

# **Civil Aviation Amendment Bill (No 2)**

Government Bill

As reported from the Transport and Industrial Relations Committee

## **Commentary**

### **Recommendation**

The Transport and Industrial Relations Committee has examined the Civil Aviation Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

### **Purpose of the bill**

The Civil Aviation Amendment Bill (No 2) (the bill) in amending the Civil Aviation Act 1990 (the Act) alters the present aviation medical certification process. The bill inserts new Part 2A on medical certification into the Act. The Government introduced the bill to improve the regulation of medical certification, to ensure the Director of Civil Aviation (the Director) has sufficient legal powers and to validate past decisions. The bill addresses two distinct areas: the Director's lack of legal powers and the organisation of the issuing of medical certificates. Under the current legislation, although the Director is responsible for ensuring that only medically fit persons are able to fly, the Director has insufficient powers to carry out those responsibilities.

### **Background**

This commentary focuses on the major issues in the bill and the main amendments we are recommending. We have not outlined here in any depth the background issues surrounding this bill. The issues

covered in the bill have generated much debate and tension between the aviation industry, the aviation medical community, and the Civil Aviation Authority (CAA) about this bill. We spent many hours hearing evidence and particularly on the issues that led to the introduction of the bill. Approximately 90 percent of the submissions are opposed to the bill. In fact we heard diametrically opposed opinions about its necessity. We are concerned about the apparent breakdown in the relationship between the CAA and sections of the aviation industry, especially the general aviation community. We are not prepared to attribute blame. However, we observe the problem to be severe to the degree that we are appalled by the polarised views of various sectors. We believe it is incumbent upon all parties to make every effort to heal the rifts.

We implemented natural justice procedures during the hearing of evidence but do not believe it is appropriate to discuss these issues in this commentary because they related mainly to the past operations of the medical certification process.

The ‘one percent’ threshold test that relates to cardiovascular risk of pilots is not part of this bill, although it was discussed in a number of submissions. The Minister of Transport has appointed a panel to review the medical standards in the Civil Aviation Rule Part 67. CAA’s implementation of this policy outside the legislation and rules led to CAA’s discovery that the Director did not have sufficient legal authority over the medical certification process.

### **Current medical certification system**

Currently, the medical assessment of pilots, air traffic controllers, and flight engineers (licence holders) has largely been devolved to designated private sector doctors. An Aviation Medical Assessor (AMA) assesses licence holders’ medical records compiled by Designated Medical Examiners (DMEs) who conduct the physical examination of licence holders. The medical certificates, legally constituted under Rule 67.09, Civil Aviation Rules Part 67, can only be issued by an AMA. Pilots, air traffic controllers and flight engineers hold a lifetime licence issued by the Director under the Act. The licence is dependent on the licence holder having a current medical certificate. The medical certificates are valid for differing periods. For example, the medical fitness of most airline pilots over the age of 40 is assessed every six months.

Although the Director has general responsibility for aviation safety, aside from a power to conduct special medical assessments referred

by applicants and the power to appoint AMAs, the Director has had little legal control over the medical certification process. The Director does not have the power to revoke or withdraw a medical certificate. The Director's legal authority to disengage an AMA is unclear. As a result we concluded that the Director's ability to discharge fully his responsibilities as regulator was compromised.

In addition, the CAA became concerned about deficiencies in the current medical certification system after it commenced on-site auditing of some AMAs in 1999. Following the implementation of the devolved system robust auditing of the medical certification process was intended to occur. This did not happen. CAA's failure to conduct effective auditing has meant mistakes in medical assessments were not identified which led to an apparent drift in assessment standards. In May 2000 the Director commissioned Professor Sir John Scott and Professor Des Gorman to conduct an independent review of the medical certification system. They concluded that the medical assessment system was fundamentally flawed. Their report was not only critical of some doctors' performance but also of the system design, the examination process for AMAs and the levels of auditing carried out. Many submitters disputed the findings of this report and did not agree about the extent of the problems in the current medical system.

Legal advice given to the CAA after the decision of the District Court in the *Civil Aviation Authority of New Zealand v Presland* case has confirmed the uncertainty of the Director's powers in the medical certification system. These legal uncertainties together with errors discovered in the medical assessments prompted the Government to introduce this bill urgently.

### **Consideration of the bill**

While we accept the Director's legal powers are uncertain, we are not convinced that the immediate aviation safety problems in the current medical certification process are as serious as portrayed. We believe that the CAA should have consulted the aviation industry before the bill was introduced and we disagree that public safety was so compromised that consultation could not have taken place. We maintain that if the CAA had undertaken any effective auditing of AMAs from the establishment of the system many of the issues the CAA is now facing would not have arisen.

The select committee process has helped to air and resolve many of the grievances within the aviation industry about this bill. We enabled the Ministry of Transport and the CAA to discuss possible amendments with the aviation industry during our consideration.

We found it surprising that Cabinet papers obtained by others under the Official Information Act 1982, that were relevant to issues in the bill, were not provided to us.

It is important that the Director has clear legal responsibility for the medical certification system. Although it is important to centralise the system legally, we do not support the centralisation of all operational functions as originally proposed. Accordingly we are recommending significant changes. We expressed our preference for a decentralised system early in the consideration of this bill. Initial advice was that this was not immediately desirable however, at a later stage proposed amendments were put forward that allowed the amended bill to proceed. National, ACT and New Zealand First members are concerned that such a significant amendment was proposed so late, minimising the time for effective consideration. Therefore, we required an extra extension of time for consideration.

We also emphasise that for a co-operative working relationship to result from this bill, the CAA must consult widely among the aviation industry and the aviation medical community on the operational functions that underpin this bill. We hope the passage of this substantially amended bill will provide a turning point.

## **Interpretation**

We recommend a new clause 3A be inserted in section 2 of the Act, which includes definitions that will apply to the whole Act rather than just to new Part 2A inserted by this bill. Included in this list are new terms as a consequence of amendments we are recommending such as “convener”, “deputy convener”, and “specified examination”.

We have omitted the terms “medical advisory panel” and “medically unfit” as explained later. Some definitions remain in clause 4, which inserts new Part 2A in the Act, as they only apply to the medical certification process.

## **Definition of aviation examiner**

The definition of “aviation examiner” is unclear. We recommend a change to make it certain that the definition enables the CAA to

build up a wide pool of health professionals and medical practitioners that can be used by the Director as necessary to conduct specified examinations.

## **Medical fitness**

We agree with submitters who criticised the inclusion of the term “medically unfit”. We recommend the replacement of this term with the concept of licence holders being fit to exercise safely every privilege to which the medical certificate relates. The privileges relate to the aviation document, the licence. The medical certificate is an “other document” in terms of section 12 of the Act that is required before privileges may be exercised.

## **Director to issue medical certificate**

We consider the provision in clause 4 inserting new section 27C into the Act, which provides for the Director to be legally responsible for the medical certification of applicants, is one of the fundamental premises of this bill. While there is a general provision in the Act that enables the Director to delegate functions and powers, we have inserted an enabling clause within this Part to highlight this power. In addition, we felt it necessary to make it clear that delegation was required for standard medical assessments.

We recommend in new section 27OA inserted by clause 4 that the Director must delegate to suitably qualified medical examiners the power to issue medical certificates to any person who meets all the medical standards or who otherwise meets the criteria for standard medical assessment as prescribed in the rules or transitional criteria prescribed by the Minister of Transport. This amendment will ensure all standard medical assessments are delegated to medical examiners outside of the CAA. We anticipate that this amendment means only a small number of medical assessments will not be delegated. People whose health assessments will require careful consideration will be those who have health issues that may impact on their ability to fly safely.

We felt it important that there was a limited time of 30 working days in which the Director must issue medical certificates after receiving the report of the medical examiner. This provision is included in new section 27C in clause 4.

