

AVIATION CRIMES BILL

EXPLANATORY NOTE

This Bill makes provision with respect to hijacking of aircraft and other acts likely to endanger aircraft and passengers on aircraft. It gives effect, so far as legislation is required, to the following Conventions:

- (a) The Hague Convention for the Suppression of Unlawful Seizure of Aircraft. This Convention deals with hijacking of aircraft.
- (b) The Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation. This Convention deals with acts of violence on aircraft and sabotage of aircraft and air-navigation facilities.
- (c) The Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft. This Convention deals with certain offences on aircraft and the powers of aircraft commanders.

The Bill also contains provisions in *clauses 11 to 14* and *clause 17* relating to taking firearms, explosives, and other dangerous substances on to aircraft and to the power to search passengers, their baggage, and cargo. These are not matters provided for in any of those Conventions.

Clause 1 relates to the Short Title and commencement.

Clauses 7 and 8 (relating to the extradition of offenders) and *clauses 15 and 16* (relating to the powers of the aircraft commander and the surrender to the Police of persons placed under restraint) are to come into force on a date to be fixed by Order in Council, and different dates may be fixed in respect of different clauses. It is intended that these clauses will be brought into force when New Zealand becomes bound by the 3 Conventions. The other provisions are to come into force on the date of the passing of the Act.

Clause 2 is the interpretation clause. *Subclause (2)* defines when an aircraft is "in flight" for the purposes of the Bill, and *subclause (3)* defines when an aircraft is "in service" for the purposes of the Bill.

Crimes Relating to Aircraft

Clause 3 defines the crime of hijacking. The clause provides that everyone commits the crime of hijacking who, while on board an aircraft in flight (whether in or outside New Zealand), unlawfully, by force or by threat of force or by any form of intimidation, seizes or exercises control, or attempts to seize or exercise control, of the aircraft.

A person convicted of hijacking may be sentenced to imprisonment for life.

Clause 4 relates to other crimes committed in connection with the crime of hijacking. It provides that everyone who, while on board an aircraft in flight outside New Zealand, does or omits anything which, if done or omitted by him in New Zealand, would be a crime, commits that crime if the act or omission is in connection with the crime of hijacking. *Subclause (2)* specifies circumstances in which, for the purposes of this clause, an act or omission is to be regarded as being in connection with the crime of hijacking.

Clause 5 defines other crimes relating to aircraft, the maximum penalty for which is imprisonment for 14 years. They are—

- (a) On board an aircraft in flight, committing an assault which is likely to endanger the aircraft.
- (b) Destroying an aircraft in service.
- (c) Causing damage to an aircraft in service which renders the aircraft incapable of flight or is likely to endanger the safety of the aircraft in flight.
- (d) Placing on an aircraft in service anything likely to destroy the aircraft or to cause damage to the aircraft which will render it incapable of flight or is likely to endanger the safety of the aircraft in flight.
- (e) Destroying, damaging, or interfering with the operation of air navigation facilities used in international navigation, if the act is likely to endanger the safety of the aircraft in flight.
- (f) Endangering the safety of an aircraft in flight by communicating to any other person information which he knows to be false and likely to endanger the safety of the aircraft in flight.

Clause 6 amends the Extradition Act 1965 by including in the list of extradition offences the crime of hijacking and any crime defined by *clause 5*.

Clause 7 provides that the crime of hijacking is to be deemed to be an extradition offence under existing extradition treaties with foreign countries which are parties to the Hague Convention, and that the crimes defined in *clause 5* are extradition offences under existing treaties with foreign countries which are parties to the Montreal Convention.

Clause 8 provides that where the surrender of any person is sought by another country under the Extradition Act 1965 (which provides for the surrender to foreign countries for trial of persons alleged to have committed an extradition offence within the jurisdiction of a foreign country) or under the Fugitive Offenders Act 1881 (U.K.) (which makes similar provision in the case of Commonwealth countries) in respect of any act or omission which amounts to hijacking or to one of the crimes defined in *clause 5* and which could be tried and punished in the country seeking surrender, and that other country is a party to the Hague Convention or the Montreal Convention, as the case may require, that act or omission will be deemed to have been committed within the jurisdiction of that other country notwithstanding that it was committed outside the territory of that country.

