



**WELLINGTON NEW ZEALAND**

**PURSUANT** to Section 28 of the Civil Aviation Act 1990

**I, HARRY JAMES DUYNHOVEN**, Minister for Transport Safety,

**HEREBY MAKE** the following ordinary rules.

**SIGNED AT** Wellington

This *2nd* day of *August* 2005

by **HARRY JAMES DUYNHOVEN**

Minister for Transport Safety

**Civil Aviation Rules**

**Part 108, Amendment 4**

**Air Operator Security Programme**

*Docket 4/CAR/10*

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## **Rule objective**

The main objective of Amendment 4 to Part 108 is to implement the International Civil Aviation Organisation (ICAO) standards, prescribed in Annex 17 – *Security*, regarding security controls for hold baggage that is intended to be carried on international flights. Other amendments include provisions for additional security requirements to be applied to domestic air operations if there is an increased security risk, a clarification of the rules relating to the carriage of persons in custody, and additional requirements to prevent unauthorised persons from entering the flight deck of an aircraft. There are associated changes to Part 1 regarding definitions for the various types of baggage.

## **Extent of consultation**

A consultative approach with industry was adopted throughout the rule making process. Consultation between the CAA and the Board of Airline Representatives of New Zealand Inc. (BARNZ), representing airlines, commenced in early 2002. An initial CAA briefing paper was forwarded to industry in July 2002 and was followed by the formation of two project working groups; a Consultative Group consisting of eighteen industry and Government agency representatives with a separate Working Group consisting of nine representatives. In December 2003 the Cabinet Business Committee agreed that New Zealand will meet the ICAO obligation for hold baggage screening by 1 October 2005.

Prior to finalising the NPRM meetings were held with industry in Auckland, Wellington and Christchurch during September and October 2004 detailing the proposed content and scope of the rule proposals.

A Notice of Proposed Rulemaking, NPRM 05-03, containing the proposed changes to Part 108 was issued for public consultation under Docket 4/CAR/10 on 21 December 2004.

The publication of this NPRM was notified in the *Gazette* on 23 December 2004 and advertised in the daily newspapers in the five main provincial centres on 24 December 2004. The NPRM was published on the CAA web site and mailed to identified stakeholders including representative organisations who were considered likely to have an interest in the proposal.

A minimum period of 56 days was allowed for comment on the proposed rule.

### **New Zealand Transport Strategy**

The development of the NPRM and the proposed rule changes takes into account the objectives of the New Zealand Transport Strategy (NZTS) and the provisions of the Civil Aviation Amendment Act (No 2) 2004.

**Assisting Economic Development** – The economic impact of not implementing Hold Baggage Screening and Hold Baggage Authorisation is the possible cessation of flights to other states who are signatories to the Convention. The New Zealand government has agreed on a uniform cost recovery method of Hold Baggage Screening costs and therefore differential effects on the local economies should not occur.

**Assisting safety and personal security** – This is the central impact of this rule proposal particularly Hold Baggage Screening and Hold Baggage Authorisation. The aim is to enhance the safety and security of persons on an aircraft, so the direct beneficiaries of the proposed rule changes are the aircraft occupants. The safety and personal security of persons not on the aircraft may benefit as these measures reduce the changes of an aircraft security or safety incident and any related consequences e.g. aircraft crashing, injury from an explosive blast.

**Improving access and mobility** – The rule amendments are unlikely to affect access and mobility issues.

**Protecting and promoting public health** - The rule amendments are unlikely to affect public health.

**Ensuring environmental sustainability** – The rule amendments are unlikely to affect environmental sustainability.

The proposed rules are in accordance with the standards and recommended practices of ICAO Annex 17.

### **Summary of submissions**

Seven written submissions were received on the NPRM. These submissions and comments have been considered and as a result 3 changes have been made to the original rule proposals. The Board of Airline Representatives New Zealand Inc (BARNZ) and Air New

Zealand commented on the grounds for the Minister and the Director to require additional screening of baggage on domestic flights and this has resulted in rule 108.53(b)(9) being changed to include a reference to the relevant provisions in the Civil Aviation Act for the Minister and the Director to require such screening. The wording of rule 108.55(b)(5) has been changed to the future tense as a result of the BARNZ submission.

Air New Zealand also commented on the grounds for the Minister and the Director to require screening of passengers on domestic flights and rule 108.53(b)(8) has also been changed to include reference to the provisions in the Act for the Minister and the Director to require passenger screening.

These changes were noted in the Summary of Public Submissions which was published on the CAA web site on 4 April 2005.