The new section 27C (2) inserted into the Act by clause 4 still allows for the Director to exercise discretion and issue medical certificates

in special cases subject to appropriate conditions and limitations. We believe this provision can be improved by the inclusion of the principles of Annex 1 of the Convention on International Civil Aviation. This ensures that if the Director imposes conditions and limitations on a medical certificate he or she must have regard to such matters as the ability, skill and experience of the applicant, the operational conditions under which the applicant uses his or her licence, whether or not the conditions and limitations allow the applicant to operate safely and other relevant information.

We recommend that the time required to conduct and deliver the results on any test, examination or re-examination, or time required to provide any medical information required by the Director will not be included in the 30 working day period in which the Director must issue a medical certificate.

### **Powers to extend**

We recommend amendments to new section 27F inserted by clause 4 that enable the Director to grant an extension of no more than 60 days from the expiry date of a licence holder's existing medical certificate. The Director could delegate this power to extend.

### **Delegation of powers**

New sections 27G and 27H of the Act, inserted by clause 4, deal with examiners and cancelling the designation of examiners. The current provisions on examiners raised much concern among submitters. We agreed, as stated above, that the medical certification system should be centralised legally but are of the view that the actual operational functions of issuing standard medical certificates be delegated to examiners.

We considered the Australian and the American medical certification systems. In both systems, all medical assessments are reviewed by the regulating authority but limited certification functions are delegated to the examining doctors. Our preference was for the American system and our recommendations reflect this.

We recommend new section 27O inserted in clause 4 that will allow the Director to delegate his powers to registered medical practitioners who are CAA employees. We recommend new section 27OA(1) that will enable the Director to delegate his or her functions and

powers under new Part 2A other than the power to revoke certificates. In addition, we recommend new section 27OA(2) that will require the Director to delegate the power to issue medical certificates under section 27C(1) or criteria specified in rules, for routine medical assessments, to suitably qualified medical examiners.

We recommend a provision in new section 27I(2) inserted by clause 4 that enables the Director, by written notice, to withdraw the medical certificate within 60 days if the Director has delegated the authority under new section 27OA to an examiner to issue a medical certificate.

### **Designation of aviation and medical examiners**

We recommend that the Director must designate aviation examiners and medical examiners by way of issuing an aviation document. The Act details the powers of the Director in relation to aviation documents and the requirements that apply to aviation documents. The provisions in the Act on aviation documents would require the selection criteria and removal of examiners to be spelt out in a civil aviation rule and ensure that consultation is carried out. As rulemaking will take about 18 to 24 months, we recommend in the interim that the Minister of Transport determine selection criteria for examiners. The transitional provisions we recommend are in new section 27OC inserted by clause 4.

We recommend the omission of the proposed section 27H inserted by clause 4, which covered the cancelling of the designation of examiners. Some submitters were concerned that there were no safeguards for examiners dismissed by the Director and that there was no administrative process for counselling poor-performing doctors. As we are proposing that notice of designation of examiners will be an aviation document, such issues will now be addressed by the requirements in the Act. The Act provides a natural justice regime for the appointment, non-appointment, suspension and revocation of document holders.

### **Changes in medical conditions**

We believe it is important that the Director is informed about serious changes in the medical condition of aviation personnel as provided in clause 4, which inserts new section 27D in the Act. The CAA will advise the aviation industry and medical community through exceptions under new section 27H on what types of medical conditions

should be reported. The CAA, in discussion with members of the aviation industry and the medical community, will give advice on how operators and pilots can manage the expectations placed on them by this provision.

We also consider it important to include that the licence holder be required to report not only changes in medical conditions but also any previously undetected medical conditions the licence holder becomes aware of that may affect the safe exercise of licence privileges.

We agree with some submitters that the requirement on an aviation examiner, medical examiner or operator to report a change in the licence holder's medical condition if they "suspect" a change is a low threshold. We recommend an amendment to this requirement to state if an examiner or operator is "aware of, or has reasonable grounds to suspect" a change in the medical condition to be required to report this. The word "suspects" has been similarly replaced in other provisions.

We agree with two submitters that an indemnity provision is required. We recommend the inclusion in clause 4, which inserts new section 27D in the Act, a new indemnity provision to protect aviation examiners, medical examiners or registered medical practitioners from honest disclosure.

## **General and emergency medical directions**

We recommend that clause 4 contain a replacement section 27H on general and emergency directions. We agree with submitters that the Director must consult with the aviation industry and other relevant persons or organisations before issuing general directions for conducting medical examinations of applicants and licence holders, reporting the results of the examinations and providing exceptions for temporary medical conditions. The general directions must be notified in writing to the examiners and be incorporated in a medical manual issued by the Director.

We consider it is important that the Director has the power in an emergency situation to issue medical directives without consultation, and recommend such a provision be included in section 27H inserted by clause 4. These directives must be published as soon as practicable in the *Gazette* and expire 90 days after the date on which they were issued. It is intended that the Director would consult affected parties as soon as practicable after issuing the emergency

directions and before they are incorporated into the medical manual as a general direction.

## Review procedures

The original intention of including the provision of a medical advisory panel was to provide the Director with advice on medical matters, particularly on complex assessment cases. The only right of appeal for applicants was to the District Court. We concur with the aviation industry that appealing to the District Court would be too costly and could result in lengthy delays in hearing cases. We believe there should be a more accessible intermediate step.

We are proposing new provisions be included that establish a review body for applicants as well as a source of independent advice for the Director to consult. We recommend amendments to new sections 27K, 27L, 27M and 27N in clause 4.

The provisions set out the procedures for the appointment, and cancelling the appointment, of a convener and deputy convener by the Minister of Transport. The convener and deputy convener are to be experienced and suitably qualified medical practitioners and be able to represent the public interest in aviation safety.

The recommended changes enable an applicant who has received an unfavourable medical certification decision from the Director to approach the convener for a review of the Director's decision. The convener will not be able to review decisions in which he or she has any conflict of interest. The convener must draw on advice of people with expertise relevant to the case being considered. Thereby membership of a review panel may change depending on the case under review. We expect a pool of experienced people that the convener could call on will be built up over time. The convener will make a recommendation to the Director who will bear legal responsibility for the final decision. Applicants will still have the right of appeal to the District Court.

The convener, together with any additional specialists, would also be available for the Director to consult on medical matters including, for example, the content of the medical manual.

The Director may also, with the prior agreement of an applicant, refer cases to the convener before he or she makes a decision. The applicant would also have the right to bring medical evidence to the convener for consideration. If the applicant did not agree to a joint application to the convener (we believe these cases would be rare)

the Director would decide, and the applicant could have recourse to the convener for a second opinion.

### **Timing of review and final decision**

We recommend new sections 27M and 27N inserted in the Act include various time parameters. For example, the convener must review a request “as soon as practicable” and the convenor must report the results of the review to the Director in writing “as soon as practicable”. We propose that the Director must make a decision within ten working days of receiving the convener’s report and provide the person who asked for a review or agreed to a review with copy of the convener’s report and the Director’s final decision.

### **Convener’s fees**

We recommend a new clause 4C. This clause inserts a paragraph in section 38(1) of the Act to provide for reimbursing the convener and the CAA for costs incurred in the review of medical certification cases. The Governor-General sets the fees and charges in the relevant regulations. The Ministry of Transport assured us that when it makes recommendations to the Governor-General on setting fees and charges that it follows the guidelines issued by Audit New Zealand.

### **Revocation, suspension, amendment, and surrender of medical certificate**

A number of submitters were concerned that new section 27J in clause 4 does not include the notion that the Director must have “reasonable grounds” to use the power to suspend or revoke a medical certificate. We agree with their concerns and recommend that the term “reasonable grounds” be included in the provision.

Because we propose that the authority to issue medical certificates may be delegated to examiners, we recommend that the Director can suspend, revoke, amend or impose conditions, restrictions, or endorsements on a medical certificate if he or she has reasonable grounds to believe that person with delegated authority has not acted in accordance with the Act or the terms of the delegated authority.