Clause 9 defines the jurisdiction of the New Zealand Courts to try and punish persons charged with the crime of hijacking or with crimes referred to in *clause 4* or *clause 5* of the Bill.

The effect of *subclause (1)* is that, unless the aircraft is a New Zealand aircraft, the New Zealand Courts will not have jurisdiction to try any person for the crime of hijacking or any crime referred to in *clause 4* if both the

place of take-off and the place of actual landing of the aircraft are in the territory of the country in which the aircraft is registered, except where—

- (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) The act or omission occurred in New Zealand; or
- (c) The alleged offender is present in New Zealand.

The effect of *subclause (2)* is that, unless the aircraft is a New Zealand aircraft, the New Zealand Courts will not have jurisdiction to try any person for a crime referred to in *clause 5* (except a crime described in *paragraph (e)*, which relates to destroying, damaging, or interfering with air-navigation equipment) if both the place of take-off and the place of actual or intended landing of the aircraft are in the territory of the country in which the aircraft is registered, except where—

- (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) The act or omission occurred in New Zealand; or
- (c) The alleged offender is present in New Zealand.

The effect of *subclause (3)* is that the New Zealand Courts will not have jurisdiction to try any person for the crime of hijacking or any crime referred to in *clause 4* or *clause 5* (except in *paragraph (e)* referred to above) if the aircraft is used in the military, customs, or police service of a country other than New Zealand, except where—

- (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) The act or omission occurred in New Zealand.

Clause 10 provides that section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect to crimes on ships or aircraft beyond New Zealand) and section 400 of that Act (which requires the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft) will not apply to the crime of hijacking or to any crimes referred to in *clause 4* or *clause 5* of this Bill.

Taking Firearms, Explosives, Etc., on to Aircraft

Clause 11 makes it a crime, punishable by imprisonment for not more than 5 years, if any person, without lawful authority or reasonable excuse, or without the authority of the owner or operator of the aircraft, or of a person authorised by either of them to give that authority, takes or attempts to take on board any aircraft any firearm or other dangerous or offensive weapon or device, any ammunition, any explosive substance or device, or any other injurious substance or device which could be used to endanger the safety of the aircraft or of persons on board.

Search of Passengers, Baggage, and Cargo

Clause 12 provides that it is an implied term in every contract for the carriage of any passenger by air (whether international or domestic carriage) that the passenger will, if so required, allow himself and his baggage to be searched before going on board, and that, if he declines to allow himself or his baggage to be searched, the carrier may refuse to carry him.

Such a search will not require the passenger to remove any article of clothing except a coat, and, unless the search is carried out by means of a mechanical or electrical or electronic or other similar device, the search of a female passenger must be carried out by a female searcher.

The clause also provides that it is an implied term in every contract for the carriage of cargo by air (whether international or domestic carriage) that the carrier may examine the cargo before it is loaded into an aircraft.

Clause 13 provides that where a carrier refuses to carry any person who has refused to allow himself or his baggage to be searched when a request is made under *clause 12*, and a member of the Police has reasonable grounds to suspect that a crime against the Act has been, or is being, or is likely to be, committed in relation to the aircraft on which that person is to be carried, the member of the Police may without warrant, search him and may detain him for the purposes of the search, and may take possession of any article referred to in *clause 11* found as a result of that search.

The refusal of any person to allow himself or his baggage to be searched will not of itself be a reasonable ground to suspect that a crime against the Act has been, or is being, or is likely to be, committed in relation to the aircraft.

Clause 14 provides that nothing found in the course of a search under *clause 12* or *clause 13* will be admissible as evidence in any criminal proceedings, except proceedings for a crime against the Act or for the crime of treason or for a crime punishable by imprisonment for life or for a term of 3 years or more or for an offence against section 16 of the Arms Act 1958 (which relates to the unlawful carriage of firearms, ammunition, or explosives) or for an offence against the Narcotics Act 1965.

Powers of Aircraft Commander

Clause 15 defines the powers of the commander of an aircraft and members of the crew when any person on board commits an offence or does anything which jeopardises or may jeopardise the safety of the aircraft or of persons or property on board or good order and discipline on board.

Under this provision, the commander may take with respect to that person such reasonable measures, including restraint, as may be necessary to protect the safety of the aircraft or of persons or property on board, or to maintain good order or discipline or to disembark or deliver that person in any place where the aircraft may be.

