

2014 snapshots: legislative and parliamentary developments to watch

In this edition of *The Legal Lounge* I briefly summarise some important legislative and other parliamentary developments to watch in 2014.

NZ Civil Aviation Act Review

It was announced publicly in July of last year that the Civil Aviation Act 1990 and Airports Authorities Act 1966 were up for review. The Ministry of Transport publicly stated at the time that it considered that the core safety principles underpinning the Civil Aviation Act remained “fundamentally sound” but that after more than twenty years since enactment, it was time for an in depth review to ensure the Act remains “fit for purpose” and is able to continue to support the civil aviation system into the future. A similar review has also been undertaken to ensure the Airports Authorities Act remains fit for purpose.

The Ministry is to be applauded for engaging the industry and regulator very early in the policy development process by inviting all participants and stakeholders from July 2013 onwards, to provide feedback on any issues, areas of concern or suggested change, so that these could be incorporated into the policy analysis from the outset. The author is advised that this phase of work is now largely complete and the Ministry hopes to submit a draft consultation document to the Minister of Transport by the end of February 2014. Expect formal public consultation to therefore begin around April 2014, and an indicative timeline for progression of any draft legislation into law to be announced then.

I hope to see some legislative reform around the Director’s suspension and investigation powers in the Civil Aviation Act, the associated appeal rights, and in relation to some aspects of Part 2A medical function, powers and obligations (these are discussed in a number of previous articles from *The Legal Lounge* series, available for viewing at www.amclegal.co.nz/articles).

Australian government: independent review of aviation safety regulation

In mid November 2013 the Australian Federal Government announced it was commissioning an independent review of aviation safety regulation in Australia. The Terms of Reference for the panel are to investigate:

- The structures, effectiveness and processes of all agencies involved in aviation safety, and how those agencies interact with each other and government;
- The outcomes and direction of current regulatory reform initiatives by the Civil Aviation Safety Authority;
- The suitability of Australia’s aviation safety related regulations when benchmarked against comparable jurisdictions; and
- Any other safety related matters.

The public consultation period is open but is scheduled to end on 31 January 2014, which by comparison with the current New Zealand consultation process for the Civil Aviation Act review, is pretty poor in both timing and length of consultation.

While it is my understanding that legal interest groups in Australia have been formed to submit on and represent the interests of the aviation insurance industry, and persons who represent people killed or injured in aviation accidents, it would appear that the aviation industry has largely been left to 'speak for itself'.

The only specialist industry adviser appointed to the panel to date is Mr Phillip Reiss, President of AOPA Australia, who has been enlisted to represent the concerns of general aviation and regional operators. If you have any interest or involvement in the Australian aviation sector, you may wish to contact Mr Reiss or AOPA Australia to offer your support and any ideas or concerns you want included in the Australian review.

The panel is expected to report to the relevant Minister in May 2014 (once again a very hefty and limited timeframe given the extensive scope of the Terms of Reference), with further developments to be announced then.

NZ Health and Safety Law Reform, and increased enforcement

As foreshadowed in the November 2013 edition of *The Legal Lounge*, responsibility for administering workplace health and safety laws has now been shifted from the Ministry of Business, Innovation and Employment to a new crown entity, Worksafe New Zealand, and greater enforcement of health and safety laws can be expected. Legislative reform is also well under way. The new legislation will extend health and safety law duties faced by employers to persons conducting a business or undertaking; will create more stringent duties on directors and senior officers to enforce workplace health and safety standards; and will introduce a wider and tougher range of penalties and offences for breaches of workplace health and safety laws. Refer to my November 2013 article (available on my website) for more details.

NZ company law reform: directors duties

In the August 2013 edition of *the Legal Lounge* I outlined the existing legal duties of directors under the Companies Act 1993, and also foreshadowed pending law reform to introduce criminal offences for breaches of those duties (note that there is already the ability to sue for breach of such duties). Due to widespread opposition from legal and financial advisers, some of these proposals have been watered down, however some form of criminal offence provisions will still be enacted for the most serious breaches of duties. These relate to the duties not to trade recklessly or in a manner that the director knows will cause serious loss to creditors, or for knowingly acting against the best interests of the company. I will provide an update on the final form of these offence provisions once the legislation is enacted.

Civil Aviation Fees and Charges: Regulations Review Committee complaints

A number of complaints have now been lodged with and heard by the Regulations Review Committee concerning various aspects of the new fees and charges introduced in November 2012. These complaints covered various matters, but recurrent themes were strong opposition to the composition and amount of the new flat rate medical fee, and the level of increase in the hourly rate and some other fixed charges. The Regulations Review Committee consideration of all complaints is well under way, and a report is expected shortly. What then occurs will largely depend on the outcome of the review and recommendations (if any) of the Regulations Review Committee.

CAA medical costs review

Perhaps at least partially in response to the RRC complaints, the CAA announced during 2013 that it was undertaking a dedicated review of medical related costs. This was initially confined to considering whether cost savings can be made and efficiencies introduced in order to drive down the current costs of the core medical certification functions (including the possible introduction of an automated medical filing system). The review now appears to have been extended to considering whether the previous funding review adequately addressed issues around the public vs private good components of the medical fee introduced in November 2012. Expect more developments and announcements on the medical related cost review during 2014.

Further civil aviation fees and charges review

MOT and the CAA are now required to review the fees and charges regulations every three years, purportedly to avoid having a repeat of the situation where the previous fees and charges schedule remained largely unchanged for more than ten years, and were then followed by substantial increases from November 2012 onwards. This means that the current fees and charges will shortly be up again for review, and this could lead to further changes to the fees and charges regime from as early as July 2015. It would be fair to say that the industry and regulator alike are probably now far more in tune with the financial implications of these fee increases, particularly to the GA and private and recreational sector, and the extent to which the industry perceives these to be driven by genuine value for money versus bureaucratic inefficiencies, or poor targeting of limited resources. This should make for a much more interesting and involved consultation process this time around.

Comment

As will be evident, there is a lot happening in terms of legislative and policy development that will directly or indirectly impact on aviation industry participants at all levels from 2014 onwards. No doubt there may be other matters that I have also failed to address in this article, for example local authority or conservation issues and legislative developments. You owe it to yourselves and the younger people you try so hard to attract into this industry, to take an active interest in these matters, and to get involved where you can, in whatever capacity you can manage. I have had the pleasure of working with a number of aviation corporates and industry organisations on many of these issues over the last twelve months, in particular with AOPA NZ and Aviation New Zealand (formerly the AIA). I can vouch for the fact that they are working hard to try and represent your interests and viewpoints. They rely on your continuing support, participation and feedback to do that most effectively. With the current legislative developments under way, they need your input and support now more than ever.

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