

Regulatory Decisions – Operational Policy

Contents

1. Purpose	2
2. Context	2
3. Definitions	2
4. Scope	3
5. Principles	5
6. New and emerging technologies	8
7. Our regulatory decision-making model	8
8. Public interest considerations	9
9. Our regulatory decision-making work tools	12
10. How we use our regulatory decision-making work tools	13
11. Right regulatory tools, right time, right result	16
12. Those impacted can seek a review of our decisions	16
13. Documenting decision-making	17
14. Our commitment to transparency	18
15. Independence and impartiality	18
16. Processes, procedures, and work tools	18
17. Measuring our performance	18
18. Document control	19

1. Purpose

Our main objective is to undertake our regulatory functions to facilitate the operation of a safe and secure civil aviation system. This operational policy guides us in making good regulatory decisions in performing our regulatory role, and in using our regulatory tools. The policy incorporates a range of considerations that represent the broader public interest in aviation safety and security. We apply the policy in conjunction with the legislation and other policies that guide how we perform our regulatory functions.

When making our regulatory decisions we consider any potential impact they may have on future reporting by participants of occurrences. This policy provides explicit protections for participants who properly report occurrences, provided their behaviour was not a major departure from that expected, did not recklessly cause unnecessary danger, or was not part of a pattern of repeat behaviour causing unnecessary danger.

We aim for regulatory decisions that are focused on the important matters, that are consistent, timely, and proportionate, and that help maintain a safe and secure civil aviation system.

With our main objective in mind, when we make regulatory decisions designed to help maintain a safe and secure civil aviation system, we also need to be mindful of the additional purposes of the Civil Aviation Act, particularly those in relation to environmental sustainability, economic prosperity, inclusive access to transport, promoting innovation, our international obligations, and New Zealand's national security and national interests

2. Context

We are an intelligence-led and risk-based regulator, balancing trust in participants with effective verification, assurance and regulatory action. Across and within the whole aviation system, we pursue – together with the aviation community – continual improvement in aviation safety and security performance. We constantly monitor and assess the performance of the aviation system to identify where we most need to focus our regulatory attention. With our intelligence-led, risk-based approach, we actively seek to identify and respond to unsafe practices and unacceptable risks.

The types of regulatory decision we may make are wide-ranging. Suitable knowledge and careful judgement are required in every case. Multiple considerations are likely to be involved, including the availability of our resources. We draw on external subject matter expertise to assist us when needed. It is critical that our regulatory decisions, and the rationale to for them, are clearly understood, communicated, and fully documented.

3. Definitions

Application: an application or request for the grant, renewal, amendment, or endorsement of an aviation document; or an application for the issue or reissue of a medical certificate (unless the context otherwise requires).

Director: the person who is the Director of Civil Aviation (or the Acting Director) together with (a) all persons who have been appointed as inspectors or response officers with functions and powers

within the policy's scope; and (b) all persons who hold a delegation to act on behalf of the Director in matters within the policy's scope.¹

CAA focus areas: the safety and security initiatives and other areas of regulatory focus we are currently giving priority to.

Note: CAA focus areas may address safety or security concerns, risks, and vulnerabilities across broader groupings or cohorts including specific aviation activities and operations, geographic areas, subsectors, sectors, and at a whole of system level.

Notified incident: as defined in the Act under s 339(1) as 'an incident that has come to the attention of the CAA because of a notification under section 49(3) by any person'.

Note: S 49(3) requires that: 'Every aviation participant who is involved in an incident must notify the incident to the CAA if required by, and in accordance with any requirements specified in, the rules'.

Occurrence: an accident or incident.

Note: As defined in Part 12 of the Civil Aviation Rules, *Accidents, Incidents, and Statistics* (1 December 2020).

Regulatory tools: the means available to CAA and the Director to fulfil CAA's main objective within the scope of their legislated functions, powers and duties.

Work tool: a document that supports a process or task (e.g., forms, diagrams, process map, work instructions, risk assessment matrix, and standard letter template are each different kinds of work tool).

4. Scope

This policy applies to all regulatory decisions we may make in accordance with our functions, powers, and duties under the:

- Civil Aviation Act 2023 (the Act)²
- Health and Safety at Work Act 2015 (HSWA)
- Hazardous Substances and New Organisms Act 1996 (HSNO).

Within the policy we have considered our regulatory decision-making broadly. The types of regulatory decision we may make are set out in Table 1 below, together with the legislation that applies.

¹ In this operational policy, the Civil Aviation Authority of New Zealand is referred to as 'CAA' wherever it is the legal entity that is specifically referred to. Similarly, the Director of Civil Aviation (who is also CAA's chief executive) is referred to as 'the Director' where specific reference to that statutory role is needed. Otherwise, the convention of referring to our combined regulatory roles in the singular as 'we', 'us', or 'our', is used.

² Although the 2023 Act does not come into effect until April 2025, this policy confirms the adoption of certain requirements in advance of that date.