### **Period of suspension of medical certificate**

We agree with submitters who maintain that the suspension provision in the proposed section 27J(1) and (2) in clause 4 is too open-

ended and may lead to lengthy delays before the Director makes a decision on a particular case. We believe that the provision can be improved by differentiating between the process of suspension (while the Director considers any further immediate action such as tests) and the process of finding someone temporarily unfit.

We recommend an amendment that applies a set period of ten working days for the initial suspension and a further extension period of suspension with a maximum of 20 working days from the date of initial suspension.

## **Validation provisions**

The validation provisions, in new section 27N inserted into the Act by clause 4, are controversial provisions for the aviation industry. The industry was particularly unhappy with subsections (3) and (4) of new section 27N which denies compensation if legal proceedings are taken against the Director. We are of the view that people who are aggrieved should not be precluded from the right to seek compensation against the CAA and to take judicial review proceedings if they believe the CAA has acted unreasonably, has failed in a duty of care, or has acted in bad faith. We are recommending the deletion of these subsections inserted by clause 4.

There are legal uncertainties about the current abilities of the Director to sign medical certificates because of the deficiencies in Rule Part 67. We do not believe, as some submitters argued, that this could be completely solved by relying on administrative routes such as returning medical certificates to AMAs for signing. We believe it is appropriate that this bill validate documents over which there is legal uncertainty. We recommend new section 27OC be inserted in the Act by clause 4. The provisions do not allow past medical certification decisions to be challenged on the basis that the decision lacked proper authority, however, the right to challenge on other grounds is preserved.

## **Other provisions**

### **Title**

We believe it is important, where possible, that bills that amend principal Acts be given descriptive titles rather than a numerical title. We recommend an amendment to clause 1 to change the title of the Act, when this bill is enacted, to the Civil Aviation (Medical Certification) Amendment Act.

## **Commencement**

We recommend the bill come into force on 3 September 2001. This will allow implementation work such as appointment of examiners and preparation of delegations to be undertaken. We acknowledge that this date may need to be changed during the consideration of the bill in the Committee of the whole House.

## **Medical certificates must be carried**

We do not believe it is necessary for a licence holder to be required to always carry his or her medical certificate with their licence. We recommend that new section 27B inserted by clause 4 be omitted.

## **Conclusion**

We have spent much longer considering this bill than is usual and had difficulty determining the facts leading to its introduction. The extreme divergence of views between many of the submitters and CAA, together with the haste with which the bill was introduced and intended to be passed, plus subsequent media attention, made our job more difficult. At several points in our consideration members considered recommending that the bill not proceed. However, we considered it was better to achieve a workable solution from the bill before us than begin again. Therefore, in order to make progress, we enabled the officials to work through outstanding issues with representatives of the aviation industry. We have scrutinised and debated advice received and recommend substantial amendments to the bill. We are confident that the bill is greatly improved.

## **Appendix**

### **Committee process**

The Civil Aviation Amendment Bill (No 2) was referred to the committee on 27 February 2001. The closing date for submissions was 9 March 2001. We received and considered 86 submissions from interested groups and individuals. We heard 28 submissions orally, which included holding hearings in Wellington. Hearing evidence took 16 hours 25 minutes and consideration took 27 hours 15 minutes.

We received advice from the Ministry of Transport and the Civil Aviation Authority.

### **Committee membership**

Harry Duynhoven (Chairperson)

Belinda Vernon (Deputy chairperson)

Peter Brown

Willie Jackson

Sue Kedgley

Hon Murray McCully

Simon Power

H V Ross Robertson

Penny Webster

Dianne Yates (to 19 June 2001)

Hon Tariana Turia (from 19 June 2001)

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## Key to symbols used in reprinted bill

### As reported from a select committee

#### **Struck out (unanimous)**

~~Subject to this Act,~~

Text struck out unanimously

#### **New (unanimous)**

Subject to this Act,

Text inserted unanimously

*(Subject to this Act.)*

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

*Hon Mark Gosche*

**(Civil Aviation Amendment Bill (No 2))  
Civil Aviation (Medical Certification)  
Amendment Bill**

Government Bill

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**Schedule  
Consequential amendments to principal Act**

**The Parliament of New Zealand enacts as follows:**

**1 Title**

**Struck out (unanimous)**

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- (1) This Act is the Civil Aviation Amendment Act **(No 2) 2001.**
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**New (unanimous)**

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- (1) This Act is the Civil Aviation (Medical Certification) Amendment Act **2001.**
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- (2) In this Act, the Civil Aviation Act 1990<sup>1</sup> is called “the principal Act”.

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<sup>1</sup> 1990 No 98

**New (unanimous)**

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**Part 1**  
**Preliminary provisions**

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**Struck out (unanimous)**

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**2 Commencement**

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This Act comes into force on the day after the date on which it receives the Royal assent.

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**New (unanimous)**

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**2 Commencement**

This Act comes into force on **3 September 2001.**

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**3 Purpose**

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The purpose of this Act is to amend the principal Act by incorporating provisions that—

- (a) enhance the safety of civil aviation by improving the regulation of medical certification; and

- (b) validate existing medical certificates and certification decisions.

New (unanimous)

## Part 2 Amendments to principal Act

3A	<b>Interpretation</b>	5
	Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:	
	“aviation examiner” means a health professional; and includes any registered medical practitioner to whom the Director has issued an aviation document under <b>section 27G(2)</b> or <b>section 270C(7)(c)</b> to conduct specified examinations under <b>Part 2A</b>	10
	“convener” means a registered medical practitioner appointed as convener by the Minister under <b>section 27K</b> or the deputy convener acting as convener	15
	“deputy convener” means a registered medical practitioner appointed as deputy convener by the Minister under <b>section 27K</b>	
	“medical examiner” means a registered medical practitioner to whom the Director has issued an aviation document under <b>section 27G(1)</b> or <b>section 270C(7)(b)</b> to conduct examinations under <b>section 27E</b>	20
	“specified examination” means—	
	“(a) an examination of visual and colour perception; or	
	“(b) an examination of hearing; or	
	“(c) a psychological examination; or	
	“(d) any other class of examination prescribed in the rules”.	25

## 4 New Part 2A inserted

The principal Act is amended by inserting, after Part 2, the following Part:

## “Part 2A

### “Medical certification

#### “27A Interpretation

“(1) In this Part, unless the context otherwise requires,—

“**applicant** means a person who has applied for a medical certificate; and includes a licence holder who has reapplied for a medical certificate

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**Struck out (unanimous)**

“**aviation examiner** means a person designated by the Director under **section 27G(2)(b)**

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“**examiner** means a person designated by the Director as a medical examiner or an aviation examiner

“**licence holder** means a person who—

“(a) holds an aviation document or is a (*student*) pilot; and

**Struck out (unanimous)**

“(b) is required under the rules to hold a current medical certificate

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**New (unanimous)**

“(b) holds, or is required under the rules to hold, a medical certificate

**Struck out (unanimous)**

“**medical advisory panel** means the panel appointed by the Director to advise on aviation medical matters under **section 27L**

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“**medical certificate** means a certificate issued by the Director under this Part to an applicant or licence holder

**New (unanimous)**

“operator includes an air traffic service provider.

**Struck out (unanimous)**

“medical examiner means a registered medical practitioner designated by the Director under **section 27G(2)(a)**

“medically unfit means the existence of any incapacity, risk of incapacity, or characteristic that interferes with or may interfere with the safe exercise of the privileges of a licence holder.

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“(2) *(To avoid doubt,) A medical certificate is not an aviation document.*

**New (unanimous)**

“(3) In this Part, the phrase **privileges to which a medical certificate relates**, and its variations, means those privileges under this Act that may be exercised by a person who—

- “(a) holds a current aviation document; or
- “(b) is permitted under the rules to operate an aircraft solo as a pilot.