The NPRM included changes to delete wording relating to security controls for courier and express parcels in rule 108.53(b)(5) and rule 108.55(b)(6) as these items are to be covered in the Part 109 Air Cargo Security project. When developing the final rule for amendment 4 to Part 108 it became evident that the Part 109 project would not coincide with amendment 4 to Part 108 and therefore to avoid a gap in the rules it has been necessary to reinstate the words courier and express parcels in these rules. Amendments to these two rules and deletion of these words are to be included in the Part 109 NPRM.

The rule as amended was then referred to Parliament's Regulations Review Committee before being signed by the Minister for Transport Safety.

### **Examination of submissions**

Submissions may be examined by application to the Docket Clerk at the Civil Aviation Authority between 8:30 am and 4:30 pm on weekdays, except statutory holidays.

### **Insertion of Amendments**

The amendments to the rules in this Part are reflected by the revocation of the existing rule and the substitution of the new rule, and the insertion of a new rule.

### **Effective date of rule**

Amendment 4 to Part 108 comes into force on 1 January 2006.

### **Availability of rules**

Civil Aviation Rules are available from–

CAA web site: <http://www.caa.govt.nz/>

Freephone: 0800 GET RULES (0800 438 785)

## Part 108 Air Operator Security Programme

### Subpart B — Air Operator Security Programme Requirements

*Rule 108.53 is revoked and the following new rule is substituted:*

#### **108.53 Security requirements – domestic**

(a) An air operator security programme for a domestic regular air transport passenger service must have security procedures for flights within New Zealand to safeguard passengers, crew, ground personnel, aircraft, and facilities, against acts of unlawful interference.

(b) The security procedures required in paragraph (a) must set out the means by which—

- (1) the requirements of rule 91.9 are complied with in relation to the carriage of firearms on board an aircraft; and
- (2) danger to the air operator's passengers, crew, and ground personnel is minimised in the event of a hijacking, bomb threat, or any other threat of unlawful interference; and
- (3) access to the air operator's unattended aircraft is controlled at all times to prevent unlawful interference with the aircraft; and
- (4) access to a security area of a security designated aerodrome and to an operational area at any other aerodrome within New Zealand that is through the air operator's facilities or through any other access used by the air operator for passengers, personnel, baggage, cargo, freight, or aircraft supplies is controlled; and
- (5) appropriate security controls are applied to baggage, cargo, courier parcels, express parcels, mail, aircraft supplies, stores, and air operator's supplies intended for carriage on the air operator's aircraft; and
- (6) the safe conduct of any flight is to be achieved and the pilot-in-command notified, if 1 or more persons on board the

aircraft are required to travel on the aircraft because they are in lawful custody, or are subject to other judicial or administrative proceedings, whether or not they are required to be escorted; and

- (7) the air operator and the pilot-in-command will assess the risk and decide whether a passenger's baggage that is on board an aircraft will be carried on the flight if the passenger has failed to board the aircraft; and
  - (8) before boarding an air operator's aircraft, all passengers, crew members, and the carry on baggage of those passengers and crew members must be subject to screening in accordance with rule 108.63 if, under sections 77A or 77B of the Act respectively, the Minister or the Director requires such screening in order to prevent weapons, explosives, or other dangerous articles or substances that may be used to commit an act of unlawful interference being taken onto the air operator's aircraft; and
  - (9) before being loaded onto an air operator's aircraft, all baggage that is not carry on baggage must be subject to screening in accordance with rule 108.63 if, under sections 77A or 77B of the Act respectively, the Minister or the Director requires such screening in order to prevent weapons, explosives, or other dangerous articles or substances that may be used to commit an act of unlawful interference being loaded onto the air operator's aircraft; and
  - (10) temporary security measures will be implemented to upgrade the security of the air operator's services if the Director finds or suspects an increased level of security risk to a person on an aircraft, or to an aircraft or an aerodrome and requires the additional security measures for domestic operations; and
  - (11) unauthorised persons are prevented from entering the flight deck of the air operator's aircraft during the flight.
- (c) The procedures required by paragraph (b)(6) must include procedures to ensure, in relation to the carriage of any person in lawful custody on a regular air transport passenger service, that—



- (1) the person is escorted; and
- (2) the escort confirms that the person is not carrying any item that may be used as a weapon; and
- (3) the escort is equipped with adequate devices for restraining the person; and
- (4) the pilot-in-command and senior flight attendant are notified of the location of, and the security arrangements for, the person; and
- (5) alcoholic beverages are not served to the person or their escort; and
- (6) metal utensils are not provided for the person's use; and
- (7) the person is not seated in a seat or seat row next to an emergency exit; and
- (8) the person is seated appropriately to ensure safe conduct of the flight is achieved; and
- (9) no more than 1 person in custody is carried on an aircraft with a certificated passenger seating capacity of 29 seats or less and no more than 1 additional person in custody is carried for each additional 25 seats of certificated passenger seating capacity.