Table 1: Scope of this policy

Scope of regulatory decisions	Decisions	Legislation
System design and the legislation that governs the system	<ul style="list-style-type: none"> • Decisions around our emerging aviation technologies programme³ • Decisions around influencing changes to legislation, particularly the Civil Aviation Rules (rules) • Decisions to grant or not to grant an exemption from one or more specified requirements in a regulation or rule made under the Act 	<ul style="list-style-type: none"> • The Act
CAA focus areas	<ul style="list-style-type: none"> • Decisions around the safety and security initiatives and other areas of focus CAA is currently giving priority to 	<ul style="list-style-type: none"> • The Act • HSWA • HSNO
Engagement	<ul style="list-style-type: none"> • Decisions around engaging operationally and strategically with participants and other external stakeholders to deliver maximum regulatory benefit 	<ul style="list-style-type: none"> • The Act • HSWA • HSNO
Information and education	<ul style="list-style-type: none"> • Decisions around providing and fostering information, advice, and education to assist the aviation community, together with passengers, to operate safely and securely 	<ul style="list-style-type: none"> • The Act • HSWA • HSNO
Certification and licensing	<ul style="list-style-type: none"> • In response to applications, decisions to: <ul style="list-style-type: none"> ○ grant, renew, amend, or endorse an aviation document, or to decline to do so ○ issue or reissue a medical certificate, or to decline to do so • Decisions to: <ul style="list-style-type: none"> ○ amend or impose conditions on an aviation document, or to suspend or revoke an aviation document either in whole or in part ○ suspend or revoke a medical certificate, or to impose or amend any conditions, restrictions, or endorsements on a medical certificate 	<ul style="list-style-type: none"> • The Act
Monitoring	<ul style="list-style-type: none"> • Decisions that determine our priorities for monitoring the performance of the civil aviation system as a whole as well as that of the sectors, organisations, individuals, aircraft, aeronautical products, aerodromes, and aviation places that are integral to it • Decisions in response to occurrences and to other matters of concern 	<ul style="list-style-type: none"> • The Act • HSWA • HSNO

³ Emerging aviation technologies are those new activities and supporting elements that have not been certified or licenced previously. Many of these are novel and often difficult to categorise with a key difference from established aviation technologies being that they are frequently being developed from outside the established aviation sector.

Investigations	<ul style="list-style-type: none"> • Decisions about whether to investigate a matter, and about the purpose and scope of such an investigation 	<ul style="list-style-type: none"> • The Act • HSWA • HSNO
Security service delivery	<ul style="list-style-type: none"> • Decisions, requirements, approvals, and assessments in relation to the delivery of aviation security services 	<ul style="list-style-type: none"> • The Act
Other regulatory action	<ul style="list-style-type: none"> • Decisions that lead to: <ul style="list-style-type: none"> ○ seeking voluntary or mutually agreed corrective action to return to compliance, or to otherwise mitigate risk ○ issuing a finding or improvement notice to direct a participant to address specific risks ○ issuing a warning about behaviour to put a participant on notice that further similar behaviour may attract more serious action ○ issuing an infringement notice for matters within the scope of such notices ○ detaining aircraft, seizing aeronautical products, or imposing prohibitions or conditions in relation to the operation or use of aerodromes, aircraft, and aeronautical products ○ entering into an enforceable undertaking with a participant ○ taking a prosecution for non-compliance with the legislation we operate under⁴ • In relation to aviation security, decisions to: <ul style="list-style-type: none"> ○ declare an airside security area or security enhanced area ○ carry out security checks and to make favourable or adverse security check determinations 	<ul style="list-style-type: none"> • The Act • HSWA • HSNO

5. Principles

This section sets out the principles that underpin and guide the regulatory decisions we make.

5.1 A safe and secure aviation system is a shared responsibility

Participants have a fundamental responsibility to act and operate safely and securely within the scope of the privileges they hold. We work together with the domestic and international aviation community to support this responsibility, and to provide a safe and secure aviation system. We aim to engage with participants to support them in understanding and fulfilling the requirements they must meet, and we demonstrate our organisational values in doing so.⁵

⁴ When making enforcement decisions, our enforcement policy must be considered alongside this regulatory decisions policy, particularly the Solicitor General’s two-stage prosecution test of evidential sufficiency alongside the public interest test.

⁵ Our organisational values are: collaboration, transparency, integrity, respect, and professionalism.

5.2 Collective learning and continuous improvement are critical

Continuous improvement within and across the aviation system depends on a trusted culture of collective learning tied to open reporting by participants of occurrences. Together with the aviation community, we encourage, support, and protect a trusted culture. We have a mutual interest in openly sharing and learning from information about risks, and in working to prevent occurrences by identifying and solving the underlying problems.

When making our regulatory decisions, we consider any potential impact they may have on the future reporting of occurrences by participants. Our regulatory assessments and decisions are highly dependent on the availability of timely and reliable safety and security information. The Act, in placing duties on participants to notify accidents and incidents to CAA, and in recognising the importance to the civil aviation system of open and honest reporting, provides a level of protection to individuals who properly report accidents and incidents. Good quality information helps us to determine where, when, and how to deploy our resources, and to inform the aviation sector on trends and matters of interest or concern.