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**Struck out (unanimous)**

**“27B Medical certificate required**

“(1) A licence holder must carry the appropriate current medical certificate whenever exercising any privilege to which the medical certificate relates.

“(2) Every licence holder must produce his or her medical certificate whenever required to do so by the Director.

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“(3) Except where required by the rules to produce a medical certificate immediately, a licence holder complies with the requirement in **subsection (2)** if he or she produces the medical certificate within 24 hours of the Director’s request at a place specified by the Director.

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**Struck out (unanimous)**

- “(4) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who fails to comply with subsection (2) or subsection (3).

**“27C Director to issue medical certificate**

- “(1) The Director may issue a medical certificate to an applicant with any conditions, restrictions, or endorsements. 5
- “(2) The Director must not issue a medical certificate if the Director has reasonable grounds to believe that an applicant—  
    “(a) is medically unfit; or  
    “(b) would be medically unfit in the absence of any conditions, restrictions, or endorsements placed on the medical certificate by the Director. 10
- “(3) Before issuing a medical certificate, the Director—  
    “(a) must have regard to the report of the medical examiner and such other information that may be relevant; and  
    “(b) may require the applicant, at the applicant’s expense, to undertake any other tests, examinations, or re-examinations, or provide any medical information, as the Director reasonably considers necessary to assess the medical fitness of the applicant. 15
- “(4) The Director must maintain a current register of medical certificates issued under this section. 20

**“27D Changes in medical conditions**

- “(1) If a licence holder suspects or becomes aware of any change in his or her medical condition that indicates that he or she may be medically unfit, the licence holder—  
    “(a) must advise the Director of the change as soon as practicable; and  
    “(b) may not exercise the privileges of the licence holder. 25
- “(2) If an examiner or operator suspects or becomes aware of any change in the medical fitness of a licence holder, being a change that has made or may make the person medically unfit, the examiner or operator must advise both the licence holder and the Director of the change as soon as practicable. 30

**Struck out (unanimous)**

- “(3) If a registered medical practitioner has reasonable grounds to believe that a person is a licence holder and suspects or becomes aware of any change in the medical fitness of the licence holder that could adversely affect the medical fitness of the licence holder, the registered medical practitioner must advise the Director of the change.”

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**New (unanimous)**

**“27C Power of Director to issue medical certificate**

- “(1) After considering an application for a medical certificate, the Director must, as soon as practicable but no later than 30 working days after the date of receiving the report of the medical examiner, issue the medical certificate if he or she is satisfied that the applicant meets the medical standards prescribed in the rules, unless the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.
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- “(2) Despite subsection (1), the Director may issue a medical certificate to the applicant if the Director—
- “(a) is satisfied that the applicant is fit to exercise safely every privilege to which the medical certificate relates; or
- “(b) is satisfied that the applicant is able to exercise safely every privilege to which the medical certificate relates if exercising those privileges in accordance with any conditions, restrictions, or endorsements imposed on the medical certificate.
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- “(3) The Director may impose any conditions, restrictions, or endorsements on a medical certificate issued under this section.
- “(4) Before issuing a medical certificate, the Director—
- “(a) must have regard to the report of the medical examiner and any other information that may be relevant; and
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- 30

New (unanimous)

- “(b) may require the applicant, at the applicant’s expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the Director reasonably considers necessary to assess the applicant.
- “(5) If the Director requires an applicant to undertake any other test, examination, or re-examination, or to provide any medical information, the period in which the Director must make a decision in relation to the medical certificate under this section does not include the number of days that are required to conduct and deliver the results of the test, examination, or re-examination, or to provide the medical information, to the Director.
- “(6) Before imposing conditions, restrictions, or endorsements on a medical certificate, the Director must have regard to—
- “(a) any relevant ability, skill, and experience of the applicant; and
  - “(b) the operational conditions under which the applicant is likely to exercise the privileges to which the medical certificate relates; and
  - “(c) whether or not any conditions, restrictions, or endorsements are necessary to enable the applicant to exercise safely the privileges to which the medical certificate relates; and
  - “(d) the report of the medical examiner and any other information that may be relevant.
- “(7) The Director must maintain a register of current medical certificates issued under this section.
- “(8) Any decision made under this section by the Director in relation to a medical certificate other than a decision under **subsection (4)(b)** is subject to **section 27M** (review of decisions regarding medical certificates or applications).

**New (unanimous)**

**“27D Changes in medical condition of licence holder**

- “(1) Subject to any directions that the Director may issue under **section 27H(1)(b)**, if a licence holder is aware of, or has reasonable grounds to suspect, any change in his or her medical condition or the existence of any previously undetected medical condition that may interfere with the safe exercise of the privileges to which his or her medical certificate relates, the licence holder—
- “(a) must advise the Director of the change as soon as practicable; and
- “(b) may not exercise the privileges to which the licence holder’s medical certificate relates.
- “(2) Subject to any directions that the Director may issue under **section 27H(1)(b)**, if an aviation examiner or medical examiner or operator is aware of, or has reasonable grounds to suspect, any change in the medical condition of a licence holder or the existence of any previously undetected medical condition in the licence holder that may interfere with the safe exercise of the privileges to which the licence holder’s medical certificate relates, the aviation examiner or medical examiner or operator must advise both the licence holder and the Director of the change as soon as practicable.
- “(3) Subject to any directions that the Director may issue under **section 27H(1)(b)**, if a registered medical practitioner has reasonable grounds to believe that a person is a licence holder and is aware, or has reasonable grounds to suspect, that the licence holder has a medical condition that may interfere with the safe exercise of the privileges to which the licence holder’s medical certificate relates, the registered medical practitioner must, as soon as practicable,—
- “(a) inform the licence holder that the Director will be advised of the condition; and
- “(b) advise the Director of the condition.
- “(4) An aviation examiner or medical examiner or a registered medical practitioner is not subject to any civil or criminal liability for—

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**(Civil Aviation Amendment (No 2))**  
**Civil Aviation (Medical  
Certification) Amendment**

Part 2 cl 4

**New (unanimous)**

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|---|----|
| “(a) doing an indemnified act in good faith in the course of carrying out his or her functions under this Part; or  | 5  |
| “(b) doing an indemnified act in good faith in the course of answering any questions put to him or her by the Director that—  | 5  |
| “(i) concern a licence holder; and  | 5  |
| “(ii) are relevant to any action the Director may take under this Part.   | 5  |
| “(5) In this section, <b>indemnified act</b> means any of the following acts:   | 10 |
| “(a) advising the Director, whether in writing or otherwise, that a licence holder—   | 10 |
| “(i) may not meet the medical standards prescribed in the rules; or   | 10 |
| “(ii) may be unable to exercise safely the privileges to which the licence holder’s medical certificate relates;  | 15 |
| “(b) expressing to the Director, whether in writing or otherwise, an opinion that the licence holder who the aviation examiner or medical examiner or registered medical practitioner has examined or treated may be unable to exercise safely the privileges to which the licence holder’s medical certificate relates because of— | 20 |
| “(i) illness or any bodily or mental infirmity, defect, incapacity, or risk of incapacity suffered by the licence holder; or  | 25 |
| “(ii) the effect on the licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity;  | 25 |
| “(c) stating to the Director, whether in writing or otherwise,—   | 30 |
| “(i) the nature of a licence holder’s illness, infirmity, defect, incapacity, or risk of incapacity; or   | 30 |
| “(ii) the effect on a licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity.  | 35 |

**“27E Medical examination, report, and disclosure**

- “(1) Before the Director issues a medical certificate, an applicant must have a medical examination by a medical examiner who must forward his or her report to the Director.

**Struck out (unanimous)**

- “(2) The Director may, by written notice, require any applicant or licence holder, for the purpose of determining whether or not the applicant or licence holder is medically unfit, to disclose or authorise the disclosure of any information relevant to his or her medical fitness.

