

Civil Aviation Bill 2010

EXPLANATORY MEMORANDUM

Introduction

The *Civil Aviation Bill 2010* will repeal and replace the *Air Navigation Act 1971*. It will modernise Nauru's civil aviation system in accordance with Nauru's international obligations and current international civil aviation practices.

Part 1 Preliminary matters

Part 1 specifies:

- the objects of the Act – to regulate the civil aviation system to ensure it is safe, secure and efficient and to implement Nauru's international obligations;
- who the Act applies to:
 - o a person, aircraft, aeronautical product, air service or aviation related service in Nauru;
 - o a Nauru registered aircraft, whether the aircraft is within or outside Nauru;
 - o the holder of an aviation document issued under the Act, whether the holder is within or outside Nauru, who is exercising or purporting to exercise privileges under the document;
 - o a foreign registered aircraft operating in Nauru.
- that the Act binds the Republic.

Part 2 Interpretation

Part 2 defines the key terms used in the Act, many of which are identical to those used in the Chicago Convention on International Civil Aviation.

Part 3 Civil Aviation Authority

Part 3 establishes of the Civil Aviation Authority and provides for its membership and staffing. The object of the Authority is to promote safety and security in civil aviation. The Authority will be made up of 3 members appointed by Cabinet. The staff of the Authority will be public servants subject to the direct supervision of the chairperson of the Authority.

Part 3 also provides for the conduct of meetings of the Authority and the avoidance of conflicts of interest among members.

Part 4 Director of Civil Aviation

Part 4 provides for the appointment and role of the Director of Civil Aviation. The Director is appointed by Cabinet and has the principal powers and functions of exercising control over entry into the civil aviation system and enforcing the Act. Because the Director exercises important regulatory powers over participants in the civil aviation industry, a person is not eligible to be appointed as Director if the person has an interest in a body corporate that operates or provides air services to Nauru.

The independence of the Director's position is reflected in clause 26, which prohibits interference by others, including the Minister, in the exercise of the most important powers of the DCA in relation to a particular case.

Part 5 Service provision

Part 5 deals with the provision of the fundamental aviation-related services required under the Chicago Convention.

The Authority must ensure the following services are provided:

- a national weather service;
- air traffic services;
- search and rescue services;
- fire fighting services;
- aeronautical telecommunication services;
- aviation security services;
- an aeronautical information service;
- any other service required to be provided under the Act or the Convention that is not being adequately provided.

Provision is made for the Authority to make arrangements with another person (that is, outsource) the provision of a service. However, the responsibility for making sure all the services are provided must remain with the Minister.

Part 5 also imposes record-keeping obligations on the Authority. The Authority must establish a Register of all aircraft registered under the Act and a Civil Aviation Registry, at which all important documents made and issued under the Act, such as licences, delegations and exemptions, as well as civil aviation rules, must be kept.

Part 5 also provides for information-sharing. The Director of Civil Aviation is required to give the Authority any information requested for the maintenance of the Register of Aircraft and the Civil Aviation Registry. This ensures that information held by the Director as part of the regulatory role of the Director is transmitted to the Authority to be kept in the central Registry. In turn, the Authority is required to give the Minister any information requested relating to civil aviation in Nauru. These provisions should enable the Republic to meet its information-sharing obligations under the Convention.

Part 6 Participation in civil aviation system

Part 6 sets out the requirements for participation in the civil aviation system at all levels, from aircraft operator to security officer.

Division 1 specifies that the rules may provide for the persons and activities for which an aviation document is required. An aviation document is a document issued by the Director that gives a person authority to participate in the civil aviation system, such as a pilot's licence. This Division includes severe penalties for failing to hold or comply with an aviation document that is required under the rules, and also sets out the procedure and requirements for the grant of an aviation document. An applicant for an aviation document must pass a fit and proper person test in addition to holding all the prescribed qualifications and experience for holding the document.

Division 2 deals with the registration of aircraft. All aircraft that fly to, from or over Nauru must be registered in Nauru, another country that is party to the Convention, or another country with which Nauru has an agreement for the recognition of aircraft registration. The Director has the power to register an aircraft. This Division sets out the procedure and requirements for the registration of an aircraft.

Division 3 provides for the monitoring of, and, if necessary as a result of that monitoring, the imposition of sanctions on, participants in the civil aviation system. Holders of aviation documents are subject to any inspections and monitoring the Director of Civil Aviation considers appropriate. The Director may suspend a document, impose temporary or permanent conditions on a document or revoke a document if the Director believes on reasonable grounds that it is necessary to do so in the interests of civil aviation safety or security. The Director must comply with procedural fairness requirements in imposing sanctions, and any decision made may be appealed to the Supreme Court. The Director is also given the power to obtain a warrant to seize or impose conditions on the use of an aircraft or aeronautical product.