5.3 Public interest considerations

As a regulator we must make our decisions in the public interest. Public interest refers broadly to the welfare or well-being of the public, and of society as a whole, rather than serving the interests of individuals or groups. Our regulatory decision-making processes incorporate a range of considerations that represent the public interest in aviation safety and security.

Our public interest considerations include the specific public interest considerations in the Act that the Director is required to take account of before taking enforcement action in relation to any *notified incident*⁶, and that afford certain protections to individuals who properly report accidents and incidents.⁷

These considerations within the Act are consistent with the concept and practice of ‘just culture’. They are expressed and amplified upon in this policy to provide explicit protections from law enforcement action for participants who properly report occurrences, provided their behaviour was not a major departure from that expected, did not recklessly cause unnecessary danger, or was not part of a pattern of repeat behaviour causing unnecessary danger.⁸ Incorporating just culture principles in this way within our regulatory decision-making enables us to weigh up and identify when and where, on balance, it is appropriate to hold individuals and organisations accountable for their actions in the public interest.

⁶ This is a *notified incident* which is defined in the Act under s 339(1) as ‘an incident that has come to the attention of the CAA because of a notification under section 49(3) by any person’. S 49(3) requires that: ‘Every aviation participant who is involved in an incident must notify the incident to the CAA if required by, and in accordance with any requirements specified in, the rules’.

⁷ S 341 of the Act.

⁸ These considerations are consistent with the non-prosecution rule (12.63) in Part 12 of the rules, *Accidents, Incidents, and Statistics*.

5.4 Decisions and actions that are outcome focussed, proportionate, timely, and fair

In deciding whether and how best to respond to any matter, we have, in essence, four desired high-level outcomes to consider, namely:

- a) the design of the aviation regulatory system is improved
- b) aviation privileges are properly exercised
- c) risks to aviation safety or security are eliminated or suitably mitigated
- d) individuals and organisations are held to account for non-compliance when it is in the public interest to do so.

These desired outcomes are not mutually exclusive, and we may pursue more than one in response to any given situation.

Our regulatory decisions and actions are made and carried out impartially and with fairness and consistency. They are properly informed and based on objective evidence. In responding to any matter, we can be neither excessive nor insufficient.

We follow processes and seek decisions that are proportionate by providing the right level of response to suit the situation and the level of aviation risk involved. In addressing situations of non-compliance confined to particular individuals or organisations, we use the least restrictive option we consider necessary to achieve the desired outcome or outcomes. In a general sense, the greater the aviation risk or adverse impact on the safety or security performance of the system, the more substantial our regulatory involvement is likely to be. When faced with significant risk to public safety or security, we will take swift and decisive action to ensure the risk is soon either eliminated or suitably mitigated.

5.5 We assess the impact of our decisions

As there is no certainty that well-informed regulatory decisions will have the intended effect, it is vital we monitor their effectiveness by means that are proportionate to the nature and significance of the matters involved. We ask the questions:

- were intended outcomes achieved,
- were there any unforeseen consequences (including unintended negative effects for participants), and
- and is further regulatory action necessary?

Information gained through our regulatory functions helps us to address these questions, and to inform our understanding of how well our regulatory decisions and actions are achieving their aims and objectives.⁹

⁹ Refer to the scope of CAA's *Monitoring - Operational Policy*.

6. New and emerging technologies

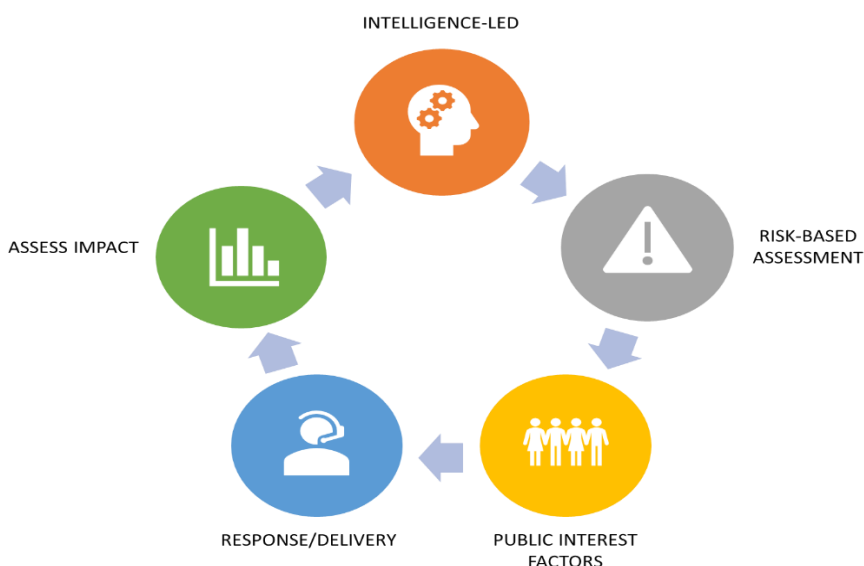
New and emerging technologies in aviation bring unique challenges. Our regulatory stewardship role requires us to ensure that the aviation regulatory system remains fit for purpose as we facilitate and authorise the operation of such innovations. We will, where needed, advocate for new rules and standards designed to bring new technologies into the aviation system in a safe and timely manner, and we will investigate the use of performance-based rules for this purpose. In addressing the inherent challenges, we are proactively engaging early on in a collaborative, facilitative, and formalised manner with the organisations involved.