***Rule 108.55 is revoked and the following new rule is substituted:***

**108.55 Security requirements – international**

- (a) An air operator security programme for an international regular air transport passenger service must have security procedures for flights within or from New Zealand to safeguard passengers, crew, ground personnel, aircraft, and facilities, against acts of unlawful interference.
- (b) The security procedures required in paragraph (a) must set out the means by which—

- (1) the requirements of rule 91.9 are complied with in relation to the carriage of firearms on board an aircraft; and
- (2) danger to the air operator's passengers, crew, and ground personnel is minimised in the event of a hijacking, bomb threat, or any other threat of unlawful interference; and
- (3) access to air operator's unattended aircraft is controlled at all times to prevent unlawful interference with the aircraft; and
- (4) access to a security area of a security designated aerodrome and to an operational area at any other aerodrome within New Zealand that is through the air operator's facilities or through any other access used by the air operator for passengers, personnel, baggage, cargo, freight, or aircraft supplies is controlled; and
- (5) temporary security measures will be implemented to upgrade the security of the air operator's services from New Zealand if the Director finds or suspects an increased level of security risk to a person on an aircraft, or to an aircraft or an aerodrome and requires additional security measures; and
- (6) appropriate security controls are applied to baggage, cargo, courier parcels, express parcels, and mail intended for carriage on the air operator's aircraft; and
- (7) the safe conduct of any flight is to be achieved and the pilot-in-command notified, if 1 or more persons on board are required to travel on that aircraft because they are in lawful custody, or subject to other judicial or administrative proceedings, whether or not they are required to be escorted; and
- (8) transit and transfer passengers and their carry on baggage are controlled to prevent unauthorised articles being taken on board the air operator's aircraft by those passengers; and
- (9) if the flight is under an increased level of threat of an act of unlawful interference, disembarking passengers do not leave items on board the air operator's aircraft; and

- (10) all cargo, baggage, mail, aircraft supplies, stores, and air operator's supplies being moved within an aerodrome and intended for carriage on an aircraft are subject to appropriate security controls; and
- (11) consignments of packages that are not cargo or mail but which are intended for carriage on an air operator's aircraft (whether unaccompanied or using commercial courier services) are subject to screening; and
- (12) before boarding an air operator's aircraft, all passengers, crew members, and the carry on baggage of those passengers and crew members are subject to screening in accordance with rule 108.63 in order to prevent weapons, explosives, or other dangerous articles or substances that may be used to commit an act of unlawful interference being taken onto the air operator's aircraft; and
- (13) baggage from passengers who are not on the aircraft is prevented from being carried unless the baggage is authorised under paragraph (b)(17); and
- (14) pre-flight checks of originating aircraft are undertaken, including procedures to discover suspicious objects or anomalies that could conceal weapons, explosives or any other dangerous articles or substances, that may be used to commit an act of unlawful interference; and
- (15) security control is to be provided for baggage from the point where it is checked in until it is placed on board the air operator's aircraft, where that baggage is intended for carriage on passenger flights and has originated from places other than airport check-in counters; and
- (16) except as provided for in paragraph (e), before being loaded onto an air operator's aircraft, all baggage that is not carry on baggage is subject to screening in accordance with rule 108.63 in order to prevent weapons, explosives, or other dangerous articles or substances that may be used to commit an act of unlawful interference being loaded onto the air operator's aircraft; and

- (17) only baggage that is authorised by the air operator is carried; and
  - (18) unauthorised persons are prevented from entering the flight deck of the air operator's aircraft during the flight.
- (c) The procedures required by paragraph (b)(7) must include procedures to ensure, in relation to the carriage of any person in lawful custody on a regular air transport passenger service, that—
- (1) the person is escorted; and
  - (2) the escort confirms that the person is not carrying any item that may be used as a weapon; and
  - (3) the escort is equipped with adequate devices for restraining the person; and
  - (4) the pilot-in-command and senior flight attendant are notified of the location of, and the security arrangements for, the person; and
  - (5) alcoholic beverages are not served to the person or their escort; and
  - (6) metal utensils are not provided for the person's use; and
  - (7) the person is not seated in a seat or seat row next to an emergency exit; and
  - (8) the person is seated appropriately to ensure safe conduct of the flight is achieved; and
  - (9) no more than 1 person in custody is carried on an aircraft with a certificated passenger seating capacity of 29 seats or less and no more than 1 additional person in custody is carried for each additional 25 seats of certificated passenger seating capacity.
- (d) If a domestic air operator undertakes passenger or baggage check-in on behalf of an international air operator, or for transshipment for carriage on an international regular air transport passenger service, the

international air operator must ensure that the domestic air operator complies with the international air operator's security programme.

