

Regulatory Enforcement Policy

1. Purpose

To provide clear guidelines for the application of the Director's regulatory enforcement powers, as provided by the Civil Aviation Act 1990, the Civil Aviation (Offences) Regulations 2006, the Health and Safety at Work Act 2015, the Hazardous Substances and New Organisms Act 1996 ("the aviation legislation") and the Search and Surveillance Act 2012.

Summary

Enforcement of the aviation legislation forms part of a suite of regulatory tools that are available to the Director to help create and sustain a safe and secure civil aviation system.

All Authority staff must be vigilant about how they exercise the significant responsibilities and powers entrusted to them. The performance of our roles as state servants is fundamental to the integrity of the state service.

The Authority must ensure that the way it gathers information is not only lawful, but fair, reasonable, and done in a way that fosters public trust in the organisation.

2. Scope

The policy applies to the Authority's regulatory workforce exercising the delegation and authorisation of the Director's and the Authority's functions and powers when undertaking investigations into alleged breaches of the aviation legislation.

3. Context

The Authority has a responsibility to clearly set out to those it regulates when, why and how it will take action to detect and respond to alleged breaches of the aviation legislation.

Enforcement activity is one component of the Authority's regulatory toolbox which is intended to encourage compliance with the aviation legislation, to help create and sustain a safe and secure aviation system.

4. References

- Civil Aviation Act 1990
- Civil Aviation (Offences) Regulations 2006
- Health and Safety at Work Act 2015
- Hazardous Substances and New Organisms Act 1996

- Aviation Crimes Act 1972
- Regulatory Safety and Security Strategy
- Search and Surveillance Act 2012
- Criminal Procedure Act 2011
- Summary Proceedings Act 1957
- Evidence Act 2006

5. Policy

Enforcement of the aviation legislation forms part of a suite of regulatory tools that are available to the Director to help create and sustain a safe and secure civil aviation system.

Participants in the civil aviation system are expected to meet their obligations with respect to the applicable legislation. The Regulatory Safety and Security Strategy describes interventions that are designed to influence the behaviour of aviation participants and to reduce aviation safety and security risk, and include:

- Engagement
- Information and education
- Certification and licensing
- Administrative and Judicial Action
- Monitoring
- Investigation

The Director has powers to use enforcement to ensure that legislative requirements are met. The regulatory enforcement tools referred to in this policy are; the issuing of a formal warning letter; issuing an infringement notice or initiating a prosecution.

Regulatory enforcement, as a tool, needs to be considered in the context of both:

- 1) the seriousness of the safety or security issue that has been identified;
- 2) the type of action that is most likely to result in the safety or security issue being addressed at the lowest appropriate level;
- 3) The evidential sufficiency to show whether the issue has arisen in the manner reported or not;
- 4) The purpose and principles of regulatory action including consideration of the public interest in circumstances of the issues raised.

5.1 The Authority and the Director's Functions

The Director's enforcement function in relation to the Civil Aviation Act 1990 is detailed in Section 721(3)(b), as follows:

“shall ... take such action as may be appropriate in the public interest to enforce the provisions of this Act and or regulations and rules made under this Act .”

The Civil Aviation Act 1990 empowers the Director to take enforcement actions. A decision to do so will necessarily consider the public interest. While the public interest is based on the broad policy objectives of holding people or organisations to account, and the deterrence and prevention of harm, in regulatory enforcement it will specifically include consideration of the seriousness or criticality of a safety issue and the associated risk of harm or actual harm, and culpability amongst other factors.

The Health and Safety at Work Act 2015, s 191 and the Hazardous Substances and New Organisms Act 1996 s 97(1)(e) also empower the Authority to take enforcement action.

To assist in delivering those functions the Authority’s Investigation and Response Unit (IRU) conducts investigations into alleged offences under the Civil Aviation Act 1990 or the Civil Aviation (Offences) Regulations 2006, the Health and Safety at Work Act 2015, or and the Hazardous Substances and New Organisms Act 1996 and makes recommendations on appropriate response.

6. Structure of the Policy

This policy is structured in four parts, which outline:

- the principles used to determine whether an investigation should be triggered
- how we conduct our investigations
- approaches that should be considered when action is taken
- responsibilities and roles of Authority staff within the decision-making process as it applies to actions.