7. Our regulatory decision-making model

Our regulatory decision-making model is set out in our regulatory safety and security strategy. The model is designed to guide us in identifying, assessing, prioritising, and responding to occurrences and to aviation safety and security risks and concerns, including unsafe practices and emerging trends and issues. In doing so, we work within the bounds of the regulatory requirements and discretion provided to us within the legislative framework we work under (including the Act, rules, HSWA, HSNO, and the associated regulations).

The model proceeds in a series of five stages, as set out in Figure 1 below.

Figure 1: Five stages of regulatory decision-making



The nature and purpose of each stage in our regulatory decision-making process is as follows:

1. **Intelligence-led:** in drawing on specific information available to us, and on insights developed by our intelligence function, we identify and characterise occurrences and situations of risk and unsafe practice in the civil aviation system (including the source, the nature of the operation, the extent and/or level of risk of harm or damage, and the overall impact within the aviation system).

2. **Aviation risk-based assessment:** we use the relevant information and insights to help determine the nature and extent of the aviation safety and security risk or risks involved in an application, or as presented by an occurrence or other issue.
3. **Public interest factors:** we also think about a range of public interest factors that may be relevant to our consideration of a particular situation.
4. **Response/delivery:** in light of the preceding assessments, we decide how best to assess an application, or whether and how best to act in response to an occurrence or other issue, and then we act accordingly.
5. **Assess impact:** we monitor the results and assess the impact of our regulatory decisions and determine if additional regulatory activity is required.

Our regulatory decision-making process is iterative. We will revisit previous stages if it becomes apparent while considering a particular matter that we need more information before being able to decide whether and how to act. Furthermore, in monitoring and assessing the results and impact of a particular regulatory decision, we may recognise that subsequent additional action is needed.

8. Public interest considerations

Public interest considerations are critical to our regulatory decisions. There are, as follows, seven public interest factors we may take into consideration, depending on the nature of the matter involved:

Contextual factors

1. Source of the occurrence, safety or security risk, or other matter
2. Nature of operation
3. Extent and level of risk of harm or damage
4. System impact
5. CAA focus area

Human and organisational factors

6. Participant behaviour and overall approach

Continuous aviation system improvement factor

7. Integrity of safety and security reporting by participant

For each factor, there is a range of variables to consider in relation to the matter under consideration. The full range of variables for each factor is set out in Table 2 below.

Table 2: Public interest factors and variables

Public interest factors	Range of variables
Contextual factors	
1. Source of the occurrence, safety or security risk, or other matter	<ul style="list-style-type: none"> Individual entities – persons and organisations (participants) Aircraft, aeronautical products, and aerodromes Sector/s –including geographic areas, subsectors, sectors, and other cohorts
2. Nature of operation	<p>Identify the nature of the operation both broadly and specifically.</p> <p>Broadly, whether:</p> <ul style="list-style-type: none"> Private/recreational Aviation-related services¹⁰ Commercial non-passenger Emerging or experimental aviation technology, or new aircraft type Commercial passenger <p>Specifically, use free text to describe the nature of the operation, including whether national, Australia New Zealand Aviation (ANZA), other regional, or international; and also the aviation place if relevant.¹¹</p>
3. Extent and level of risk of harm or damage	<p><u>Extent of risk:</u></p> <ul style="list-style-type: none"> None – no harm or damage Minimal – minimal injury or damage Moderate – significant injury and/or damage Major – death or serious injury and/or serious damage Severe – multiple parties, deaths and/or serious injuries and/or severe damage <p><u>Level of risk</u> (assessed in terms of likelihood and consequence):</p> <ul style="list-style-type: none"> Low Medium High Extreme
4. System impact	<p>Actual and/or potential impact:</p> <ul style="list-style-type: none"> Isolated – an isolated or localised risk or occurrence Sector – an issue that is impacting a subsector, sector, or other cohort National – an issue that may have nationwide impact Regional/global – an issue that may have regional or global impact
5. CAA focus area	<ul style="list-style-type: none"> No Yes

¹⁰ 'Aviation-related services' are as defined in the Act under s 5, Interpretation.

¹¹ 'Aviation place' is as defined in the Act under s 7, Meaning of aviation place.

Public interest factors	Range of variables
-------------------------	--------------------

Human and organisational factors

<p>6. Participant behaviour and overall approach</p>	<p><u>Participant behaviour:</u></p> <ul style="list-style-type: none"> • Human error/accidental – human error, or accidental, commensurate with level of training and experience, and/or appropriate exercise of professional judgment in the circumstances • At-risk behaviour – departure or major departure from the standard of care reasonably expected in the circumstances • Repeat at-risk behaviour – behaviour causing unnecessary danger to any person or property, and that repeats previous behaviour of the same or a similar kind • Conscious and deliberate disregard – recklessly causing unnecessary danger to any person or property <p><u>Overall approach to safety and security requirements and duties:</u></p> <ul style="list-style-type: none"> • Advocacy – actively promoting and championing safety and security culture • Vigilance – maintaining a constant state of alertness and actively seeking to prevent occurrences • Proactiveness – taking initiatives to identify and address potential hazards • Awareness – recognising the importance of safety but not consistently prioritising it • Apathy – feeling indifferent or unconcerned about safety measures • Complacency – ignoring or downplaying safety protocols and risks • Reckless – an approach that recklessly or deliberately creates unnecessary danger to any other person or to any property
--	--