The clause includes provisions authorising members of the crew and other persons on board to assist in restraining any person at the request or with the authority of the commander, and to take such measures without that authority in an emergency.

The clause also includes provisions requiring the commander to notify the authorities in the place where the aircraft next lands of action taken to restrain any person, and authorising the commander in certain circumstances to disembark the person placed under restraint, and to deliver him to the police at the place where the aircraft lands.

A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with the provisions of this clause will not be guilty of any offence or be liable to any civil proceeding for doing so.

Clause 16 provides that a member of the New Zealand Police shall accept delivery of and arrest any person delivered to him under *clause 15* if he has reasonable grounds to believe that person of having done or omitted on the aircraft anything that is a crime against the Act or any other Act.

Clause 17 provides that if the commander of an aircraft in flight has reasonable grounds to suspect that a crime against the Act has been, or is being, or is likely to be, committed on board or in relation to the aircraft, he or any member of the crew or any other person on board authorised by him may search any person or baggage on board, and may take possession of any article found which has been or could be used to effect or facilitate the commission of a crime against the Act.

Miscellaneous Provisions

Clause 18 provides that no proceedings for the trial and punishment of any person charged with hijacking or with any crime referred to in *clause 4*, *clause 5*, or *clause 11* may be instituted in any Court except with the consent of the Attorney-General.

Clause 19 provides that nothing in *clauses 11 to 17* will apply to any aircraft used in the military, customs, or police service of any country, including New Zealand.

Clause 20 provides that where an aircraft is subject to joint or international registration, it shall be deemed for the purposes of the Bill to be registered in the country which, according to the records of the International Civil Aviation Organisation, is the country of registration.

Clause 21 provides that nothing in the Bill shall be construed as limiting the operation of the Aliens Act 1948, the Immigration Act 1964, or except as expressly provided in the Bill, the Crimes Act 1961.

Hon. Sir Roy Jack

AVIATION CRIMES

ANALYSIS

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A BILL INTITULED

5 **An Act to give effect to the provisions of the Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, and the Tokyo Convention on Offences and Certain Other Acts Committed on Board Aircraft, and for matters incidental thereto**

10 **BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

No. 45—1

1. Short Title and commencement—(1) This Act may be cited as the Aviation Crimes Act 1972.

(2) Sections 7, 8, 15, and 16 of this Act shall come into force on a date to be fixed by the Governor-General by Order in Council. Different dates may be so fixed in respect of different sections. 5

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the date of its passing.

2. Interpretation—(1) In this Act, unless the context otherwise requires,— 10

“Aircraft” has the same meaning as in the Civil Aviation Act 1964:

“Commander”, in relation to an aircraft, means the pilot for the time being in lawful command of the aircraft: 15

“Conviction on indictment” has the same meaning as in section 3 of the Crimes Act 1961:

“Military service” includes naval and air-force service; and a certificate by the Minister of Foreign Affairs that any aircraft is or is not used in military service for the purposes of this Act shall be conclusive evidence of the fact certified: 20

“New Zealand” includes all waters within the outer limits of the territorial sea of New Zealand (as defined by section 3 of the Territorial Sea and Fishing Zone Act 1965): 25

“New Zealand aircraft” means an aircraft that is registered or required to be registered in New Zealand under the Civil Aviation Act 1964:

“Ordinarily resident in New Zealand” has the same meaning as in section 4 of the Crimes Act 1961: 30

“The Hague Convention” means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on the 16th day of December 1970:

“The Montreal Convention” means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on the 23rd day of September 1971: 35

“The Tokyo Convention” means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on the 14th day of September 1963: 40

5 The terms “baggage”, “cargo”, “carrier”, “contract”, and “passenger”, in relation to any contract of carriage, have the same meanings as in section 18 of the Carriage by Air Act 1967, whether the contract of carriage is for international carriage or domestic carriage; and the term “passenger” includes a person who has reported to an employee or agent of the carrier for the purpose of going on board an aircraft pursuant to a contract to carry him as a passenger.

10 (2) For the purposes of this Act, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation:

15 Provided that in the case of a forced landing an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place assume responsibility for the aircraft and for persons and property on board the aircraft.