7. Triggering an Investigation

An investigation may be considered following the review of initial facts related to a reported breach, occurrence, or concern. The initiation of an investigation should not preclude the application of other regulatory tools. In particular, it should be noted that anything presenting an ongoing risk to safety should be addressed with priority and without waiting for the outcome of an investigation.

The decision to commence an investigation will be informed by the following factors:

- prima facie information that indicates a potential breach of legislation pertaining to aviation
- nature of the aviation activity
- likelihood of the safety or security failure occurring
- consequences of a safety failure associated with the activity
- seriousness of the alleged offence(s)
- statute time limits that may apply to the alleged offending

- attitudes and behaviours of the participant(s) involved (if known)
- compliance record of the participant under investigation
- verifiability of the reported information

The CAA prefers not to take enforcement action against those who fully report details of accidents and incidents pursuant to Civil Aviation Rule Part 12. However, enforcement action is more likely to result when reporting is patently incomplete, or inaccurate, or reveals reckless or repetitive at-risk behaviour.

Where it is identified that the participant is the subject of more than one intervention (e.g. audit or section 15A investigation), co-ordination of those investigations will be undertaken to ensure consistency.

8. How we conduct investigations

It is critical that we conduct investigations in a way that is:

- Lawful
- Using a fair process and procedure for all persons involved in the investigation
- In accordance with the public's expectations of regulatory enforcement agencies

In particular, we need to ensure that we comply with our obligations under:

- the Civil Aviation Act 1990 and other relevant primary legislation
- the Privacy Act 2020, in terms of what information we collect, how we collect it and how we manage the information we collect. For further guidance on this, refer to the Authority's [Privacy Policy](#).
- the Search and Surveillance Act 2012, to the extent that enforcement investigations may involve surveillance governed by the provisions of that Act (including the seeking of warrants or production orders under the Civil Aviation Act 1990 or the Health and Safety at Work Act 2015). This is discussed further below.
- the New Zealand Bill of Rights Act 1990. This is discussed further below.
- The State Services Commission's Model Standards for [Information Gathering Associated with Regulatory Compliance](#)
- The [Authority Code of Conduct](#)

8.1 The Application of the Search and Surveillance Act 2012

The following activities under the Search and Surveillance Act 2012 may be performed only with the express written consent of both the relevant Deputy Chief Executive and the Chief Legal Counsel.

These activities include:

- seeking a warrant to enter a private dwelling or marae under s24 of the Civil Aviation Act;

- the observation of private activity on private premises, and the recording of that activity using a visual surveillance device;
- observation of private activity in the land immediately adjacent to a private dwelling, and the recording of that observation using a visual surveillance device, if the surveillance is for more than 3 hours in a 24 hour period, or for more than 8 hours in total.
- seeking a warrant to enter a private dwelling under s169 of the Health and Safety at Work Act;
- taking substances, materials or things from a workplace under s172 of the Health and Safety at Work Act
- seeking a warrant to enter and search any place, vehicle or thing under s173 of the Health and Safety at Work Act

These steps should only be taken where more orthodox information gathering activities would be unlikely to be successful in gathering the necessary information.

8.2 The Application of the New Zealand Bill of Rights Act 1990

The New Zealand Bill of Rights Act 1990 applies to investigation and prosecutions actions, and regard should be had to the following examples:

- Section 27 provides that the Authority is required to observe the principles of natural justice when taking steps that affect a person's lawful rights or interests. This means, for example, that an opportunity to be heard (either in writing, or by way of an interview) will be provided during the investigation stage where it is practical to do so.
- The CAA cannot compel interview, (other than as provided for by the Health and Safety at Work Act 2015). A requirement to do so must be signed off by the Manager Investigation and Response. Any person who is required to attend a compulsory interview must be made aware of their rights, treated fairly and with respect.
- Section 21 provides that every person has the right to be free from unreasonable search and seizure. In the investigation situation this would include, for example, not requiring a person to provide their computer or cellphone to the Authority without lawful authority.
- Section 24 provides that every person charged has the right to consult and instruct a lawyer. The Authority's position is that the right to consult and instruct a lawyer will be extended to all individuals or organisations in advance of conducting any interview of an individual or organisation that is under investigation.
- The rights under s23 of the Bill of Rights Act apply to persons arrested or detained. The Authority has no power of arrest or detention. Nevertheless, where offences are being investigated, the investigator will provide a caution at the start of an interview of a person or an organisation that are suspected of committing an offence.

