS will completely change the face of aviation
- Reviewing how the legislation can address a wider range of interests such as environment, economy, society and culture

We reiterate the Aviation Forum recommendation that the Government undertake a comprehensive review of the aviation regulatory framework as a first step in informing its aviation policy. The direction determined from this review should then be encompassed in both the Act and various policy directions to agencies. The review should cover the MOT, TAIC and CAA.

Until this occurs we do not support progression of this Amendment Bill.

If you have any questions about this submission please contact me

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On behalf of

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