20 (3) For the purposes of this Act, an aircraft is in service from the time when pre-flight preparation of the aircraft by ground personnel or by the aircraft’s crew begins for a specific flight until either—

- 25 (a) The flight is cancelled; or
- (b) Twenty-four hours after the aircraft, having commenced the flight, lands; or
- (c) The aircraft, having commenced the flight, ceases to be in flight,—

whichever is the latest.

Crimes Relating to Aircraft

30 **3. Hijacking**—Everyone commits the crime of hijacking and is liable on conviction on indictment to imprisonment for life, who, while on board an aircraft in flight, whether in or outside New Zealand, unlawfully, by force or by threat of force or by any form of intimidation, seizes or exercises control, or attempts to seize or exercise control, of that aircraft.

40 **4. Crimes in connection with hijacking**—(1) Everyone who, while on board an aircraft in flight outside New Zealand, does or omits anything which, if done or omitted by that person in New Zealand, would be a crime, commits that crime if the act or omission occurred in connection with the crime of hijacking.

(2) Without limiting the generality of subsection (1) of this section, an act or omission by any person shall be deemed to occur in connection with the crime of hijacking if it was done or omitted with intent—

- (a) To commit or facilitate the commission of the crime of hijacking; or 5
- (b) To avoid the detection of himself or of any other person in the commission of the crime of hijacking; or
- (c) To avoid the arrest or facilitate the flight of himself or of any other person upon the commission of the crime of hijacking. 10

5. Other crimes relating to aircraft—Everyone commits a crime, and is liable on conviction on indictment to imprisonment for a term not exceeding 14 years, who, whether in or outside New Zealand,— 15

- (a) On board an aircraft in flight, commits an assault which is likely to endanger the safety of the aircraft; or
- (b) Destroys an aircraft in service; or 20
- (c) Causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in flight; or
- (d) Places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in flight; or 25
- (e) Destroys, damages, or interferes with the operation of any air-navigation facility used in international air navigation, where the destruction, damage, or interference is likely to endanger the safety of an aircraft in flight; or 30
- (f) Endangers the safety of an aircraft in flight by communicating to any other person any information which the person supplying the information knows to be false and likely to endanger the safety of the aircraft in flight. 35

6. Extradition Act amended—The First Schedule to the Extradition Act 1965 is hereby amended by adding to Part II (as substituted by section 4 (2) of the Extradition Amend- 40

ment Act 1969 and amended by section 3 (2) of the Narcotics Amendment Act 1970), in the appropriate columns thereof, the following words:

"The Aviation Crimes Act 1972	3 5	Hijacking Other crimes relating to aircraft"
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7. Crimes deemed to be included in extradition treaties—

- 5 (1) For the purposes of the Extradition Act 1965 and any Order in Council made under section 3 of that Act or referred to in section 21 of that Act, the crime of hijacking (including aiding, abetting, inciting, counselling, or procuring any person to commit that crime, inciting, counselling, or attempting to
- 10 procure any person to commit that crime when it is not in fact committed, and being an accessory after the fact to that crime) shall, if not already described in the treaty, be deemed to be an offence described in any extradition treaty concluded before the commencement of this section and for the time
- 15 being in force between New Zealand and any foreign country which is a party to the Hague Convention. A certificate given under the hand of the Minister of Foreign Affairs that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.
- 20 (2) For the purposes of the Extradition Act 1965 and any Order in Council made under section 3 of that Act or referred to in section 21 of that Act, each crime described in section 5 of this Act (including attempting to commit that crime, aiding, abetting, inciting, counselling, or procuring any person
- 25 to commit that crime, inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed, and being an accessory after the fact to that crime) shall be deemed to be an offence described in any extradition treaty concluded before the commencement of this
- 30 section and for the time being in force between New Zealand and any foreign country which is a party to the Montreal Convention. A certificate given under the hand of the Minister of Foreign Affairs that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.
- 35 (3) Where, pursuant to the provisions of subsection (1) or subsection (2) of this section, any crime is deemed to be an offence described in an extradition treaty, a person whose surrender is sought under the Extradition Act 1965 in respect of an act or omission which amounts to that crime shall be

liable to be surrendered in accordance with the provisions of that Act, whether the act or omission occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty. 5