Division 3 also gives the court power to make special orders against a person found guilty of an air safety offence, such as disqualifying the person from holding an aviation document, imposing conditions on an aviation document and ordering a person to pay an amount equal to 3 times any commercial gain made by the person in the course of committing the offence.

Part 7 Licensing of international air services

Part 7 provides for the licensing of air services to and from Nauru. All scheduled air services to and from Nauru must be operated under a licence granted by the Minister with the consent of Cabinet. Non-scheduled air services must be operated under the authorisation of Cabinet or an open aviation market licence granted by the Minister. This Part provides for the application, consideration and grant of a licence. It also provides for the imposition of sanctions by the Minister on licence holders, such as a variation of conditions or the suspension or revocation of a licence. A decision to impose sanctions may be appealed to the Supreme Court.

Part 8 Aircraft operations

Part 8 deals with a number of matters related to the operation of an aircraft.

Division 1 prohibits military aircraft from flying over or landing in Nauru except with the written approval

of Cabinet. It also prohibits an aircraft from landing in Nauru unless the aircraft is registered in Nauru, authorised to land under a licence or registered in another country that is party to the Convention and stopping in Nauru for non-traffic purposes. This Division also requires Nauru registered aircraft to operate in accordance with the ICAO Rules of the Air when over the high seas.

Division 2 specifies the powers and responsibilities of the pilot-in-command, and permits the pilot-in-command to contravene the Act in response to an emergency.

Part 9 Accidents and incidents

Part 9 deals with the notification and investigation of accidents and incidents.

Division 1 requires pilots and aircraft operators to notify the Authority of accidents and incidents.

Division 2 provides for the establishment of an Accident Investigation Commission if an accident or incident occurs that that is required to be investigated by Nauru under the Convention. The Commission would consist of 3 qualified Commissioners headed by a Supreme Court judge or senior lawyer. The Commission would have wide powers of investigation, with the primary object of determining the circumstances and causes of the accident or incident, rather than apportioning blame. The Commission would cease to exist by Cabinet declaration after the Commission has presented its final report of the investigation.

Division 3 deals with the use of cockpit voice recordings in criminal and civil proceedings. Cockpit voice recordings play a vital role in accident and incident investigations, and the use of these recordings is limited to ensure such investigations are not compromised. A cockpit voice recording is not admissible in criminal proceedings against a crew member or air traffic service officer. A voice recording is only admissible in civil proceedings if the court is satisfied that a question of material fact cannot be determined without admitting the recording and the public interest in determining the question outweighs the public interest in protecting the privacy of a person recorded on the recording. However, a voice recording admitted in a civil proceeding cannot be used to determine the liability of a crew member or air traffic service officer.

Part 10 Aviation Security

Part 10 deals with various matters relating to aviation security.

Division 1 allows the Minister to designate navigation installations as security designated navigation installations, and allows the Director of Civil Aviation to declare an area within the aerodrome or a security designated navigation installation to be a security restricted area. Only the following people have access to a security restricted area:

- a police officer on duty;
- an aviation security officer on duty;
- a person who is authorised by the Director, aerodrome manager or other person in control of the area to be in the area and wearing an aerodrome identity card issued and worn in accordance with the rules;

- a passenger passing through the area to embark or disembark an aircraft through a gateway or thoroughfare approved for that purpose by the Director or aerodrome manager;
- a person authorised to enter or be present in the area under the rules.

Division 2 deals with the aviation security service. The Minister is required to designate a provider of aviation security services, and may authorise persons engaged by the service to be aviation security officers. The aviation security service has the primary responsibility for ensuring aviation security, with the support of the Nauru Police Force if necessary. The Division gives police officers the same powers as aviation security officers (in addition to ordinary police powers).

Division 3 provides for the screening and searching of people and items by aviation security officers. Any person entering or present in a security restricted area may be requested to submit to screening or a search. If the person does not consent, they can be refused entry or required to leave the area. If an aviation security officer has a reasonable suspicion that the person has or is likely to commit an aviation security offence and it is necessary to screen or search the person to find evidence of the offence, the officer may detain and deliver the person to a police officer. A police officer has power to search or screen a person who refuses to consent to a search or screening. Division 3 also provides for the procedure to be followed when conducting a search or screening, including what must be done if a regulated item is detected.

Division 4 gives aviation security officers the power to detain a person they suspect of committing a serious aviation security offence under the *Counter Terrorism and Transnational Organised Crime Act 2004*. It also specifies the circumstances in which an aviation security officer may use force to carry out their powers or functions.