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**New (unanimous)**

- “(2) The Director may, by written notice, require any applicant to disclose, or authorise the disclosure of, any information relevant to his or her medical condition or history for the purpose of determining whether or not the applicant is eligible for a medical certificate under **section 27C**.

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**Struck out (unanimous)**

**“27F Expiry of medical certificate**

Despite the imminent expiry of an existing medical certificate, the Director may, on receiving an application from an existing licence holder for a new medical certificate, grant an extension of up to 60 days of the grant of the existing medical certificate.

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**“27G Examiners**

- “(1) The Director may establish selection criteria for examiners, including—  
“(a) any requirements for examinations, training, and experience; and  
“(b) any requirements for ongoing training and development.

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**Struck out (unanimous)**

- “(2) The Director—
- “(a) must designate, subject to any conditions that the Director may specify, 1 or more registered medical practitioners to be medical examiners for a period of no longer than 3 years; and
- “(b) may designate, subject to any conditions that the Director may specify, 1 or more persons to be aviation examiners for a period of no longer than 3 years.
- “(3) The Director must maintain a current list of examiners.
- “(4) The Director may renew a designation as an examiner for 1 or more periods, each of which may not exceed 3 years.
- “(5) The Director may, by notice in the *Gazette*, issue general directions for conducting examinations of the medical fitness of applicants and licence holders, and reporting the results of those examinations to the Director; and the directions must be—
- “(a) notified in writing to examiners; and
- “(b) incorporated in a medical manual prepared by the Director.
- “(6) Nothing in this Act or the rules may be deemed to constitute an employment relationship or a contractual relationship of any kind between the Director and any examiner.
- “27H Cancelling designation of examiners
- “(1) The Director may cancel a person’s designation under **section 27G(2)** if the person—
- “(a) fails to comply with—
- “(i) any condition that the Director has specified; or
- “(ii) any direction that the Director has issued; or
- “(iii) any selection criterion that the Director has established; or
- “(b) fails to advise the Director, as soon as practicable, of any change in the medical fitness of a licence holder that indicates that the licence holder is medically unfit; or
- “(c) asks the Director to cancel his or her designation; or

**Struck out (unanimous)**

- “(d) fails to discharge satisfactorily his or her duties as an examiner.
- “(2) Before cancelling a designation, the Director must—  
“(a) give the examiner written notice of the matters that constitute the grounds for cancellation; and  
“(b) give the examiner a reasonable opportunity to make representations explaining why his or her designation should not be cancelled.
- “(3) If the Director cancels a designation, the Director must give the examiner written notice of the cancellation that sets out the grounds for the cancellation.
- “27I **Investigation of medical fitness**
- “(1) The Director may, by written notice, require any licence holder, at the licence holder’s expense, to undertake any tests, examinations, or re-examinations, or provide any medical information, at any time before the expiry of his or her medical certificate, if the Director has reasonable grounds to believe that the licence holder—  
“(a) may be medically unfit; or  
“(b) has obtained his or her medical certificate fraudulently.
- “(2) The Director may, by written notice, require any licence holder, at the Authority’s expense, to undertake any tests, examinations, or re-examinations, or provide any medical information, at any time before the expiry of his or her medical certificate if the Director—  
“(a) is auditing licence holders on the basis of random selection from the register of medical certificates required to be maintained under **section 27C(4)**; or  
“(b) has reasonable grounds to believe that the licence holder’s medical certificate was issued in error; or  
“(c) is auditing examiners for compliance with the requirements of this Act or the rules.
- “(3) The Director may, by written notice, require any licence holder, for the purpose of determining whether or not the licence holder is medically unfit, to disclose or authorise the disclosure of any relevant information.

**Struck out (unanimous)**

**“27J Revocation, suspension, amendment, and surrender of medical certificate**

- “(1) If the Director believes that a licence holder may be medically unfit, the Director may, by written notice to the licence holder,—
- “(a) suspend any medical certificate issued to the licence holder by issuing a notice of temporary medical unfitness; or
- “(b) amend the conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.
- “(2) If the Director believes that a licence holder is medically unfit, the Director must, by written notice to the licence holder,—
- “(a) suspend any medical certificate issued to the licence holder by issuing a notice of temporary medical unfitness; or
- “(b) revoke any medical certificate issued to the licence holder by issuing a notice of permanent or long-term medical unfitness; or
- “(c) amend the conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.
- “(3) A notice issued under subsection (1) or subsection (2) must state the grounds for the Director’s decision to suspend, revoke, or amend the medical certificate.
- “(4) A person who has had his or her medical certificate revoked or suspended must surrender the medical certificate to the Director, a person authorised by the Director, or a member of the police.
- “(5) If necessary for ensuring the safety of civil aviation or for enabling an operator to ensure compliance with the operator’s obligations under this Act or the rules, the Director may inform the operator—
- “(a) that the medical certificate of any person for whom the operator is responsible has been revoked or suspended;
- “(b) of the duration of any suspension of any medical certificate:

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**Struck out (unanimous)**

- “(c) that the medical certificate of any person for whom the operator is responsible has had any conditions, restrictions, or endorsements placed on it.
- “(6) The Director may revoke a medical certificate and suspend the aviation document to which it relates if a licence holder fails to comply with a demand under **section 27I(1) or (2) or (3)** within a reasonable period of time. 5
- “(7) Any person holding a medical certificate may, by notice in writing to the Director, surrender his or her medical certificate. 10
- “27K Rights of persons affected by adverse decision**  
Any person affected by an adverse decision of the Director under this Part has a right of appeal to a District Court under section 66.
- “27L Director to appoint medical advisory panel** 15
- “(1) The Director must appoint a medical advisory panel to—
- “(a) advise the Director on medical cases that the Director refers to the medical advisory panel for opinion or advice; and
- “(b) advise the Director and the Authority on aviation medical issues that the Director refers to the medical advisory panel for opinion or advice. 20
- “(2) The Director may establish selection criteria for members of the medical advisory panel, including—
- “(a) any requirements for examinations, training, and experience; and
- “(b) any requirements for ongoing training and development. 25
- “27M Cancelling appointment of member of medical advisory panel** 30
- “(1) The Director may cancel a person’s appointment under **section 27L(1)** if the person fails to discharge satisfactorily his or her duties as a member of the medical advisory panel.

**Struck out (unanimous)**

- “(2) Before cancelling an appointment, the Director must—  
“(a) give the member written notice of the matters that constitute the grounds for cancellation; and  
“(b) give the member a reasonable opportunity to make representations explaining why his or her appointment should not be cancelled.
- “(3) If the Director cancels an appointment, the Director must give the member written notice of the cancellation that sets out the grounds for the cancellation.

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**“27N Validation and transitional provisions**

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- “(1) Every decision regarding medical certificates, special medical assessments, notices of permanent or long-term medical unfitness, and notices of temporary medical unfitness, that the Director or the Authority made after 4 November 1992 and before the commencement of this Part, is as valid as it would have been if this Act had been in force at the time that the decision was made and the decision had been authorised under this Act.

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- “(2) If any proceedings have been commenced before 20 February 2001, nothing in subsection (1) affects the rights of any person under any judgment of a court given in those proceedings or any judgment given on appeal from that judgment.

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- “(3) This Act has effect for the purpose of determining any civil proceedings commenced on or after 20 February 2001 but not completed before the date on which this Act receives the Royal assent.

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- “(4) No compensation is payable by the Crown or the Authority to any person for any loss or damage arising from the enactment or operation of this section.

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- “(5) Subject to section 27H(1), all persons exercising any function relating to medical certification under Part 67 of the rules as they stood immediately before the commencement of this Part are entitled to continue to exercise those functions for a period of 30 days after the commencement of this Part.

**Struck out (unanimous)**

**“27O Fees and charges**

Fees or charges to be paid by an applicant or licence holder under this Part, for the purpose of reimbursing the Authority for costs associated with the performance of the Director's functions under this Part, may be prescribed by regulations made under section 38.