(4) For the purposes of this section, the expression “foreign country” includes any territory for whose international relations the Government of a foreign country is responsible and to which the extradition treaty and the Hague Convention or, as the case may be, the Montreal Convention extends. 10

8. Surrender of offenders—(1) Where the surrender of a person is sought under either the Extradition Act 1965 or the Fugitive Offenders Act 1881 of the United Kingdom Parliament in respect of any act or omission which amounts to the crime of hijacking or to any crime described in section 5 15 of this Act (including attempting to commit any of the crimes so described, aiding, abetting, inciting, counselling, or procuring any person to commit the crime of hijacking or any of the crimes so described, inciting, counselling, or attempting to procure any person to commit the crime of 20 hijacking or any of the crimes so described when it is not in fact committed, and being an accessory after the fact to the crime of hijacking or any of the crimes so described), and for which the person whose surrender is sought could be tried and punished in the country seeking surrender, being a 25 country which is a party to the Hague Convention or the Montreal Convention, as the case may require, that act or omission shall be deemed to have been committed within the jurisdiction of that country notwithstanding that it was committed outside the territory of that country. A certificate 30 given under the hand of the Minister of Foreign Affairs that a country is a party to either Convention shall be sufficient evidence of that fact.

(2) For the purposes of this section, the term “country” includes any territory for whose international relations the 35 Government of a country is responsible and to which the extradition treaty (if any) and the Hague Convention or, as the case may be, the Montreal Convention, extends.

9. Application of sections 3, 4, and 5—(1) Nothing in section 3 or section 4 of this Act shall apply if both the place 40 of take-off and the place of actual landing of the aircraft (not being a New Zealand aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of

an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless—

- 5 (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- (b) The act or omission occurred in New Zealand; or
- (c) The alleged offender is present in New Zealand.

(2) Nothing in paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (f) of section 5 of this Act
10 shall apply if both the place of take-off and the place of actual or intended landing of the aircraft (not being a New Zealand aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is
15 subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless—

- (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- 20 (b) The act or omission occurred in New Zealand; or
- (c) The alleged offender is present in New Zealand.

(3) Nothing in section 3 or section 4 or paragraph (a), paragraph (b), paragraph (c), paragraph (d), or paragraph (f) of section 5 of this Act shall apply to aircraft used in
25 military, customs, or police service (not being aircraft used for the purposes of any of the Armed Forces of New Zealand or of the New Zealand Customs or of the New Zealand Police), unless—

- (a) The alleged offender is a New Zealand citizen or a person ordinarily resident in New Zealand; or
- 30 (b) The act or omission occurred in New Zealand.

10. Application of certain provisions of Crimes Act—
Nothing in section 8 of the Crimes Act 1961 (which relates to jurisdiction in respect of crimes on ships or aircraft beyond New Zealand) or in section 400 of that Act (which requires
35 the consent of the Attorney-General to proceedings in certain cases for offences on ships or aircraft) shall apply with respect to the crime of hijacking or to any of the crimes described in section 5 of this Act or to any crime referred to in section 4 of this Act committed in connection with the crime of
40 hijacking.

*Taking Firearms, Explosives, Etc., on to Aircraft***11. Taking firearms, explosives, etc., on to aircraft—**

(1) Everyone commits a crime, and is liable on conviction on indictment to imprisonment for a term not exceeding 5 years, who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorised by either of them to give such permission, takes or attempts to take on board any aircraft— 5

(a) Any firearm; or

(b) Any other dangerous or offensive weapon or instrument of any kind whatsoever; or 10

(c) Any ammunition; or

(d) Any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft. 15

(2) For the purposes of this section, the term “firearm” means any gun, rifle, or pistol, whether acting by force of explosives or not; and includes any such gun, rifle, or pistol which for the time being is not capable of discharging any shot, bullet, or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable; and also includes any such gun, rifle, or pistol which is for the time being dismantled. 20 25

Search of Passengers, Baggage, and Cargo

12. Terms implied in contracts of carriage—(1) It shall be an implied term of every contract providing for the carriage of any passenger by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere), wherever the contract was made and whether it was made before or after the commencement of this Act, that— 30

(a) The passenger shall, if required to do so, allow himself and his baggage to be searched by any member of the New Zealand Police, or by an officer of Customs, or by an employee or agent of the carrier authorised for that purpose, before the passenger boards any aircraft in New Zealand on which he is to be carried; and 35

(b) If the passenger declines to allow himself or his baggage to be searched, the carrier may refuse to carry him: 40

5 Provided that the refusal of the carrier to carry any passenger pursuant to any such implied term shall not affect any right that the passenger may have pursuant to the contract of carriage to any refund of the fare or any part thereof by reason of the fact that he is not carried.

