

# What are my review options?

This CAA Medical Information Sheet (MIS) outlines options available to applicants for a CAA medical certificate who are dissatisfied with a decision made in respect of their application. This could include a decision to decline the issue of a medical or a decision to issue a medical certificate with conditions, restrictions, or endorsements.

## What is the legal basis of CAA Medical Certification decisions?

The primary legislation that is the basis of the CAA medical certification system is contained in Schedule 2 of the Civil Aviation Act 2023 (the Act). The Director's power to issue medical certificates is granted by Schedule 2, clause 5 of the Act. The Director is also granted other powers and responsibilities under other sections of the Act. These include powers, under Schedule 2, clauses 10-11 and clauses 12-15, to investigate the medical condition of a licence holder and to revoke, suspend, or amend medical certificates.

The Director of Civil Aviation can delegate these functions to others, so the term the *Director*, used in this document, will refer to both the Director of Civil Aviation and any delegates.

Part 67 of the Civil Aviation Rules contains further legislation, secondary to the Act, relating to medical certification, medical standards, and medical examiners.

Additional requirements are contained in the various General Directions, published by the Director of Civil Aviation, under the provisions of Schedule 2, clause 25 of the Act.

## What are my review options?

If an applicant is dissatisfied with a decision relating to their medical certificate application, then they may elect to pursue any of several options. Those options include Review by the Convener; District Court Appeal; and Judicial Review.

## What review option should I use?

The CAA cannot provide advice regarding which review option(s) an applicant should use.

## What review options have others used?

Since 2002 the number of Convener Reviews sought has been much greater than the number of District Court appeals. During the period 2002—2022 there were no Judicial Reviews concerning CAA medical certification decisions.

## What is the Convener?

The Convener is a person appointed by the Minister of Transport for the purpose of performing re-views of medical certification decisions. The legislation requires that the Convener be a medical practitioner, be experienced or knowledgeable in civil aviation, and be able to represent the public safety in aviation safety. (See 'Looking at the Law' section at the end of this MIS.)

## What is Review by the Convener?

Schedule 2, clauses 19-21 of the Act provides for the review of decisions regarding medical certificates or applications. Under this section an applicant may, within 20 working days, request the convener to review a decision.

The types of decisions that can be reviewed by the convener are:

- any decision taken under Sch 2, cl 5 to:
  - grant an application for a medical certificate, or
  - grant an application but impose conditions, restrictions, or endorsements on the medical certificate, or
  - decline an application for a medical certificate.
- any decision under Sch 2, cl 12 other than decisions relating to the suspension, or the imposition or amendment of conditions, on the medical certificate. The exceptions are specified in section sch 2, cl 20.

This right to Convener Review does not apply to a decision taken under Sch 2, cl 3(1) which permits the Director to require an applicant to undertake further tests, examinations or re- examinations or to provide further information as specified. (See 'Looking at the Law' section at the end of this MIS.)

### How do I apply for Review by the Convener?

The Ministry of Transport has published information about *Convener review of a medical certification decision on their website*<sup>1</sup>. This webpage includes email contact details and a step-by-step guide concerning the Convener Review process, as well as a link to the application form for Review of a Medical Certification Decision.

### District Court appeal

Schedule 2, clause 22 of the Act affirms the right of any person affected by any decision taken by the Director under Schedule 2, clauses 4, 5, 15, 16, 19, 20 to appeal to the District Court under sections 453-455 of the Act. This right of appeal does not apply to a decision taken under Sch 2, cls 3(1) and 5(1) which permits the Director to require an applicant to undertake further tests, examinations or re- examinations or to provide further information as specified.

The CAA cannot provide advice to applicants regarding their rights to District Court appeal. Assistance and advice should be sought from a lawyer when considering a District Court appeal.

### Judicial Review

An applicant also has the right to make an application for Judicial Review, to the High Court, of any decision made by the Director pursuant to functions under the Act or powers granted under the Civil Aviation Rules.

The CAA cannot provide advice to applicants regarding their rights to Judicial Review. Assistance and advice should be sought from a lawyer when considering Judicial Review.

### Are there any other review options?

The roles and responsibilities of the CAA medical certification system are subject to the requirements of many other items of legislation (e.g. The Privacy Act). Because of this, there are potentially other review options that might relate to certain aspects of CAA medical certification.

The CAA cannot provide advice to applicants regarding such other review options.

### New medical information

The CAA will also routinely review a medical decision when new medical information relevant to the case is provided.

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<sup>1</sup> <https://www.transport.govt.nz/about-us/what-we-do/queries/reviewing-a-medical-certificate-decision>

## Looking at the law

### Sch 2, cl 19-20:

(19) An applicant for a medical certificate may apply to the convener for a review of—

- (a) a requirement of the Director under clause 3(2); or
- (b) a decision of the Director under clause 5 other than a decision where the application concerned was referred to a convener under clause 4.

(20) Review of decisions regarding revocation, suspension, or amendment of medical certificate

A licence holder may apply to the convener for a review of any decision made under any of clauses 12 to 16, other than a decision made under—

- (a) clause 12(1); or (b) clause 12(2)(a); or (c) clause 12(2)(c); or (d) clause 12(3)(a)(i); or (e) clause 12(3)(a)(iii).

### Sch 2, cl 22:

A person affected by a decision of the Director under any of the following provisions has a right of appeal to the District Court under section 453:

- (a) clause 3(2); (b) clause 5; (c) clause 15; (d) clause 16; (e) clause 21(6).

**Sch 2, cl 30(4)** of the Act, Appointment of convener and deputy convener, includes a requirement that the Convener and Deputy Convener must: (a) be medical practitioners who are suitably qualified, and experienced or knowledgeable in civil aviation; and (b) be able to represent the public interest in aviation safety.

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