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**New (unanimous)**

**“27F Expiry of medical certificate**

The Director may, on receiving an application for a medical certificate from a licence holder before the expiry of his or her existing medical certificate, grant an extension of no more than 60 days from the expiry date of the licence holder's existing medical certificate with any additional conditions, restrictions, or endorsements as the Director considers necessary.

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**“27G Designation of aviation examiners and medical  
examiners**

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- “(1) The Director must designate, by issuing an aviation document under section 9, 1 or more medical examiners to conduct examinations under **section 27E**.
- “(2) The Director may designate, by issuing an aviation document under section 9, 1 or more aviation examiners to conduct specified examinations that the Director may require under this Part.

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**“27H General and emergency directions**

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- “(1) The Director may, by notice in the *Gazette*, issue general directions for—
- “(a) conducting examinations of applicants and licence holders, and reporting the results of those examinations to the Director, and the directions must be—
- “(i) notified in writing to aviation examiners or medical examiners; and

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New (unanimous)

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| “(ii) incorporated in a medical manual issued by the Director; and  |    |
| “(b) providing exceptions for temporary medical conditions to the reporting requirements set out in <b>section 27D</b> .  |    |
| “(2) Before issuing general directions under <b>subsection (1)</b> , the Director must consult with those persons, representative groups within the aviation industry or elsewhere, government departments, and Crown agencies that he or she considers appropriate.  | 5  |
| “(3) The Director may issue directives in emergency situations without consultation or prior notice in the <i>Gazette</i> , but those directives—   | 10 |
| “(a) must be published in the <i>Gazette</i> as soon as practicable after they are issued; and  |    |
| “(b) expire on the day that is 90 days after the date on which they were issued.  | 15 |
| “(4) The Director may reissue, under <b>subsection (1)</b> , directives issued under <b>subsection (3)</b> before or after they expire.   |    |
| <br><b>“27I Investigation of medical condition of licence holder</b>  |    |
| “(1) The Director may, by written notice, require any licence holder, at the licence holder’s expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his or her medical certificate, if the Director has reasonable grounds to believe that the licence holder—  | 20 |
| “(a) may be unable to exercise safely the privileges to which the medical certificate relates; or   |    |
| “(b) has obtained his or her medical certificate fraudulently.  |    |
| “(2) If the Director has delegated under <b>section 270A</b> the authority to issue medical certificates to any medical examiner, the Director may, by written notice to the relevant licence holder, withdraw any medical certificate that the medical examiner has issued under that authority within 60 days after the date it was issued if the Director requires the licence holder to supply additional medical information, in which case the Director | 30 |
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**New (unanimous)**

must decide whether to reissue the medical certificate in accordance with **section 27C**.

- “(3) The Director may, by written notice, require any licence holder, at the Authority’s expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his or her medical certificate if—

“(a) the Director—

“(i) is monitoring licence holders on the basis of random selection from the register of current medical certificates that is required to be maintained under **section 27C(7)**; or

“(ii) has reasonable grounds to believe that the licence holder’s medical certificate was issued in error; or

“(iii) is monitoring aviation examiners or medical examiners for compliance with the requirements of this Act or the rules; and

“(b) the Director has reasonable grounds to believe that any of those tests, examinations, re-examinations, or medical information are necessary to investigate the matters specified in **paragraph (a)**.

- “(4) The Director may, by written notice, require any licence holder to disclose, or authorise the disclosure of, any relevant information for the purpose of determining whether or not the licence holder—

“(a) meets the medical standards prescribed in the rules; or

“(b) is able to exercise safely the privileges to which the medical certificate relates.

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**“27J Revocation, suspension, amendment, and surrender of medical certificate**

- “(1) If the Director has reasonable grounds to believe that a licence holder may be unable to exercise safely the privileges to which the licence holder’s medical certificate relates, the Director may, by written notice to the licence holder,—

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New (unanimous)

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| “(a) suspend any medical certificate issued to the licence holder; or  | 5  |
| “(b) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.  |    |
| “(2) If the Director has reasonable grounds to believe that a licence holder is unable to exercise safely the privileges to which the licence holder’s medical certificate relates, the Director must, by written notice to the licence holder,—   | 10 |
| “(a) suspend any medical certificate issued to the licence holder; or  |    |
| “(b) revoke any medical certificate issued to the licence holder; or   |    |
| “(c) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder.  | 15 |
| “(3) If the Director has reasonable grounds to believe that a person who has been delegated authority under <b>section 270A</b> to issue a medical certificate has issued a medical certificate other than in accordance with this Part or the terms of the delegated authority, the Director— | 20 |
| “(a) may, by written notice to the licence holder,—  |    |
| “(i) suspend any medical certificate issued to the licence holder; or  |    |
| “(ii) revoke any medical certificate issued to the licence holder; or  | 25 |
| “(iii) impose or amend any conditions, restrictions, or endorsements on any medical certificate issued to the licence holder; and  |    |
| “(b) may, by written notice to the person with delegated authority, revoke that person’s delegated authority.  | 30 |
| “(4) Any notice issued under this section must state the grounds for the Director’s decision.  |    |
| “(5) A notice of suspension issued under <b>subsection (1)(a) or subsection (2)(a) or subsection (3)(a)(i)</b> remains in force until the Director determines what action, if any, referred to in <b>subsection (7)</b> is to be taken, but any such suspension expires                        | 35 |

New (unanimous)

10 working days after the date that the suspension is imposed unless, before the expiry of that 10-working-day period, the Director extends the suspension for a further specified period not exceeding 10 working days (the aggregate suspension period may not exceed 20 working days after the date on which the suspension is imposed).

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“(6) Any conditions, restrictions, or endorsements that are imposed or made under **subsection (1)(b) or subsection (2)(c) or subsection (3)(a)(iii)** remain in force until the Director determines what action, if any, referred to in **subsection (7)** is to be taken, but any of those conditions, restrictions, or endorsements expire 10 working days after the date that they are imposed unless, before the expiry of that 10-working-day period, the Director extends the conditions, restrictions, or endorsements for a further specified period not exceeding 10 working days (the aggregate period may not exceed 20 working days after the date on which the conditions, restrictions, or endorsements are imposed).

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“(7) If a notice is issued under **subsection (1) or subsection (2) or subsection (3)**, the Director may, by written notice, take 1 or more of the following actions:

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- “(a) impose or amend conditions, restrictions, or endorsements for a specified period;
- “(b) withdraw any conditions, restrictions, or endorsements;
- “(c) disqualify the licence holder from holding the medical certificate for a specified period;
- “(d) revoke the medical certificate;
- “(e) cancel the suspension.

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“(8) If the Director revokes a medical certificate under **subsection (2)(b) or subsection (3)(a)(ii) or subsection (7)(d) or subsection (11)** or imposes any conditions, restrictions, or endorsements on a medical certificate under **subsection (7)(a)** or disqualifies a licence holder under **subsection (7)(c)**, the licence holder has 20 working days from the date of the decision to ask the convener to review the decision under **section 27M**, after which time the decision may not be referred to the convener.