Public interest factors	Range of variables
-------------------------	--------------------

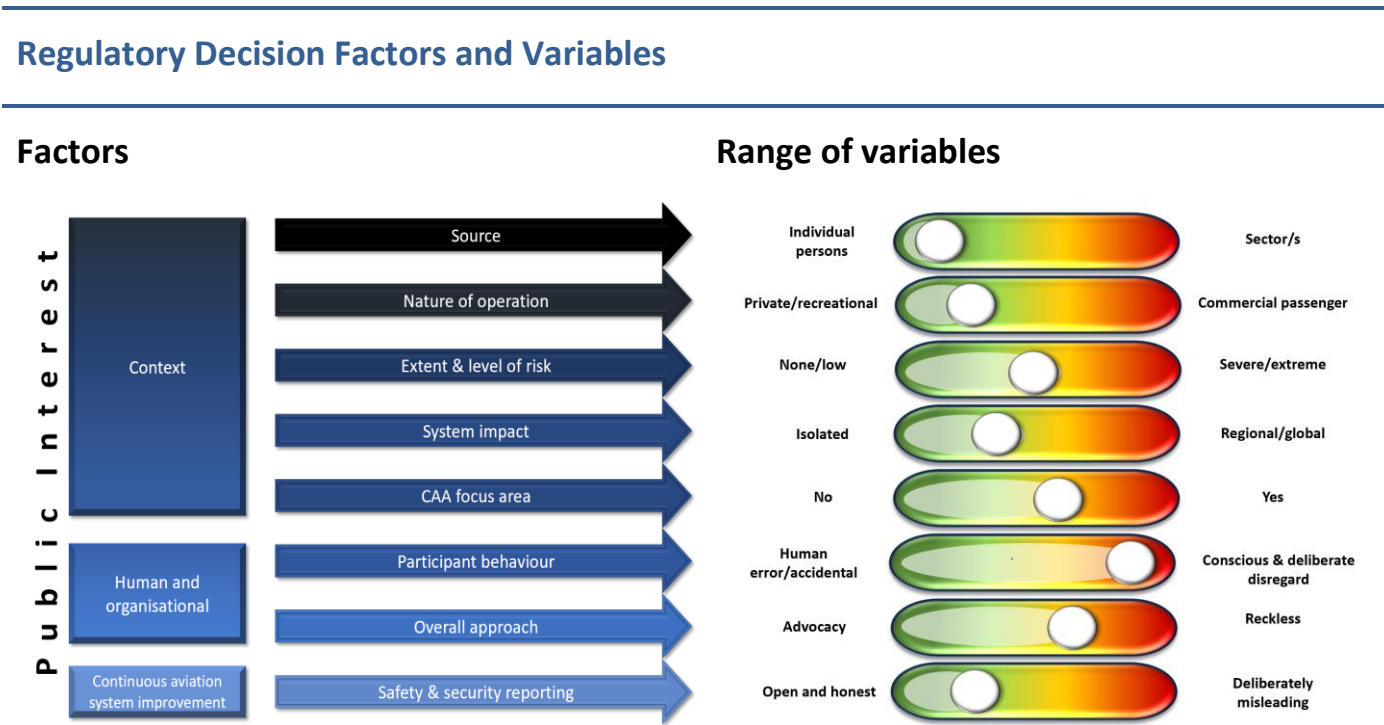
Continuous aviation system improvement factor

<p>7. Integrity of safety and security reporting by participant</p>	<ul style="list-style-type: none"> • Open and honest – a full account is submitted in accordance with the regulatory requirements; willingly engages in providing further information (including investigation reports submitted by certificated organisations) • Bare minimum – the information submitted meets the bare minimum of the regulatory requirements; subsequent engagement indicates reluctance to provide additional information • Incomplete reporting – the information submitted falls short of the regulatory requirements • Non-reporting – no information is submitted • Deliberately misleading – the information submitted is determined to be misleading, and deliberately so
---	---

We use the public interest factors and range of variables that are set out in Table 2 above to assist us to characterise the matters we are addressing, and to decide upon suitable responses. In any particular case, we consider which factors apply, and – for each one – the full range of variables within it. In so doing, we identify and define the variables that apply, and weight each of them relative to the others depending on their level of importance and priority in our considerations and in the overall context of the matter at hand.

The combination of public interest factors and the range of variables for each, together with the overall process for identifying and weighting those that apply in any particular case – as described above – is summarised in the graphic that is Figure 2 below.

Figure 2: Regulatory decision factors and variables



9. Our regulatory decision-making work tools

We have a range of regulatory decision-making work tools, each of which is designed for a particular type of matter.¹² They are designed to support us in systematically making sound regulatory decisions directed towards achieving their intended outcomes. In drawing from our decision-making model, they facilitate our assessments of the issues we are addressing for any particular matter, and guide us towards the decisions we need to make in response.