Division 5 provides for the conduct of security assessments by the Director. If a person falls within a category of persons in relation to whom a security assessment is required under the rules, the person must consent to the assessment (and be granted a favourable assessment) or the person will not be granted an authorisation that requires the assessment. Division 5 specifies how the assessment must be conducted, and includes a right to respond to a proposed adverse assessment.

Part 11 Offences

Part 11 creates a number of offences not included elsewhere in the Bill. The most serious aviation security offences, such as hijacking and other terrorism-related offences, are included in the *Counter Terrorism and Transnational Organised Crime Act 2004*.

Division 1 extends the application of the Criminal Code to a person's behavior on an aircraft to which the Act applies in flight outside Nauru as if the person had engaged in the conduct in Nauru.

Division 2 includes unruly passenger offences, such as:

- endangering an aircraft;
- disrupting crew members and passengers;
- interfering with an aircraft;
- being intoxicated on an aircraft;
- failing to comply with the directions of a crew member;
- unlawfully taking a regulated item onto an aircraft.

Division 3 includes offences for the holder of an aviation document or another person conducting an activity in the civil aviation system to endanger a person or property while conducting the activity.

Division 4 includes a number of miscellaneous offences, such as:

- operating a body corporate under a name closely resembling the terms 'Civil Aviation Authority' or 'Accident Investigation Commission';
- giving misleading information to a person exercising powers or performing functions under the Act, such as the Director of Civil Aviation;
- flying or operating a Nauru registered aircraft over a foreign country for a purpose that is detrimental to the security or safety of air navigation in the country;
- flying or operating a Nauru registered aircraft over a foreign country and failing to comply with a direction of the civil aviation authority of the country.
- smoking on an air route (including an offence for an airline who allows a person to smoke);
- failing to maintain a record required to be maintained under the Act.

Part 12 Legal and administrative matters

Part 12 includes a number of provisions necessary for the effective administration of the Act.

Division 1 provides protection from civil or criminal liability for a person exercising a power or performing a function under the Act in good faith. In addition, the Division prevents a person from bringing an action for nuisance or trespass in relation to the operation of an aircraft if the aircraft is operated in accordance with the Act. However, it provides that a person may recover damages from the owner of an aircraft that causes damage when it takes off, lands or is in flight.

Division 2 deals with the principles of criminal liability. This Division states the common law position in relation to criminal liability and is an interpretive aid to the offence provisions of the Act.

Division 3 deals with a number of matters relating to offence proceedings, such as:

- the fine for an offence committed by a body corporate, which is 5 times the fine specified for the offence;
- extending criminal liability for an offence committed by a body corporate to executive officers of the body corporate;
- evidence contained in documents issued under the Act;
- the liability of a holder of an aviation document for an offence committed while conducting activities under the document outside Nauru.

Division 4 provides for appeals to the Supreme Court against the following decisions under the Act:

- to refuse to grant an aviation document;
- to refuse to register an aircraft;
- to impose sanctions in relation to an aviation document;
- to amend or revoke an aviation document;

- to seize or detain an aircraft or aeronautical product;
- to prohibit or impose conditions on the operation of an aircraft or the use of an aeronautical product;
- to refuse to grant a licence;
- to vary, suspend or revoke a licence;
- to make an adverse security assessment.

Part 13 Delegations

Part 13 provides for the delegation of powers and functions by the Minister, Director and Authority. It also allows, in the case of the Minister, the sub-delegation of powers.

Part 14 Subordinate legislation

Part 14 gives Cabinet the power to make regulations. It also gives the Minister power to make ordinary civil aviation rules, and the Director power to make emergency civil aviation rules. The procedures for making ordinary and emergency rules are outlined, including the procedure for making rules by adopting the rules of other countries. Regulations are intended to provide for general matters that are necessary or convenient for giving effect to the Act, whereas rules are intended to focus on the operational aspects of implementing the Act.

Part 14 also gives the Minister the power to make exemptions from the rules in very limited circumstances.

Part 15 Repeals and transitional matters

Part 15 provides for the transition from the *Air Navigation Act 1971* to the *Civil Aviation Act 2010*.

Division 1 repeals the *Air Navigation Act 1971* and its constituent Acts.

Division 2 deals with transitional matters, and continues in force all current licences, permits, approvals, delegations and staff of the Authority. The current regulations are also continued in force, even though they were made under the repealed Act. They will be repealed progressively as new regulations are developed to replace them.

Division 3 is an enabling provision for the Schedule, which makes consequential amendments to two Acts.