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New (unanimous)

- “(9) A person who has had his or her medical certificate revoked, withdrawn, or suspended or who is disqualified from holding the medical certificate for a specified period must surrender the medical certificate to the Director, a person authorised by the Director, or a member of the police. 5
- “(10) If the Director issues a notice under this section, the Director—  
“(a) must also, if practicable, notify any aviation document holder affected by the notice, other than the licence holder, if the Director reasonably considers it necessary for reasons of aviation safety; and 10  
“(b) may notify any other affected aviation document holder.
- “(11) The Director may, by written notice, revoke a medical certificate if a licence holder fails, without reasonable excuse, to comply with a demand under **section 27I(1) or section 27I(3) or section 27I(4)** within a reasonable period of time. 15
- “(12) Any licence holder may return his or her medical certificate to the Director and ask the Director, in writing, to cancel the medical certificate. 20
- “(13) If a licence holder asks the Director to cancel his or her medical certificate, the Director must—  
“(a) cancel the medical certificate; and  
“(b) update the register of current medical certificates. 25
- “27K Appointment of convener and deputy convener** 30
- “(1) The Minister must—  
“(a) appoint a convener and a deputy convener for a period of no longer than 3 years; and  
“(b) consult with the Director, and other parties as the Minister thinks fit, before making either appointment; and  
“(c) take into account any representations made under **paragraph (b)**.
- “(2) The Minister may renew an appointment as convener or deputy convener for 1 or more periods, each of which may not exceed 3 years. 35

**New (unanimous)**

- “(3) If the Minister renews an appointment, he or she must—  
“(a) consult with the Director, and other parties as the Minister thinks fit, before making the renewal; and  
“(b) take into account any representations made under **paragraph (a)**. 5
- “(4) The convener and the deputy convener must—  
“(a) be registered medical practitioners who are suitably qualified and experienced; and  
“(b) be able to represent the public interest in aviation safety. 10
- “(5) If the convener is unavailable for any reason, the deputy convener must discharge the duties of the convener under this section until—  
“(a) the convener is available; or  
“(b) the Minister has appointed a new convener. 15
- “27L Cancellation of appointment as convener or deputy convener**  
“(1) The Minister may cancel a person’s appointment under **section 27K(1)** if the person fails to discharge satisfactorily his or her duties as convener or deputy convener, as the case may be. 20
- “(2) Before cancelling an appointment, the Minister must—  
“(a) give the person written notice of the matters that constitute grounds for cancellation; and  
“(b) give the person a reasonable opportunity to make representations that explain why his or her appointment should not be cancelled; and  
“(c) take into account any representations made under **paragraph (b)**. 25
- “(3) If the Minister cancels an appointment, the Minister must give the person written notice of the cancellation that sets out the grounds for the cancellation. 30

**“27M Review of decisions regarding medical certificates or applications**

- “(1) A licence holder or an applicant may, within 20 working days of a decision being made, ask the convener in writing to 35

**New (unanimous)**

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review the following decisions made by the Director about that person's medical certificate or application:

“(a) any decision made under **section 27C**, other than a decision made under **section 27C(4)(b)**;

“(b) any decision made under **section 27J**, other than a decision made under—

“(i) **section 27J(1)**; or

“(ii) **section 27J(2)(a)**; or

“(iii) **section 27J(2)(c)**; or

“(iv) **section 27J(3)(a)(i)**; or

“(v) **section 27J(3)(a)(iii)**.

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“(2) If such a request is made, the convener must, as soon as practicable, review the decision.

“(3) The convener—

“(a) must draw on the advice and expertise of at least 1 person who the convener is satisfied is suitably qualified and experienced to assist the convener in his or her assessment of the decision that is under review; and

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“(b) must have regard to the purpose and scheme of the Act and the Director's duties under the Act when carrying out his or her review of the decision; and

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“(c) may require the person who asked for the review, at that person's expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the convener considers reasonably necessary to carry out his or her review of the decision.

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“(4) The convener must, as soon as practicable, report the results of his or her review to the Director in writing.

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“(5) Despite **section 27C(1)** or **section 27C(5)**, the Director must, within 10 working days of receiving the convener's report,—

“(a) consider the convener's report; and

“(b) make his or her final decision in writing; and

“(c) provide to the licence holder or applicant—

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“(i) a copy of the convener's report; and

“(ii) a copy of the Director's final decision.

New (unanimous)

- “(6) The licence holder or applicant or Director may, either directly or through his or her medical experts, participate in the review process by providing relevant evidence to the convener regarding any medical matter at issue with respect to the decision that is under review. 5
- “(7) The convener may not review a decision made by the Director if the convener—
- “(a) acted as an aviation examiner or medical examiner of the person requesting the review with respect to that person’s application for a medical certificate; or
- “(b) has any other conflict of interest with respect to the person’s medical certificate. 10
- “(8) Any decision by the Director under review by the convener remains in force until the Director makes a final decision under subsection (5). 15
- “27N Referral to convener by agreement
- “(1) An application for a medical certificate may, by agreement in writing between the Director and the applicant, be referred to the convener for advice before the Director makes a decision on the application. 20
- “(2) If an application is referred to the convener under subsection (1),—
- “(a) the deadline imposed on the Director under section 27C(1) does not apply; and
- “(b) the convener must,—
- “(i) as soon as practicable, assess the application; and
- “(ii) draw on the advice and expertise of at least 1 person who the convener is satisfied is suitably qualified and experienced to assist the convener in his or her assessment of the application; and
- “(iii) require the applicant, at the applicant’s expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical 25
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**New (unanimous)**

information, that the convener considers reasonably necessary to carry out his or her assessment of the application; and

- “(iv) have regard to the purpose and scheme of the Act and the Director’s duties under the Act when making his or her assessment of the application; and
- “(v) as soon as practicable, report the results of his or her assessment to the Director in writing.

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- “(3) The Director must, within 10 working days of receiving the convener’s report,—
- “(a) consider the convener’s report; and
- “(b) make his or her decision in writing; and
- “(c) provide to the applicant—
- “(i) a copy of the convener’s report; and
- “(ii) a copy of the Director’s decision.
- “(4) If an application is referred to the convener under this section, the applicant may not ask the convener to review the Director’s eventual decision.
- “(5) The applicant or Director may, either directly or through his or her medical experts, participate in the convener’s assessment of the application by providing relevant evidence to the convener regarding any medical matter at issue with respect to that application.
- “(6) The convener may not assess the application if the convener—
- “(a) acted as an aviation examiner or medical examiner of the applicant with respect to that person’s application for a medical certificate; or
- “(b) has any other conflict of interest with respect to the person’s medical certificate.
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**“27O Delegation of Director’s powers under this Part to registered medical practitioners who are employees of Authority**

- “(1) The Director may, either generally or particularly, delegate to any suitably qualified registered medical practitioner who is an employee of the Authority any of the Director’s functions

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**New (unanimous)**

and powers under this Part or under the rules relating to medical certification.

- “(2) Every delegation under this section must be in writing.
- “(3) The Director may not delegate the power to delegate under this section.
- “(4) The provisions of subsections (6), (7), (9), (10) and (11) of section 23 apply to delegations under this section as if—
  - “(a) references in those provisions to the Authority were references to the Director; and
  - “(b) references in those provisions to any employee of the Authority were references to any employee of the Authority other than the Director.
- “(5) Any delegation under this section may be made to a suitably qualified registered medical practitioner who is the holder of a specified office of the Authority.

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**“27OA Delegation of Director’s power under this Part to medical examiners who are not employees of Authority**

- “(1) The Director may, either generally or particularly, delegate to any suitably qualified medical examiner who is not an employee of the Authority any of the Director’s functions and powers under this Part or under the rules relating to medical certification other than the power under this Part to revoke medical certificates.
- “(2) Despite **subsection (1)**, the Director must delegate to suitably qualified medical examiners who are not employees of the Authority the power to issue medical certificates to any person who qualifies for a medical certificate under **section 27C(1)** or who otherwise meets the criteria for a standard medical assessment as prescribed in the rules or by the Minister under **section 270C(8)**.
- “(3) Every delegation under this section must be in writing.
- “(4) Subject to any general or special directions given or conditions imposed by the Director, any medical examiner to whom any functions or powers are delegated under this section may exercise those functions and powers in the same manner and

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**New (unanimous)**

with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.

“(5) Any delegation under this section may be made to a specified medical examiner or a specified class of medical examiner or to the holder or holders of a specified office.

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“(6) Every delegation under this section must be given for a specified period but in any event must be revocable at will.

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“(7) No delegation under this section may—

“(a) affect or prevent the exercise of any function or power by the Director; or

“(b) affect the responsibility of the Director for the actions of any person acting under the delegation.