8.3 Storing information

Information gathered during the course of an investigation will be collected, stored and managed in accordance with our legal obligations under the Privacy Act (refer to the Privacy Policy for further guidance on those obligations) and the Information and Records Management Policy.

Any information provided to the Authority during an investigation that appears to have been obtained illegally, should be discussed with the Legal Services Unit before any further use is made of it.

Investigators must always have in mind the State Sector Standards of Integrity and Conduct, which require us to be:

- Fair
- Impartial
- Responsible.
- Trustworthy

8.4 Requests for information

In managing requests for information, the Authority will consider:

The provisions of the Privacy Act 2020 with regard to personal information;

- The provisions of the Criminal Disclosure Act 2008 and the Access to Court Documents rules for both the District Court and Senior Courts
- The provisions of the OIA as it applies to confidentiality, legal privilege, maintenance of the law, obligation of confidence and other relevant grounds
- Whether the information provided by witnesses over the course of the investigation was provided with the expectation that it would be treated in confidence and was used in the investigation or not

Accurate and tested information gathered during the course of an investigation into a participant's compliance with legislative or regulatory requirements, can lawfully and appropriately be used for subsequent compliance or administrative assessments within the Authority if it is relevant, timely and appropriate to do so.

8.5 Sources of Information for an Investigation

An investigator may gather a wide range information from a variety of sources to support an enforcement investigation, so long as the information:

- Is relevant (it has genuine probative value in relation to the issues to be determined)
- is gathered fairly and lawfully.

Potential sources include:

- reports or documents submitted about the incident by third parties
- information in the Authority business systems including
- publicly available social media posts, including from YouTube or publicly accessible Facebook accounts
- interviews of witnesses

- interviews of the subject
- expert advice from internal or external sources
- Airways data
- Covert surveillance, in accordance with the Authority's [Covert Investigation Policy](#), The Authority does not use external consultants or security consultants to conduct regulatory investigations.

Sometimes the Authority will receive anonymous information. Such information should be treated with caution as there is no way to test the credibility of the information or motive of the informant. While the anonymous information may be used to direct further lines of enquiry, the information itself should not be treated as having any evidential value unless it is able to be corroborated by independent enquiries.

Any information received should be tested for credibility and accuracy and, wherever possible, be corroborated by further independent enquiries.

9. Enforcement Decisions

The Authority has three levels of enforcement action 1) Formal Warning, 2) Infringement Notice, and 3) Prosecution. The Authority will choose the least punitive option required to achieve the desired outcome and will ensure it is both proportionate and consistent in its approach.

To assist the decision-making a panel is appointed to review recommendations made by the investigator. This panel consists of the relevant Manager for the area of concern, Chief Legal Counsel and the relevant operational Deputy Chief Executive. See also information below regarding expedited investigations.

Before a decision is made to take enforcement action, an assessment of the evidence is made to ensure the evidential sufficiency test, as set out in the Solicitor General's Prosecution Guidelines, has been met:

"A reasonable prospect of conviction exists if, in relation to an identifiable person (whether natural or legal), there is credible evidence which the prosecution can adduce before a court and upon which evidence an impartial jury (or Judge), properly directed in accordance with the law, could reasonably be expected to be satisfied beyond reasonable doubt that the individual who is prosecuted has committed a criminal offence."

In addition to the question of evidential sufficiency, the review of the recommendation and supporting evidence must also encompass:

- the nature of the information used, to ensure that it is admissible, relevant to the prosecution objectives and persuasive;
- the analysis, to ensure that it is supported by the available evidence;
- the recommendations, to ensure that they are proportionate, reasonable and appropriate to address the nature and extent of any aviation risk identified.
- the public interest in prosecution, including consistency with similar enforcement action.