(e) Paragraph (b)(16) does not apply to international transfer and transit baggage unless required by the Director under section 77B of the Act.

***Rule 108.63 is inserted:***

### **108.63 Screening**

The screening of passengers, crew members, and baggage as required by rules 108.53 and 108.55 must be conducted—

- (1) in the case of aircraft operating from or within New Zealand, by, or under the direct supervision of, the Aviation Security Service, or the holder of an aviation security service certificate issued in accordance with Part 140; and
- (2) in the case of New Zealand registered aircraft operating from aerodromes outside New Zealand, by an organisation authorised by the appropriate authority of the state of departure to conduct screening.

## Consultation Details

(This statement does not form part of the rules contained in Part 108. It provides details of the consultation undertaken in making the rules.)

### Comments arising from the NPRM

Amendment 4 to Part 108 was developed under docket 4/CAR/10 and published as NPRM 05-03. Seven written submissions were received on the NPRM.

The comments and all background material used in developing the rules are held on the docket and are available for public inspection. Persons wishing to view the docket should call at Aviation House, 10 Hutt Road, Petone and ask for docket 4/CAR/10.

### Comments on Part 108

#### General

Notice of Proposed Rule Making (NPRM) 05-03 was issued for public comment on 21 December 2004, with a submission close-off date of 18 February 2005. The purpose of NPRM 05-03 was to put forward for consultation amendments to Civil Aviation Rule Part 108, Air Operator Security Programme, along with associated changes to Part 1.

The amendments in the NPRM are designed to implement the International Civil Aviation Organisation (ICAO) standards prescribed in Annex 17 – *Security*, that relate to security requirements for hold baggage that is intended to be carried on international flights. The Air Operator Security Programme required under Part 108 is intended to apply to air operators who are certificated in accordance with Part 119 to operate a regular air transport passenger service with aircraft that have 10 or more passenger seats in accordance with Part 121 or Part 125, and foreign air operators certified under Part 129 carrying 10 or more passengers.

A total of seven submissions were received.

One submission was made by the Board of Airline Representatives New Zealand Inc (BARNZ) on behalf of 27 airlines. Six submissions were from individual airlines.

## **Representative Group**

The Board of Airline Representatives New Zealand Inc (“BARNZ”) is an incorporated society comprising 27 member airlines operating scheduled and code share international and domestic services. Its members are:

### *Full membership:*

Aerolineas Argentinas	Air Caledonie International
Air New Zealand Limited (Freedom Air)	Air Pacific
Airpost Limited	Air Tahiti Nui
Air Vanuatu Airlines	Asian Express Airways
Cathay Pacific Airways	Emirates
EVA Airways	Fieldair
Garuda Indonesia	Japan Airlines (Code share)
Korean Air	LAN Airlines
Malaysia Airlines	Pacific Blue
Polynesian Airlines	
Qantas Airways Limited (Jet Connect)	
Royal Brunei	Singapore Airlines
Thai Airways International	

### *Associate membership: (code share)*

British Airways	Air Canada
Lufthansa	Menzies Aviation

## **Individual Airlines**

Qantas Airways Limited which includes Qantas New Zealand (Jetconnect) operation.

Origin Pacific Airways

Korean Air

Air Nelson

Air New Zealand Limited

Virgin Blue Airways Pty Limited

## **Summary of Submissions**

**The Board of Airline Representatives New Zealand Inc (BARNZ)** submitted the following comments:

**Application of security measures to charter flights** BARNZ note that the new security requirements relating to hold baggage screening and hold baggage authorisation will only apply to international regular air transport passenger services (refer to rule 108.55(a)). They comment that the effect of this is that Part 108 will not require charter flights to screen hold baggage or authorise hold baggage.

BARNZ considers that this creates a significant risk and is open to exploitation by persons wishing to unlawfully interfere with an aircraft. They state that by not requiring charter flights to meet these standards means that the objective identified in the New Zealand Transport Strategy, and referred to on page 12 of the NPRM, of “increasing the safety and security of persons on an aircraft”, will be diminished. They believe charter flights will become the weak link in New Zealand’s international aviation security programme.

BARNZ is firmly of the view that international passenger charter flights need to comply with the hold baggage and baggage authorisation requirements to be specified in Part 108. This is particularly so for those charter flights where check in and use of the baggage system is at the international terminal where these facilities are provided. BARNZ state that they assume that in such cases the passengers themselves will be screened, along with their carry on bags. If this is not to be the case they point out that airside, the baggage system along with the airport and aircraft are put at risk.