(2) The following provisions shall apply with respect to any search made pursuant to any such implied term:

10 (a) The passenger shall not be required to remove any article of clothing (other than a coat or similar article), for the purpose of being searched:

(b) Except where the search is made by means of any mechanical or electrical or electronic or other similar device, no female shall be searched except by a female.

15 (3) It shall be an implied term of every contract providing for the carriage of cargo by air from a place in New Zealand to any other place (whether in New Zealand or elsewhere), wherever the contract was made and whether it was made before or after the commencement of this Act, that the carrier
20 may examine the cargo, by the employees or agents of the carrier authorised for that purpose, before the cargo is loaded on to any aircraft in New Zealand on which it is to be carried.

13. Search of persons declining to allow search—

(1) Where—

25 (a) Pursuant to the term implied in a contract of carriage by subsection (1) of section 12 of this Act a carrier refuses to carry a person who has declined to allow himself or his baggage to be searched; and

30 (b) A member of the New Zealand Police has reasonable grounds to suspect that a crime against this Act in relation to the aircraft on which that person was to be carried has been, is being, or is likely to be, committed, whether by that person or by any other person,—

35 the member of the Police may, without warrant, search that first-mentioned person and his baggage, and may detain him for the purposes of that search, and may take possession of any article referred to in paragraph (a), paragraph (b), paragraph (c), or paragraph (d) of section 11 of this Act

40 found in the course of that search.

(2) The refusal of any person to allow himself or his baggage to be searched pursuant to the term implied by subsection (1) of section 12 of this Act shall not of itself constitute reasonable grounds for suspecting that a crime against this Act in relation to the aircraft has been, is being, or is likely to be, committed. 5

(3) Every member of the New Zealand Police exercising the power of search conferred by subsection (1) of this section shall identify himself to the person searched, and shall also tell him that the search is being made pursuant to that subsection. He shall also, if not in uniform and if so required, produce evidence that he is a member of the New Zealand Police. 10

14. Evidence of offences—Nothing found in the course of a search or examination made pursuant to a term implied in the contract of carriage by section 12 or pursuant to section 13 of this Act shall be admissible as evidence in any criminal proceedings against the person who, or whose baggage, has been searched, or, as the case may be, the consignor of any cargo that has been examined, other than proceedings in respect of a crime against this Act or the crime of treason or any crime punishable by imprisonment for life or for a term of imprisonment of 3 years or more, or in respect of an offence against section 16 of the Arms Act 1958 (which relates to the unlawful carriage or possession of firearms, ammunition, or explosives), or in respect of an offence against the Narcotics Act 1965. 15 20 25

Powers of Aircraft Commander

15. Powers of aircraft commander—(1) Without limiting the provisions of section 60 of the Crimes Act 1961, if the commander of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that any person on board the aircraft has done or is about to do on board the aircraft— 30

- (a) Anything which is an offence under the law of the country in which the aircraft is registered (not being a law of a political nature or a law based on racial or religious discrimination); or 35

(b) Anything (whether an offence or not) which jeopardises or may jeopardise—

- 5 (i) The safety of the aircraft or of persons or property on board the aircraft; or
- (ii) Good order and discipline on board the aircraft,—

the commander may take with respect to that person such reasonable measures, including restraint, as may be necessary—

- 10 (c) To protect the safety of the aircraft or of persons or property on board the aircraft; or
- (d) To maintain good order and discipline on board the aircraft; or
- 15 (e) To enable the commander to disembark or deliver that person in accordance with subsection (4) or subsection (5) of this section.

