



## ANALYSIS

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1996, No. 92

**An Act to amend the Transport Accident Investigation Commission Act 1990** [13 August 1996]

BE IT ENACTED by the Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be cited as the Transport Accident Investigation Commission Amendment Act 1996, and shall be read together with and deemed part of the Transport Accident Investigation Commission Act 1990 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the day on which it receives the Royal assent.

**2. Performance agreement**—The principal Act is hereby amended by inserting, after section 6, the following section:

“6A. (1) Not later than one month before the commencement of each financial year, the Commission shall give to the Minister a draft performance agreement setting out in respect of that year—

“(a) The proposed statement of objectives for that year prepared by the Commission under section 41D(1)(h) of the Public Finance Act 1989; and

“(b) The methods (including financial and non-financial performance measures) by which the Commission intends to assess the extent to which it in fact meets those objectives during that year; and

“(c) How the Commission intends to report on the extent to which it met or is meeting those objectives for that year and the dates by which interim reports, if any, will be given to the Minister; and

“(d) Any new borrowings or financial leases, or similar liabilities the Commission intends to incur during that year; and

“(e) Financial forecasts for the 2 years following the year to which the performance agreement relates; and

“(f) Policies and priorities in exercising its discretion with respect to the investigation of accidents and incidents.

“(2) After receiving a draft performance agreement from the Commission under subsection (1) of this section or an amended version of it under subsection (4) of this section (whether for the first time or any later time), the Minister shall,—

“(a) Subject to subsection (3) of this section, approve it; or

“(b) Refuse to approve it and return it to the Commission with directions that the Commission amend it.

“(3) No provision specifying any liabilities the Commission intends to incur shall be included in a performance agreement under this section without the concurrence of the Minister of Finance.

“(4) Where a draft performance agreement is returned to the Commission under subsection (2)(b) of this section, the Commission shall amend it according to the directions given by the Minister and return it to the Minister.

“(5) The draft performance agreement approved for any year by the Minister under subsection (2)(a) of this section shall constitute the performance agreement between the Minister and the Commission for that year.

“(6) Where the Commission fails to comply with subsection (1) of this section, then, subject to subsection (3) of this section, the draft performance agreement shall be prepared by the Minister and that agreement shall constitute the performance agreement between the Minister and the Commission for that year.

“(7) Where the Commission fails within a reasonable time to comply to the satisfaction of the Minister with subsection (4) of this section, the Minister shall determine the amendment and approve the agreement so amended.

“(8) Subject to subsection (3) of this section, at any time during a financial year, the Minister and the Commission may in writing agree to amend the performance agreement for that year.

“(9) Subject to subsection (3) of this section, at any time during a financial year, the Minister may direct the Commission to amend any provisions of the performance agreement in respect of that year, and the Commission shall amend the performance agreement according to the directions given by the Minister.”

**3. Powers of entry and investigation**—Section 12 (1) of the principal Act is hereby amended by repealing paragraph (c), and substituting the following paragraphs:

“(c) Where the Commission believes on reasonable grounds that it is necessary to preserve or record evidence, or to prevent the tampering with or alteration, mutilation, or destruction of any place or thing involved in any manner in an accident or incident, to prohibit or restrict access of persons or classes of persons to the site of any accident or incident or to any transport related thing involved in the accident or incident:

“(d) Where the Commission believes on reasonable grounds that any transport related thing is or contains evidence relevant to the investigation of any accident or incident, to direct that the transport related thing be taken to a place nominated by the Commission.”

**4. Offences in respect of certain powers of investigation**—The principal Act is hereby amended by inserting, after section 12, the following section:

“12A. (1) Every person commits an offence who, without sufficient cause, fails to comply with a direction given by the Commission under section 12 (1) (d) of this Act.

“(2) Every person commits an offence who, without lawful authority, wilfully interferes with—

“(a) The site of any accident or incident or any transport related thing in respect of which access has been prohibited or restricted by the Commission under section 12 (1) (c) of this Act; or

“(b) Any transport related thing that the Commission has directed be taken to any place under section 12 (1) (d) of this Act.

“(3) Every person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

“(4) A member of the Police may arrest without warrant any person who the member of the Police believes on reasonable

grounds has committed, is committing, or is attempting to commit, or is otherwise concerned in the commission of, an offence against this section.”

**5. Accidents to be investigated**—The principal Act is hereby amended by repealing section 13 (as substituted by section 203 of the Maritime Transport Act 1994), and substituting the following section:

“13. (1) As soon as practicable after an accident or incident has been notified to the Commission under section 27 of the Civil Aviation Act 1990 or section 39c of the Transport Services Licensing Act 1989 or section 60 of the Maritime Transport Act 1994, the Commission shall investigate the accident or incident if,—

“(a) In the case of an aviation accident, the accident involves a foreign aircraft (being an accident that is required by the Convention to be investigated); or

“(b) The Commission believes that the circumstances of the accident or incident have, or are likely to have, significant implications for transport safety, or may allow the Commission to establish findings or make recommendations which may increase transport safety; or

“(c) In the case of an accident or incident that the Commission has decided not to investigate under paragraph (b) of this subsection, the Minister has directed the Commission to undertake an investigation in respect of that accident or incident.

“(2) Notwithstanding subsection (1) of this section, the Commission shall not investigate any maritime accident or incident where the implications of that accident or incident relate exclusively to the safety of persons employed or engaged solely to—

“(a) Maintain a ship while it is not at sea; or

“(b) Load or unload a ship; or

“(c) Both—

unless the Minister directs the Commission to investigate that accident or incident.

“(3) The duty to investigate an accident or incident referred to in subsection (1) of this section shall include the power to investigate any aviation, maritime, or rail service accident or incident that involves any combination of military and non-military persons, transport related things, or transport related services.

“(4) The Commission may investigate such additional accidents or incidents notified to it in accordance with section 27 of the Civil Aviation Act 1990 or section 39c of the Transport Services Licensing Act 1989 or section 60 of the Maritime Transport Act 1994 as it deems necessary.

“(5) If an accident or incident has not been notified to the Commission in accordance with section 27 of the Civil Aviation Act 1990 or section 39c of the Transport Services Licensing Act 1989 or section 60 of the Maritime Transport Act 1994, and the accident or incident is one that the Commission would investigate under paragraph (a) or paragraph (b) of subsection (1) of this section if it were so notified, the Commission may commence an investigation of the accident or incident.

“(6) Where an accident or incident has not been notified to the Commission in accordance with section 27 of the Civil Aviation Act 1990 or section 39c of the Transport Services Licensing Act 1989 or section 60 of the Maritime Transport Act 1994, the Minister may,—

“(a) Where the Commission has decided not to investigate the accident or incident under subsection (5) of this section; or

“(b) Where the accident is one that the Minister would direct the Commission to investigate under subsection (2) of this section if the accident had been notified to the Commission,—

direct the Commission to investigate the accident or incident, and in any such case, the Commission shall do so.

“(7) Where the Commission intends to undertake an investigation under this section, the Commission shall notify the Civil Aviation Authority, the Land Transport Safety Authority, or the Maritime Safety Authority, as the case may require, of its intention as soon as practicable.

“(8) For the purpose of subsection (3) of this section, ‘military’ means with respect to any transport related thing, a transport related thing operated by the New Zealand Defence Force or a visiting force.”