BARNZ submit that charter flights should comply and that they should meet their obligations to pay for the service they receive. They understand that in Australia charter flights will be required to comply.



The requirement for international charter flights to comply could be achieved either by extending those parts of Part 108 to international charter flights of a certain size, or alternatively, by making hold baggage screening and hold baggage authorisation a condition of the charter operator's licence to operate the flight. BARNZ understand that the Ministry of Transport is responsible for issuing licences to operate charter aircraft, and they will also be raising this issue with the Ministry.

**CAA comment:** *CAA acknowledges the matters raised by BARNZ in its submission. In previous consultation with BARNZ dating back to 2003 the applicability of hold baggage authorisation measures has been clearly identified in relevant documentation as all flights covered by rule 108.55. The Air Operator Security Programme required under Part 108 is intended to apply to air operators who operate a regular air transport passenger service with aircraft that have 10 or more passenger seats certificated under Part 121 or Part 125, and foreign air operators certified under Part 129 carrying 10 or more passengers. The scope of applicability was reinforced in communications between CAA and BARNZ in May 2004 with reference also made to both closed and open charters. This intended applicability was further identified in letters to key stakeholder, including BARNZ, from CAA in September 2004 formally advising of the commencement of the NPRM development process.*

*In their submission BARNZ consider that the applicability of Part 108 and hold baggage screening to international regular air transport passenger services only will create a significant security risk. CAA acknowledges the BARNZ view on this matter but also recognises the need for such matters to be considered within an overall risk assessment and management framework where identified risks are only one component. Factors such as prevailing levels of threat at airports within New Zealand and system controls also require consideration when assessing overall risk levels.*

*The CAA does however acknowledge the need to consider the levels of security that should be applied to international flights other than regular air transport passenger services. This includes not only charter operations but also potentially other relevant operations such as corporate and other activity. This subject is currently the topic of discussion internationally particularly within ICAO and indications are*

*that a proposed Amendment 11 to ICAO Annex 17- Security will provide States with some guidance in this area.*

*The security measures required by rule 108.55 only apply to regular international air transport services with aircraft of more than 9 passenger seats. Any substantive change to the scope of security measures required by CAR 108.55, or various components of it, will potentially impact on a wide range of aviation related activities and other rule requirements. Accordingly any such move requires an appropriate degree of consultation with all potentially affected parties and is not one that can be entered into lightly. As outlined above, cognisance also needs to be taken of overall risk factors and potential pending developments in the international regulatory framework that will result in relevant issues being given the appropriate degree of consideration by both regulators and industry.*

*Taking all these factors into account the CAA is satisfied that the current applicability of the new security measures proposed in rule 108.55 (as they apply to hold baggage screening and authorisation), reflects the original intent and outcomes of extensive consultation conducted to date, and achieves, to an appropriate level, necessary objectives of increasing the safety and security of the travelling public.*

*In arriving at this view the CAA has considered the level of security that should be applied to international flights other than regular air transport passenger services. Accordingly the CAA intends to explore these issues in full consultation with all relevant stakeholders at an appropriate stage and within the framework of possible developments within the international regulatory framework provided by ICAO.*

*The Minister and the Director also have the power under sections 77A and 77B of the Act respectively to direct an aviation security provider to screen any person boarding an aircraft or screen any thing to be carried by an aircraft. Therefore if the situation arises the Minister or the Director can require passengers and baggage on all charter flights to be subject to screening.*

**Hold baggage screening on domestic flights** BARNZ notes that under the proposed rule 108.53(b)(9), the Director or Minister will have the ability to require hold baggage on domestic aircraft to be screened.

They refer to the commentary on page 6 of the NPRM which refers to the Director or Minister coming to the conclusion that this measure is required, based on a consideration that “an increased risk to domestic aviation security exists”. However, this qualification is not present in the proposed amendment in rule 108.53(b)(9). BARNZ considers the ability in rule 108.53(b)(9) to require hold baggage screening on domestic operations needs to be qualified to ensure that justification is present and consultation has taken place.

BARNZ suggest the following wording:

“Before being loaded onto an air operator’s aircraft, all baggage that is not carry on baggage must, if the Minister or the Director consider that an increased risk to domestic aviation security exists sufficient to justify the introduction of hold baggage screening, be subject to screening in accordance with 108.63 in order to prevent weapons, explosives or other dangerous articles or substances that may be used to commit an act of unlawful interference being loaded onto the air operator’s aircraft; Before introducing any such requirement for hold baggage screening the Minister or Director as the case may be shall consult with the air operators and airports which would be affected by the introduction of such a measure.