9.1 Proportionality

The following factors may be considered to inform proportionality:

- seriousness of the offence(s) established – the offences and rule breaches prescribe maximum penalties for each and these will be used as a guide to establish the seriousness of the offending. Anticipated penalties may also be considered.
- culpability – in this context culpability relates to the degree of fault or liability. A person who commits an offence unknowingly may be less culpable than a person who knowingly offends.
- the risk of harm or actual harm caused.
- whether in the circumstances, the person demonstrates a genuine willingness to learn from the event and implement meaningful change in such a way that alternative to prosecution may be considered.
- compliance history – participant’s previous warnings, infringement notices or prosecutions will be considered along with any other relevant information.

9.2 Consistency

Consistency means the systematic application of relevant policy and principles. It does not mean that a consistent or similar result will be achieved, as every case must be evaluated based on the specific facts and evidence available.

9.3 Formal Warning Letter

Formal warning letters, as an enforcement option, are issued by the Deputy Chief Executive (DCE) or other Operational Manager with operational oversight.

The purpose of issuing a warning letter is to acknowledge that there is a possibility for behaviour of the alleged offender to change and to provide for an opportunity for the offender to demonstrate, by way of undertaking or action, that they will endeavour not to engage in repeat behaviour that may lead to safety or security risks.

Eligibility for a warning letter to be issued is that the evidential sufficiency test has been met and the subject needs to have cooperated to some degree with the investigation and demonstrated acknowledgement of the impact of their actions.

They must be consistent with the Solicitor-General’s guidelines for the use of warnings¹ including being independently reviewed by a person separate from the decision-makers who issued the warning, if this is requested by the person warned.

These will be permanently held on the participant’s file. These warnings will be considered by the Authority when reviewing the participant’s compliance or administrative history for any purpose and will be referred to when considering the public interest in prosecuting.

¹ Crown Law Office, (23 December 2021) available [here](#).

9.4 Infringement Notice

An infringement offence does not result in a court conviction² and provides the individual or organisation an ability to accept responsibility for their actions and pay a fine without having the matter heard in the District Court.

An infringement notice provides the recipient with the following options:

- pay the prescribed fee
- make a written submission to the court as to the level of penalty
- seek a court hearing to contest the alleged breach.

9.5 Prosecution

A prosecution triggers a judicial process that starts in the District Court. In general, prosecution should be considered for the more serious offending encountered by the Authority or there has been a deliberate action that has led to the non-compliance with the legislation.

Prosecution processes, including litigation support, disclosure responsibilities and compliance with the Criminal Procedure Act 2011, are documented in procedures.

9.6 Discretion

The Director has granted discretion to the relevant operational DCE for decisions on action to be taken following an enforcement investigation.

When new relevant and material information is presented, the DCE has the discretion to reverse initial decisions and if appropriate discontinue a prosecution or an infringement notice, or alternatively if fresh information indicates that the seriousness of offending is more serious than previously disclosed, the enforcement options considered may be elevated.

If relevant the DCE may also consider replacing the enforcement action with an alternative safety or security intervention.

9.7 Expedited Investigation

In some cases, a regulatory investigation may disclose, at an early stage, evidence that the Authority objectively believes may justify the early issue of either a warning letter or infringement notice for a specified breach.

In these cases, the Operational Unit Manager and Manager Investigation and Response will assess the information and make a determination whether to classify the investigation as an expedited investigation. In doing so consideration will be given to the Regulatory Safety and Security Strategy and the Solicitor General's Prosecution Guidelines.

If the investigation is classified as an expedited investigation, then:

² Criminal Procedure Act 2011 s 375.

- The test of reasonable cause to believe that an offence is being or has committed by an identifiable person should be applied³
- The evidential sufficiency and public interest tests must still be met.

This pathway enables the assigned Investigating Officer to exercise a discretion (in consultation with the Operational Unit Manager) to issue an infringement notice or warning letter if, following an expedited investigation, they have reasonable grounds to believe this is the appropriate enforcement outcome. The action taken must be documented and saved to the investigation file.

The purpose of an expedited investigation is to encourage a timely result leading to shorter period of uncertainty for the alleged offender, and to support a reasonable use of resources that is proportionate to the offending being considered.