¹² A work tool is a document designed to support a particular process or task. For example, a process map, risk assessment matrix, work instructions, and standard letter template are each different kinds of work tool.

10. How we use our regulatory decision-making work tools

This section explains, for each factor, how we use these work tools to guide us in making good regulatory decisions.

10.1 Source of the occurrence, safety or security risk, or other matter?

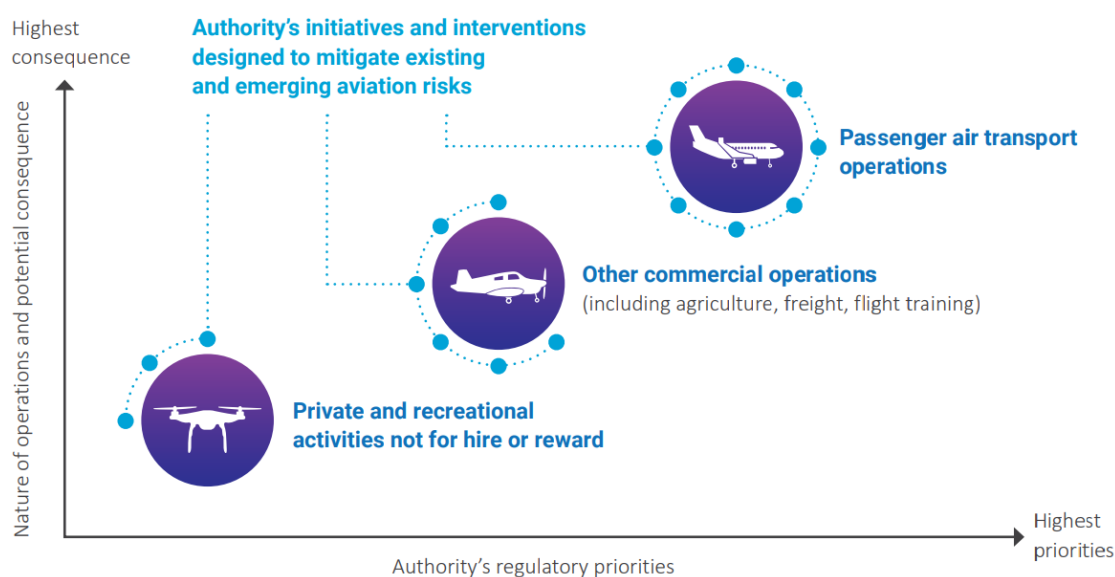
Sources of occurrences, safety and security risks, and other matters under consideration may be related to aviation participants (individuals and organisations), aircraft, aeronautical products, aerodromes, aviation-related services, or aviation places; or to groups, subsectors, sectors, or other cohorts. Identifying the source of a concern helps us to determine what kind of response will be best suited to the situation we need to address and who we need to reach.

10.2 Nature of operation?

When we think about aviation risks, we think about the likelihood of an occurrence in combination with the potential magnitude of its consequences. The nature of an operation is a good indicator of the types of aviation risks encountered and of the potential severity of any consequences. With air transport passenger operations, the potential consequences of an accident or security event are severe in the extreme. Accordingly, there is a very high expectation of safety and security, and a low level of acceptance of risk, by passengers and by the public. We therefore place the highest importance in our regulatory approach and decision-making on work programmes and activities that are related to passenger-carrying operations, and on addressing issues arising that involve significant risk to public safety and security.

Accordingly, non-passenger commercial operations, and recreational and private activities, sit lower on our scale of importance, as depicted in Figure 3 below.

Figure 3: Our regulatory priorities in relation to the nature of aviation operations and activities



10.3 Extent and level of risk of harm or damage?

Further to considering the extent of harm or damage that has occurred, if any, we also consider whether a risk of harm or damage exists, and, if so, what the level of that risk is. That risk might be a continuing risk that exists because of, or in relation to, a situation involving harm or damage that has already occurred. Or, otherwise, it might be a risk that exists in relation to an occurrence or other issue that has not resulted in harm or damage.

Our decision-making work tools include risk assessment matrices that assist us to assess the level of any particular risk based on our consideration of the likelihood and consequence of a potential future adverse event.

The work tools also include guidance, when applicable, on how quickly we need to respond to a situation, if at all.

10.4 System impact?

In thinking more widely about the impact, or potential impact, of an occurrence or other issue on aviation safety and security – that is, in thinking beyond the immediate scope of the originating matter itself – we take into account our assessment of each of the preceding factors. Our assessment of the wider implications for the aviation system leads us into determining whether, when, and how to respond. We may:

- a) confine our response to addressing the originating matter; or
- b) address the originating matter and, as well, the wider implications it has for the aviation system; or
- c) confine our response to addressing the wider implications for the system.

10.5 CAA focus area?

We have a high interest in examining and pursuing matters that are in scope of our CAA focus areas, or that relate to them. The nature and extent of any regulatory action we might take in response to such a matter will depend not only upon the significance of that matter to a particular priority, but also upon our assessment of the other factors involved in our decision-making model.