**CAA comment:** *The BARNZ submission raises a concern about the need for consultation and justification on the part of the Minister or Director before they require domestic hold baggage screening and the concern that the proposed rule, as currently worded does not reflect these needs.*

*Proposed rule 108.53(b)(9) places an obligation on operators to only carry screened hold baggage when required so by the Minister or Director.*

*Any actual requirement for hold baggage screening on domestic services would originate from the Minister or Director exercising their powers and responsibilities to direct an aviation security provider to carry out certain functions under section 77A (in the case of the Minister) and section 77B (in the case of the Director) of the Civil Aviation Act 1990.*

*Section 77A(2) of the Act provides that before directing an aviation security provider under subsection (1) of that section, the Minister must, to determine whether or not the direction is 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, consult—*

- (a) the Director; and*
- (b) as the Minister in each case considers appropriate, representative groups in the aviation industry, government departments, and Crown agencies.*

*Section 77B of the Act provides that before directing an aviation security provider the Director must;*

- (a) believe on reasonable grounds that a security risk exists; and*
- (b) to determine whether or not the direction is necessary to meet the security risk, consult, as the Director in each case considers appropriate, representative groups in the aviation industry, government departments, and Crown agencies.*

*In respect of the powers and duties of the Director pursuant to section 77B any belief on reasonable grounds that a security risk exists can only be arrived at as the result of an appropriate robust and transparent risk assessment processes. This should address the concern in this area raised by BARNZ.*

*Current requirements for domestic screening of passengers and their carry on baggage on 90 seat plus services are authorised under section 77B of the Act. In this respect the proposed rule amendments mirror what is already in place in current rule 108.53(b)(8) that applies to any required screening of passengers and their carry on baggage on domestic services.*

*In summary the requirement for the Minister to consult in section 77A(2) of the Act and the requirement for the Director to consult in section 77B(2) of the Act should address the matters raised by BARNZ. In order to clarify this the CAA will amend 108.53(b)(9) to reference these provisions:*

*108.53(b)(9) before being loaded onto an air operator’s aircraft, all baggage that is not carry on baggage must be subject to screening in accordance with rule 108.63 if, under sections 77A or 77B of the Act respectively, the Minister or the Director requires such screening in order to prevent weapons, explosives, or other dangerous articles or substances that may be used to commit an act of unlawful interference being loaded onto the air operator’s aircraft; and*

**Comment on rule 108.55 (b) (5)** This clause seems to read better if it is drafted in the future tense, so that it reads “temporary security measures would be implemented to upgrade the security ...”.

**CAA comment:** *Agree that the wording needs amendment and following input from the Rules Unit legal drafter the words are changed to “will be”.*

**Comment on air cargo security** BARNZ records its understanding that NPRM 05-03 Docket 4/CAR/10 does not affect cargo, and that changes to the security programmes applying to cargo will be addressed under Part 109.

**CAA comment:** *This is correct and Part 109 should be issued in due course.*

**Qantas Airways Limited** submitted the following comments:

Qantas agrees in principle with the proposed Part 108 changes but makes the following observations.

**Rule 108.53(b)(9)** Qantas suggests the word “weapon” be omitted to be consistent with ICAO and other regulators. Qantas suggests that weapons (which may be lawfully carried within the community generally) will be inaccessible to the passenger during flight and therefore unable to be used to commit an act of unlawful interference.

**CAA comment:** *The CAA disagrees as the word weapon covers a range of items including firearms and the wording is consistent with the ICAO Annex 17 requirements.*

*Annex 17 requirements under section 4.4 Measures relating to hold baggage require—*

*“4.4.1 Each Contracting State shall establish measures to ensure that hold baggage is subjected to appropriate **security controls** prior to being loaded into an aircraft engaged in international civil aviation operations”.*

*The Annex 17 definition of **Security Control** is—*

*“A means by which the introduction of weapons, explosives or other dangerous devices which may be utilized to commit an act of unlawful interference can be prevented”.*

*The use of the word weapon is also consistent with Aviation Crimes Act Section 11. The carriage of firearms on an aircraft is provided for under rule 91.9 and the operator’s security programme should already cover this.*

**Rule 108.53(b)(9)** In their submission Qantas asks that if the Minister or Director requires the screening of domestic hold baggage, is it the expectation of the CAA that the screening will be performed by AVSEC and if so would AVSEC resources be adequate to perform such screening, potentially at short notice, or will the aircraft operator be expected to undertake such screening?