(2) Any member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the commander of the aircraft, and any member
 20 of the crew shall if so required by the commander, assist in restraining any person whom the commander is entitled under subsection (1) of this section to restrain. Any member of the crew and any other person on board the aircraft may, without the commander's authority, take with respect to any person
 25 on board the aircraft such reasonable measures, including restraint, as he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(3) Any restraint imposed on any person on board an
 30 aircraft under the powers conferred by subsection (1) or subsection (2) of this section shall not be continued after the aircraft ceases to be in flight, unless the commander of the aircraft notifies the appropriate authorities of the country in which the aircraft ceases to be in flight, either before or as soon
 35 as reasonably practicable after that time, that a person on board is under restraint and of the reasons for such restraint, but, provided that notification has been given, restraint may be continued—

- 40 (a) For any period (including the period of any further flight) between that time and the first occasion thereafter on which the commander is able with the requisite consent of the appropriate authorities to

disembark or deliver the person under restraint in accordance with subsection (4) or subsection (5) of this section; or

(b) If the person under restraint agrees to continue his journey under restraint on board that aircraft. 5

(4) If the commander of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether an offence or not) which jeopardises or may jeopardise—

(a) The safety of the aircraft or of persons or property 10
on board the aircraft; or

(b) Good order and discipline on board the aircraft,—
he may, if he considers it necessary to do so in order to protect the safety of the aircraft, disembark that person in any country in which the aircraft may be. 15

(5) If the commander of an aircraft has reasonable grounds to believe that any person on board the aircraft has done on board the aircraft anything which in the commander's opinion is a serious offence under the law of the country in which the aircraft is registered, he may deliver that person— 20

(a) In New Zealand, to any member of the New Zealand Police; or

(b) In any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a member of the New 25
Zealand Police.

(6) If the commander of an aircraft disembarks any person pursuant to subsection (4) of this section, in the case of a New Zealand aircraft, in any country, or, in the case of any other aircraft, in New Zealand, he shall report the fact of, 30
and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation (being, in New Zealand, a member of the New Zealand Police).

(7) If the commander of an aircraft intends to deliver any person in accordance with subsection (5) of this section in 35
New Zealand or, in the case of a New Zealand aircraft, in any other country which is a party to the Tokyo Convention, he shall, before or as soon as practicable after landing, give notification of his intention and of the reasons for his intention to an appropriate authority in that country (being, in New 40
Zealand, a member of the New Zealand Police).

(8) Any commander of an aircraft who without reasonable cause fails to comply with the requirements of subsection (6) or subsection (7) of this section is liable on summary conviction to a fine not exceeding \$400.

5 (9) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with the provisions of this section is not guilty of an offence and is not liable to any civil proceeding in respect of those measures.

10 **16. Arrest of persons delivered to Police**—(1) Any member of the New Zealand Police shall accept delivery of a person whom the commander of an aircraft seeks to deliver to him in accordance with subsection (5) of section 15 of this Act if
 15 done or omitted on board that aircraft anything that is a crime against this Act or any other Act.

(2) Where any member of the New Zealand Police accepts delivery of a person under subsection (1) of this section, he shall forthwith arrest that person.

20 **17. Power to search persons on aircraft**—If the commander of an aircraft in flight has reasonable grounds to suspect that a crime against this Act has been, is being, or is likely to be, committed on board or in relation to that aircraft, he, or any member of the crew of the aircraft or any other person
 25 on board the aircraft authorised by him to do so, may search any person or baggage on board the aircraft, and may take possession of any article found which has been used or could be used to effect or facilitate the commission of a crime against this Act.

30 *Miscellaneous Provisions*

18. Attorney-General's consent required to prosecutions—No proceedings for the trial and punishment of any person charged with a crime against section 3 or section 4 or section 5 or section 11 of this Act shall be instituted in any Court

35 except with the consent of the Attorney-General:

Provided that a person charged with any such crime may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to
 40 the institution of a prosecution for the crime has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

19. Aircraft in military, customs, or police service—Nothing in sections 11 to 17 of this Act shall apply to aircraft used in the military, customs, or police service of any country, including New Zealand.

20. Joint registration of aircraft—Where an aircraft is 5
subject to joint or international registration, it shall be deemed for the purposes of this Act to be registered in the country which, according to the records of the International Civil Aviation Organisation, is the country of registration.

21. Other Acts not affected—Nothing in this Act shall be 10
construed to limit or affect the operation of any provision of the Aliens Act 1948, or of any provision of the Immigration Act 1964, or, except as expressly provided in this Act, of any provision of the Crimes Act 1961.