10.6 Participant behaviour and overall approach?

The human and organisational factors involved in particular matters have significant weighting in our decision-making model. Given that an intent of regulation is to shape behaviour, then the regulatory decisions we make must take into account the attitudes, behaviours, and other human and organisational factors together with the overall approach taken towards safety and security by those involved. Where relevant, we consider the nature of the relationship between an organisation and its employees, contractors, or volunteers, and we distinguish between their respective roles and duties in relation to the primary responsibilities and duties of care involved in the matter at hand.

We think about the evident behaviour of individuals and organisations as causal factors, whether human error at one end of the scale, or reckless and non-compliant behaviour at the other. We also

think about the overall approach shown by individuals and organisations, or within subsectors, sectors, and other cohorts. In doing so, we examine the information and insights available to us to identify and characterise the type, history, and significance of findings and occurrences, and of any at-risk, reckless, or other non-compliant behaviour by an individual or organisation, or across a cohort, as applicable.

10.7 Integrity of safety and security reporting by participant?

The approach shown by individuals and organisations towards reporting occurrences through to us is another indicator we turn to when thinking about the overall approach being taken. Similarly, we may use this indicator when thinking about issues that apply within cohorts.

The Act supports the application of just culture principles within the overall obligation of the Director to act in accordance with the public interest.

The Director may take law enforcement action in relation to a *notified incident* if satisfied that the public interest in taking the action outweighs any adverse impact that the action will have on further accident or incident notifications.¹³ Additionally, an accident or incident notification is generally not admissible as evidence in a criminal proceeding against the person who provided the notification, unless the proceeding concerns the falsity of the notification.¹⁴

In considering the public interest, we consider any harm that was caused, or any risk of harm that was created, and weigh this alongside our other public interest considerations. When there is an accident involving harm, particularly death or serious injury, the consequence becomes a factor in determining our regulatory response. Action to hold people to account may be expected in the public interest. However, before reaching such a decision, we weigh the benefits of addressing the specific consequence against other public interest factors which may have wider or more enduring system safety and security benefits or other implications, including the potential impact on future reporting of safety or security information.

Where there is no self-reporting, or where there is evidence of repeated at-risk behaviours or recklessness, we need to consider what actions we should take to address such behaviours. These considerations need to also include holding participants to account for the consequences of their actions.

Where occurrences are properly reported, suitable regulatory tools including information and education options may be used to immediately address the risk revealed to ensure protection of the public, aircraft, and participants and, where applicable, to address any likely future non-compliance.

In assessing the weight of this factor, we need to strike a balance to ensure that information continues to flow to us without compromising our ability to hold participants to account for their actions when it is in the public interest to do so. The Director must satisfy themselves that the public

¹³ s 341 of the Act.

¹⁴ s 340 of the Act.

interest in taking enforcement action in respect of a *notified incident* must outweigh any potential adverse impact on further notifications.¹⁵

11. Right regulatory tools, right time, right result

After assessing each of the public interest factors, we determine whether and how best to respond. We aim to use the right regulatory tool or combination of tools at the right time, with a focus on the desired outcome. The full scope and types of regulatory decisions we may make are set out in section 3: Scope. We may make decisions not to take regulatory action in response to particular matters. Our overall approach to broadly different situations of concern and risk is set out in Table 3 below.

Table 3: Our broad regulatory approach to situations of concern or risk

Situation	Our broad regulatory approach
Legislative inadequacy or gap	With situations where we have identified the root cause of a problem as being an inadequacy or gap in the legislation (including the rules), we may need to influence a system design solution.
Concerns, risks, or vulnerabilities within subsectors, sectors, and other cohorts, or at a whole of system level	In responding to concerns and risks at system and sector levels, we will often need to develop multifaceted initiatives and interventions that combine a range of activities and approaches suitable for reaching a wide audience. In particular, we have a high interest in pursuing and examining matters that are in scope of CAA’s focus areas.
Generalised poor understanding of a risk and the requirements for eliminating or mitigating it	With situations where there is generalised poor understanding of a risk and the requirements for managing it, the best initial approach may be to look to provide information, advice, and education to the participants involved to assist them to better understand the risk and the requirements they must meet for eliminating or mitigating it.
Willing participants	With situations that involve willing participants, we prefer to obtain corrective action through options that may be taken on a voluntary or mutually agreed basis (provided this is consistent with our assessment of a situation and what we need to do about it).
Immediate or imminent exposure to harm	With situations where there is Immediate or imminent exposure to harm, we may address the risk by using administrative action to restrict or remove a participant’s privileges. Where we believe there has been reckless or repeated unsafe behaviour, and when it is in the public interest to do so, we will take enforcement action to hold a participant to account and to deter others.

12. Those impacted can seek a review of our decisions

The Act provides rights of independent review in relation to specified decisions made by the Director.¹⁶ A person in respect of whom a decision is made may apply for a review of the decision, as may the owner, operator, or person for the time being in charge of an aircraft or aeronautical

¹⁵ s 341 of the Act.

