

Privacy Commissioner's Submission to the Transport and Infrastructure Committee on the Civil Aviation Bill

Background

1. I am pleased to provide a submission on the Civil Aviation Bill (the Bill). My office was consulted by the Ministry of Transport during the development of this Bill and the subsequent Cabinet process.
2. The Bill repeals and replaces the Civil Aviation Act 1990 (the Act) and the Airport Authorities Act 1966 with a single statute.
3. The Privacy Act 2020 (the Privacy Act) is New Zealand's main privacy law. It governs the collection, use, storage and disclosure of personal information and provides a mandate for my Office to consider wider developments or actions that affect personal privacy. One of my functions under the Privacy Act is to examine legislation before Parliament and to consider any matters affecting individuals' privacy.
4. The Bill has a range of references to the Privacy Act 2020 and/or relate to the collection, retention or use of personal information. My Office provided comments on the Bill during its development. Some of these comments related to more minor drafting matters, some of which have been adopted by Ministry of Transport officials. However, I retain one notable concern about the proposed extension of the powers of the Aviation Security Service (Avsec) to carry out searches in landside areas of airports.

Landside screening

5. Section 126 of the Bill creates temporary *Landside security areas*, which can be established by the Minister of Transport at certain times, such as when responding to a threat to civil aviation. Landside areas generally correspond to those parts of an airport that can be accessed by all passengers and members of the public; airside areas are designated by the Director of Civil Aviation, and have restricted access, with passengers only able to access these by going through an Avsec screening point. The Bill proposes that the Minister will be able to determine the size and scope of the landside security area.
6. Under the current Act, the Director of Civil Aviation, in designating airside areas at some of New Zealand's airports, confers upon Avsec specific authority in ensuring the security of those areas, including the searching and screening of people within those areas. This appropriately reflects their role in preventing imminent threats to aviation.
7. However, in creating landside security areas, the Bill extends Avsec's authority and powers further into the airport premises. Aviation security officers will be empowered, under clauses 142-145 of the Bill, to search any 'person or thing' present in a landside area, or immediately before that 'person or thing' enters into a landside area. They will be able to seize items to determine whether they present a risk to aviation safety or

security, and detain items if required as evidence of a suspected offence under civil aviation legislation.

8. I am concerned with the expansion of these searching and screening powers, which intrude on an individual's privacy. Any items seized or detained may well include sensitive personal information (e.g. passports; medications; personal cellphone).
9. The argument has been made to my Office that the widening of powers of aviation security officers to search and screen anyone in a landside security area is necessary to respond to emerging security concerns internationally in landside areas, or to enable New Zealand to be part of a concerted international response to a threat to aviation security, or to support the main or additional purposes of the Bill (or which there are many).
10. I accept that malicious actors continue to see passenger aircraft as an attractive target. However, I am not aware of any clear security concern, in the New Zealand or international context, relating to the *landside* areas of airports. I am also not aware of any security assessments that demonstrate that airports are a more attractive target than equivalent crowded places, such as rail stations or ferry terminals.
11. Given the significant powers being sought for Avsec, I would expect to see compelling evidence that airports are, or would be, a significantly more attractive target than other crowded places. I would expect clearer evidence of the risk reduction offered, across the security system, of the proposed landside areas, before I could consider whether the privacy intrusion was justified.
12. I recommend that this proposal be removed from the Bill.

Other matters

13. There are a couple of other minor drafting matters relating to the Privacy Act 2020 in the Bill, that I believe require further consideration by officials to ensure that individual privacy is appropriately protected.

Powers of Director in relation to aviation documents

14. The Director of Civil Aviation can suspend, or impose conditions on, an aviation document. When considering whether to do so, under clause 99(4) of the Bill, the Director may 'seek and receive any information that the Director thinks fit'. Clause 99(5) states that 'nothing in the Privacy Act 2020 prevents a person or agency from disclosing personal information to the Director in response to a request made by the Director under 99(4)'— an explicit override of the Privacy Act.
15. While it is important that the legislative override of the Privacy Act has been made explicit, I am still concerned at the broadness of the Director's power to require information (including personal information). I consider that this power could be constrained so as to more clearly link to the Director's function to suspend or impose conditions.

Obligations of Director in relation to disclosure or non-disclosure of information obtained under sections 96, 97, or 98

16. Section 100 carries over provisions from the current Act, specifically sections 19(5) - (7). These provisions provide natural justice protections to people whose aviation documents may be suspended, have conditions imposed, or revoked. In one such case, where the Director is to take into account information prejudicial to a person, the Director must disclose that information to the person and give them a reasonable opportunity to refute or comment on it.
17. However, under section 100 of the Bill, the Director may determine not to disclose information, if the information is about the person in question *and* the Director could withhold that information in accordance with sections 49 - 53 of the Privacy Act 2020.
18. This is a wider range of withholding grounds than permitted under the current Act, which permits withholding only in situations of where disclosure 'would endanger the safety of any person', or as per the Privacy Act section 49(1)(a)(i), 'likely to pose a serious threat to the life, health or safety of any individual'.
19. I can understand why the Director may require a broader range of withholding criteria (e.g. to protect the identity of a 'whistle-blower'). I understand Ministry officials consider this drafting as consistent with how personal and official information is to be handled in other provisions across the Bill. However, I would expect officials to clearly articulate why there has been an expansion of withholding grounds, and ensure that this is consistent with policy intent of this proposal.

Conclusion

20. I recommend that the proposal in the Bill to create landside security areas be removed, and the Committee and officials give consideration to the other drafting matters raised in my submission.
21. I trust my comments are of use to the Committee in its consideration of the Bill. I do not wish to speak to this submission but am happy to appear before the Committee if that would be of assistance.



John Edwards
Privacy Commissioner

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