**CAA comment:** *The screening would be required to be performed in accordance with rule 108.63 by the Aviation Security Service or the holder of a Part 140 certificate.*

**Rule 108.53(b)(10)** Given the potential “requirement to upgrade security measures”, Qantas consider it would be useful if the CAA could expand on the type of measures it is anticipating and in which circumstances. Qantas note that some additional measures for protecting aircraft are in the domain of the airport operator and AVSEC.

**CAA comment:** *These measures will be detailed in the National Aviation Security Programme (NASP) and will be developed to provide*

*flexibility to respond to threats in an evolving environment. The Director will discuss such measures with air operators, aviation security providers and airports in conjunction with the NASP and the individual air operator security programme.*

**Rule 108.53(c)(2)** Qantas suggests that the words "...to the aircraft operator..." should be inserted to follow "the escort confirms..."

**CAA comment:** *The CAA disagrees as this requirement links to the requirements of the air operator security programme in rules 108.53(b)(6) and 108.53(a). Therefore the individual air operator security programme would detail to whom the escort must confirm this information to. The additional wording is not required.*

**Rule 108.53(c)(9)** In their submission Qantas considers that a provision needs to be provided to allow an aircraft operator to seek a variation to rule 108.53(9) to provide for the situation when a family is compelled to travel together (i.e. on a domestic flight prior to deportation on an international service).

**CAA comment:** *This requirement is made in the interests of the safety and security of both the flight and the persons on board the aircraft relating directly to persons in **lawful custody**. In the case stated the persons in lawful custody would need to travel on separate flights if necessary to comply with the rule.*

**Rule 108.55(b)(16)** With respect to the requirement to screen international hold baggage, Qantas suggests that word weapon be removed to be consistent with ICAO and other regulators. Qantas suggests that weapons (which may be lawfully carried within the community generally) will be inaccessible to the passenger during flight and therefore unable to be used to commit an act of unlawful interference.

**CAA comment:** *See comment on rule 108.53(b)(9) above.*

**Rule 108.55(c)(2)** Qantas suggests that the words “...to the aircraft operator...” should be inserted to follow “the escort confirms...”

*CAA comment: The CAA disagrees as this requirement links to the requirements of the air operator security programme in rules 108.55(b)(7) and 108.55(a). Therefore the individual air operator security programme would detail to whom the escort must confirm this information to. The additional wording is not required.*

**Origin Pacific Airways Limited** submitted the following comment:

**Rule 108.53(b)(8), (9) and (10)** Origin Pacific consider it is unclear how the requirement in rule 108.53(b)(8), (9) and (10) will be achieved by the operator as the screening is required to be carried out by the Aviation Security Service in accordance with rule 108.63 and the additional security measures that may be required are not specified.

*CAA comment: The Aviation Security Service has procedures, including measures related to staffing resources, for domestic screening when required. These procedures and measures will be detailed in the National Aviation Security Programme (NASP) and will be developed to provide flexibility to respond to threats in an evolving environment. The logistics of implementing the screening and temporary security measures would be included in the matters that the Minister or Director would need to consider before requiring the screening and temporary security measures. These would be included in the discussions with the air operators, aviation security provider and airport operators as appropriate.*

**Rule 108.53(b)(11)** Origin Pacific notes that this rule requires the operator to set out the means by which unauthorised persons are prevented from entering the flight deck. Origin Pacific consider they can get their J41 aircraft to comply with this requirement by introducing procedures to lock the flight deck door, however they consider it would be difficult to comply with this requirement for their J31/J32 aircraft.

Origin Pacific submit this rule as proposed has no detail as to what would be acceptable as the means to prevent access.



**CAA comment:** *The CAA is not proposing a requirement for lockable cockpit doors. The rule places a requirement on the air operator to detail procedures to prevent unauthorised persons access to the cockpit. These procedures will be specific for the air operator aircraft and may include locked cockpit doors if the aircraft is equipped with a lockable door.*

**Korean Air** submitted they consider the proposal is acceptable without change.

**Air Nelson** submitted the following comment:

Air Nelson seeks clarification on the wording of rule 108.53(c)(9) as they consider it may be in contradiction to Appendix 1 on page 18.