¹⁶ Part 10 Regulations and miscellaneous provisions; Subpart 5 – Review of Director’s decisions. The decisions in scope of these rights of review are ‘specified in the regulations’ and are defined to include the process by which any such decision is made. The regulations that will specify the decisions are yet to be made.

product that is the subject of a decision. The Minister must appoint one or more reviewers to review applications and decisions. A reviewer's recommendations are not binding on the Director, but the Director must consider the recommendations and respond in writing to the applicant and the reviewer. Timeframes apply to applications for review and to the Director's responses to recommendations made by reviewers. A decision under review remains in force until the Director makes a final decision. However, if the parties agree, the Director may, at any time before the reviewer reports their recommendations to the Director, make a final decision in the applicant's favour.

Similarly, the Act provides rights of appeal to the District Court in relation to specified decisions made by the Director or an inspector.¹⁷ In this case, a specified decision is one that is specified in the Act itself. The court may confirm, reverse, or modify the decision appealed against. Pending the determination of an appeal, every decision of the Director appealed against continues in force¹⁸; and no person is excused from complying with any of the provisions of this Act on the ground that an appeal is pending.

13. Documenting decision-making

CAA's information and records management policy provides a framework and assigns responsibility for ensuring that full and accurate records of business activities are created and maintained. For every regulatory decision we make, all data and information received or created by us is saved in accordance with the policy as the official record of the matter.

It is critical that our regulatory decisions, and the rationale for them, are clearly documented and recorded to ensure that:

- we can demonstrate that our decisions are:
 - properly informed and evidence-based
 - made impartially, and with fairness and consistency, and in a timely and responsive manner
- we can, if required, re-examine our decisions if:
 - more information becomes available
 - unforeseen consequences have arisen
 - intended outcomes are not being achieved
 - the decision is subject to review or appeal
- we can subsequently review and improve our processes and approaches if needed.

¹⁷ Part 10 Regulations and miscellaneous provisions; Subpart 6 – Rights of appeal.

¹⁸ In respect of appeals, although the Act provides for decisions of the Director to continue in force, it does not do so for decisions made by inspectors.

Even when we decide not to intervene, it is important to document that decision including the rationale. The information recorded will help our overall picture of the performance of the civil aviation system, and it may provide further insights and potentially trigger regulatory action in the future if and when related additional information or insights come to light.

For any matter, our documentation of the evidence involved, together with the processes used to obtain and verify it, and to arrive at our conclusions and decisions, should be capable of persuading an objective reviewer that sufficient relevant and credible evidence was obtained, and that the decisions arrived at were reasonable. The significance of a decision, including the nature of the situation it is addressing, will guide the amount and level of detail of the information that needs to be documented. Higher levels of documentation for decisions of higher significance would reasonably be expected by an objective reviewer.

14. Our commitment to transparency

Maintaining and improving a safe and secure aviation system depends on a trusted culture of collective learning tied to open reporting by participants of occurrences. Good quality information helps us to determine where, when, and how to deploy our resources, and to inform the aviation sector on trends and matters of interest or concern. In seeking to build and sustain confidence throughout the civil aviation system to encourage timely, accurate, and full reporting of occurrences by participants to CAA, we are transparent – within legal constraints – in publishing information and commentary about the occurrences reported to us, and about our regulatory decisions in response. The scope of the information and commentary we publish also includes other regulatory action we have taken to obtain compliance, address risk, change behaviour, and impose penalties.

15. Independence and impartiality

Sector and public trust and confidence in the integrity of our regulatory decisions is vital. Ensuring independence, impartiality, and transparency in our assessment and decision-making processes, and in being perceived to do so, are critical to maintaining this trust and confidence. For all our employees and contractors, actual, potential, and perceived conflicts of interest are identified and managed in accordance with CAA's staff conflicts of interest policy.

16. Processes, procedures, and work tools

This policy is supported by the associated processes, procedures, and work tools required to implement it. Specified work tools – customised to meet the needs of particular regulatory functions and rule parts – will be used to guide our operational personnel and our decision-makers in assessing and determining our responses to occurrences, to aviation safety and security risks, and to other issues.

17. Measuring our performance

Our internal quality assurance and control processes assess our adherence to this policy to ensure it is being properly adopted. The overall effect of our regulatory decision-making is captured in our annual *Statement of Performance Expectations*, which sets out the regulatory outputs we provide

together with the corresponding quality and timeliness standards against which we assess our performance for the business year under consideration. Our performance is also subject to external monitoring and review by the Ministry of Transport, Audit New Zealand, and the International Civil Aviation Organization (ICAO). Also, we seek and receive sector insights and viewpoints on our approach to regulatory decision-making through our engagement with aviation participants, representative organisations, and other aviation sector stakeholders.

18. Document control

Title	Regulatory Decisions – Operational Policy
Effective date	1 November 2024
Author	Rob Scriven, Manager Operational Policy, Practice & Guidance
Approver	John Kay, Deputy Chief Executive System Practice & Design
Quality approver	Yvette Bartholomew, Senior Advisor Quality Systems & Assurance
Owner	Deputy Chief Executive System Practice & Design
Endorsed by	Authority Leadership Team
Revision	1.0
Review date	1 November 2027
InfoHub ID	62727581

Revision	Date	Description of change
1.0	1 November 2024	Revision one – new Operational Policy.