10. Responsibilities of Authority staff

10.1 Investigators

Investigators will:

- investigate alleged breaches of the Civil Aviation Act 1990, the Civil Aviation Rules, and/or other legislation as appropriate, and make recommendations as to the appropriate action to be taken;
- exercise a discretion to issue an infringement notice or warning letter if the investigation has been classified as an expedited investigation; and
- investigate alleged breaches of the Health and Safety at Work Act 2015 and the Hazardous Substances New Organisms Act 1996 and make recommendations as to the appropriate action to be taken;
- also extend the scope of the investigation to examine causation. As a result, a broader suite of interventions will be considered in addition to enforcement tools. For example, the investigation may determine a need for the Inspector to issue an Improvement Notice or Prohibition Notice under HSWA. If these notices are considered, the investigator must engage with the relevant Operational Unit Manager to ensure that the issuing of a notice under HSWA will not impact work the operational units may be conducting at the same time, with the person or organisation under investigation.; and
- engage with the Operational Unit Manager during the course of the investigation; and
- assist in the prosecution management phase.

10.2 Team Leader Investigation and Response Unit

The Team Leader Investigation and Response Unit will:

- review all referrals in relation to alleged breaches of relevant legislation in consultation with the relevant Operational Manager to determine whether an investigation should commence;

³ Civil Aviation Act 1990, s 58.

- trigger an investigation and manage the investigative resources
- review the investigation report and refer to a Senior Solicitor for legal review
- refer the investigation report to the Manager Investigation and Response Unit for IRU 3 sign off process to be commenced.

10.3 Manager Investigation and Response Unit

The Manager Investigation and Response Unit will:

- Review referrals from other operational managers and forward to Team Leader IRU for actioning;
- review all accident and serious incident referrals and provide advice and approval for deployment and allocation of IRU resources;
- maintain oversight of investigations and IRU resource;
- recommend the action to be taken and commence the IRU 3 sign off process.

10.4 Operational Unit Manager

When considering a referral, the Operational Unit Manager with regulatory oversight will apply the Regulatory Strategy. The circumstances of the case will be examined, in consultation with the Manager Investigation and Response to determine the best mode or modes of investigation. This includes determining whether an investigation should be classified as expedited.

The Operational Unit Manager will then document the decision, trigger the referral(s) by sending this to the Team Lead Investigation and Response and provide technical resources when required.

The Operational Unit Manager responsible for the oversight of the concern will, during the course of the investigation, be engaged by the Investigator and provide advice on proposed recommendations and any further SME required by the investigator. The Operational Unit Manager will, on the conclusion of an investigation, review and thoroughly test the recommendations presented. If the necessary delegation has been issued by the DCE, the Operational Unit Manager is authorised to make a decision on whether to issue a formal warning or Infringement Notice. They will document their decision in the sign off communication with the sign off panel members before it is reviewed by Chief Legal Counsel.

10.5 Chief Legal Counsel

The Chief Legal Counsel will assign a Senior Solicitor to provide legal advice where required.

When considering a prosecution recommendation, and the feedback from the Operational Unit Manager responsible for the oversight of the concern, the Chief Legal Counsel will advise the DCE on the application of the regulatory enforcement policy, and/or provide his or her endorsement of the recommended enforcement decision, after considering:

- the evidential sufficiency test, and
- the public interest.

The Chief Legal Counsel, at his/her discretion, may consult with external legal counsel for the purpose of informing advice provided to the DCE.

10.6 Deputy Chief Executive (DCE)

The DCE is obligated to consider enforcement action when it is in the public interest to do so. The DCE will consider all relevant information provided by the investigator and other sign off panel members before making a decision on what, if any, enforcement action should be taken.

The DCE's enforcement decisions will be documented and saved to the relevant investigation folder by the Team Coordinator IRU.

11. Measuring our performance

The Authority's quality assurance and control processes will assess our adherence to this policy to ensure that the principles and the approaches in it, are being adopted.

The overall effect of our regulatory enforcement function and our broader suite of regulatory functions is captured in our Statement of Performance Expectations, that stipulates how these activities are measured against performance targets.

Our performance is subject to external monitoring and review by organisations such as the Ministry of Transport, Audit New Zealand, and ICAO.

12. Document Control

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