**CAA comment:** *The CAA considers this section is worded correctly and that it correlates with Appendix 1.*

**Air New Zealand** submitted the following comments:

**Security requirements domestic: rule 108.53(b)(8) and (9)**

Application of these 2 sub clauses is triggered by a decision of either the Director or Minister. Air New Zealand are not satisfied that the provision in this proposed rule change is consistent with the requirements of the Civil Aviation Act sections 77A and 77B. In particular Air New Zealand are concerned that there is no reference to the threshold test that must be applied by the Minister or Director prior to activating either paragraph (b)(8) or (9). Before paragraph (b)(8) or (9) can be activated the Minister must be satisfied that screening is necessary as part of a “concerted international response” or the Director must have “reasonable grounds”. Activation of paragraph (b)(8) or (9) represents a substantial shift in the domestic aviation security environment, other than for 90 seat plus passenger jet services. Air New Zealand submits that the rule change should elaborate on the

“reasonable grounds” or the nature of a “concerted international response” upon which the Director or Minister may base any action or highlight the consultative requirements of the Act prior to the Minister or Director taking any action in terms of further enhancing domestic screening. Air New Zealand considers substantial additional costs are expected to be associated with the introduction of any further change in the domestic environment.

**CAA comment:** *See CAA response to BARNZ submission on Hold Baggage Screening on domestic flights.*

**Security Requirements International: rule 108.55(a)** Air New Zealand submit that this rule should be amended to extend the requirement to cover all international charter operations being undertaken by a holder of an air operator certificate issued pursuant to CAR Part 121 or CAR Part 129 or a condition of the authorisation issued by the Director to conduct the flight. Air New Zealand consider international charter operations should as a matter of course be subjected to hold stow screening and to not do so is to create a loop hole. They refer to the charters to various points in Japan that Air New Zealand undertakes on a regular basis. In the past Air New Zealand has used this strategy to develop routes or to provide seasonal services when a full year round service cannot be sustained by the market.

**CAA comment:** *See CAA’s response to BARNZ submission on Application of security measures to charter flights. However as a provider of regular air transport passenger services any charter flight by Air New Zealand will be subject to their air operator security programme including the requirement for hold baggage screening.*

**Security Requirements International: rule 108.55(c)(3)** Air New Zealand submit that this rule should be amended to read: ”The escort **or aircraft** is equipped with adequate devices for restraining the person; and...” Air New Zealand consider the amendment would recognise that the Aviation Security Officers do not personally carry such restraint equipment, nor do Company trained security staff, but in all cases the aircraft would have the necessary equipment on board.

**CAA comment:** *The CAA disagrees as rule 108.55(c)(3) deals with persons in lawful custody and in such case would be escorted by a police officer, prison officer or person appointed by the court system. The escort must be able to restrain the person not only on the aircraft but in transit to or from the aircraft. See also CAR 19.359.*

**Virgin Blue Airlines** submitted the following comments:

Virgin Blue state that the consultative process and methodology already conducted and implemented is a credit to the CAA. They consider the manner in which the CAA have consulted can be a lesson to other jurisdictions.

Virgin Blue note the reference in Section 4.2 of the NPRM on Compliance Costs regarding the Government's agreement to fund the capital expenditure required by the Aviation Security Service for hold baggage screening equipment. Virgin Blue commends the government, AVSEC and the CAA on this common sense approach to aviation security.

**Section 3.1 of the NPRM**

Virgin Blue note this section states that international charter flights or non air-transport operations are excluded from the requirements of hold baggage screening. Virgin Blue are concerned that charter flights that will not be subject to the baggage screening required for regular air transport passenger services are on the same apron area as the Regular Passenger Transport aircraft. They submit it could create anxiety for other carriers in close proximity and imply double standards. Virgin Blue suggest that if the rule were to be applied to all international carriers the CAA would have the ability to provide exemptions to a carrier if a substantive case were presented that required an exemption. Virgin Blue does not consider the current format would be credible or provide public confidence.

**CAA comment:** *See CAA response to BARNZ submission on Application of security measures to charter flights.*

**Appendix 1 Advisory Circular 108-1 Amendment regarding rules 108.53(c)(9) and 108.55(c)(9).** Virgin Blue considers that the risk of “persons in custody” is one of the main threats to aviation at this current time. They consider that no more than 2 persons should be allowed on any aircraft unless there is exemption provided by the CAA and that there should be a risk assessment process by each carrier for any prisoners in custody. If such a system were to be implemented Virgin Blue considers that any rule exemption would need the carrier to provide a full risk assessment and ensure adequate security measures are implemented.

*CAA comment: The rules set minimum safety requirements to cover a range of aviation activities. In this case there is a limit, related to aircraft size, on the number of persons in custody that may be carried on a passenger flight. The air operator security programme is required to contain details of the operator’s procedures for carrying persons in custody and the operator is free to include additional risk assessment procedures and tighter limitations on the numbers of persons in custody that they are prepared to carry. The CAA both applauds and encourages any operator who wishes to set a higher standard than the minimum required by the rule. Rule 19.359 allows the operator to impose conditions regarding the carriage of persons who are subject to administrative procedures.*