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“(8) Every delegation under this section continues in force until it is revoked or it expires, whether or not the person who made the delegation ceases to hold office.

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“(9) Every person purporting to act under any delegation under this section may, when reasonably requested to do so, produce evidence of his or her authority to so act.

“(10) The Director may not delegate under this section any of his or her functions or powers under **section 27M** or **section 27N**.

**“27OB Right of appeal to District Court**

Any person affected by a decision of the Director under **section 27C** (other than a decision made under **section 27C(4)(b)**), **section 27J(7)**, **section 27J(11)**, **section 27M**, or **section 27N** has a right of appeal to a District Court under section 66.

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**“27OC Validation and transitional provisions**

“(1) Every medical certificate issued by the Director or the Authority after 4 November 1992 and before the commencement of this Part is as valid as it would have been if this Part had been in force at the time that the medical certificate was issued.

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“(2) Every notice of permanent or long-term medical unfitness issued by the Director or the Authority after 4 November 1992 and before the commencement of this Part is deemed to have been issued under **section 27J(7)(d)** of this Part.

New (unanimous)

- “(3) Every notice of temporary medical unfitness issued by the Director or the Authority after 4 November 1992 and before the commencement of this Part is deemed to have been issued under **section 27J(7)(c)** of this Part.
- “(4) Any decision regarding medical certificates, special medical assessments, notices of permanent or long-term medical unfitness, or notices of temporary medical unfitness made or issued by the Director or the Authority after 4 November 1992 and before the commencement of this Part may not be challenged on the grounds that the decision lacked authority under any Act or the rules, but may be challenged on any other relevant grounds.
- “(5) If any proceedings have been commenced before 20 February 2001, nothing in **subsection (1) or subsection (2) or subsection (3) or subsection (4)** affects the rights of any person under any judgment of a court given in those proceedings or any judgment given on appeal from that judgment.
- “(6) All persons exercising any functions relating to medical certification under Part 67 of the rules as they read immediately before the commencement of this Part are entitled to continue to exercise those functions for a period of 60 days after the commencement of this Part.
- “(7) In the absence of rules providing for the issue of aviation documents to aviation examiners or medical examiners,—
- “(a) the Minister must establish the selection criteria for the issue of aviation documents to aviation examiners or medical examiners or classes of aviation examiners or medical examiners that the Director must use to issue those aviation documents, including—
- “(i) any requirements for examinations, training, and experience; and
- “(ii) any requirements for ongoing training and development; and
- “(iii) any requirements relating to the classification of aviation examiners and medical examiners and any related standards and restrictions on the exercise of their functions and powers; and

New (unanimous)

- “(b) the Director must designate, by issuing an aviation document under section 9, 1 or more medical examiners to conduct examinations under **section 27E**; and
- “(c) the Director may designate, by issuing an aviation document under section 9, 1 or more aviation examiners to conduct specified examinations that the Director may require under this Part.
- “(8) In the absence of rules under **section 30(b)(x)** or **section 30(b)(xi)**, the Minister must establish the criteria for the grant of delegations, including—
- “(a) any requirements for the grant of delegations by the Director under **section 270A(2)**; and
- “(b) any requirements for the purposes of determining suitably qualified medical examiners and establishing the criteria for standard medical assessments under **section 270A(2)**.
- “**27P Savings**  
Any medical certificate issued under the rules before the commencement of this Part is deemed to be a medical certificate issued under this Part.”

New (unanimous)

- 4A Requirement for aviation document**  
Section 7(1) of the principal Act is amended by adding the following paragraph:
- “(s) any person who is an aviation examiner or medical examiner.”
- 4B Rules relating to general matters**
- (1) Section 30(a) of the principal Act is amended by inserting, after subparagraph (vi), the following subparagraph:
- “(via) aviation examiners or medical examiners;”.
- (2) Section 30(b) is amended by adding the following subparagraphs:

**New (unanimous)**

- “(ix) the requirements relating to the classification of aviation examiners and medical examiners and any related standards and restrictions on the exercise of their functions and powers;
- “(x) the requirements for the grant of delegations by the Director under **section 270A(2)**;
- “(xi) the requirements for the purposes of determining suitably qualified medical examiners and establishing the criteria for standard medical assessments under **section 270A(2)**;”.

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**4C Fees and charges**

Section 38(1) of the principal Act is amended by inserting, after paragraph (b), the following paragraph:

- “(ba) to reimburse the Authority and the convener for costs associated with the Director’s functions and the convener’s functions under **Part 2A**;”.

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**5 Amendments to offence provisions**

The principal Act is amended by inserting, after section 46, the following sections:

**“46A Acting without required medical certificate**

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- “(1) Every person who exercises (*or attempts to exercise*) the privileges of any aviation document or (*flies or attempts to fly*) operates an aircraft solo (*as a student pilot*) commits an offence if that person—

**Struck out (unanimous)**

- “(a) does not hold an appropriate current medical certificate issued under **Part 2A**; or
- “(b) knows or has reason to believe that his or her medical fitness is no longer adequately covered by the terms of the existing medical certificate; or

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**Struck out (unanimous)**

- “(c) knows or has reason to believe that his or her ability to act safely is, or is likely to be, medically impaired despite any conditions, restrictions, or endorsements on the medical certificate; or

**New (unanimous)**

- “(a) does not hold an appropriate current medical certificate issued under Part 2A or a medical certificate recognised by the Director under the rules; or

- “(b) knows or has reasonable grounds to suspect that he or she can no longer exercise safely the privileges to which his or her medical certificate relates; or

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- “(d) fails to comply with any conditions, restrictions, or endorsements specified by the Director under **section (27C(1)) 27C(3)**.

- “(2) Every person who commits an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000.

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**“46B Fraudulent, misleading, or intentionally false statements to obtain a medical certificate**

- “(1) Every person commits an offence who makes or causes to be made—

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- “(a) any fraudulent, misleading, or intentionally false statement for the purpose of obtaining a medical certificate under **Part 2A**; or

- “(b) any fraudulent, misleading, or intentionally false entry in any logbook, record, form, or report that is required to be kept, made, or used to show compliance with any conditions, restrictions, or endorsements placed on any medical certificate under **Part 2A**; or

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- “(c) any reproduction or alteration for fraudulent purposes of any medical certificate issued under **Part 2A**; or

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## New (unanimous)

- (d) any fraudulent, misleading, or intentionally false statement during an investigation under **section 27I** or a review under **section 27M** or an assessment under **section 27N**.

- “(2) Every person who commits an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$10,000.

## New (unanimous)

## **“46C Failure to disclose information required by Director**

- “(1) Every person commits an offence who fails to disclose, without reasonable excuse, information required by the Director under **section 27D(1)** or **section 27I**.
  - “(2) Every person who commits an offence under **subsection (1)** is liable to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000.”

## **6 (Director of Civil Aviation) Evidence and proof**

- (1) Section 71(1) of the principal Act is amended by inserting, after paragraph (c), the following paragraph:

“(ca) the production of a written statement signed by the Director to the effect that on a specified date a person was or was not the holder of a medical certificate issued under Part 2A, or the rules before the commencement of the **Civil Aviation Amendment Act (No 2) 2001**, is sufficient evidence of the matter stated, until the contrary is proved;”.

#### **Struck out (unanimous)**

- (2) Section 72I(3) of the principal Act is amended by adding to paragraph (b) the word “; and” and by adding the following paragraph:

“(c) undertake medical assessments and issue, suspend, or revoke medical certificates in accordance with **Part 2A**.”

- (3) Section 72I(4) of the principal Act is amended by inserting, after paragraph (a), the following paragraph:
- “(aa) the issue, suspension, or revocation of medical certificates; or”.

**7 Consequential amendments to principal Act**

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The principal Act is consequentially amended in the manner indicated in the **Schedule**.

**8 Consequential amendments to rules**

- (1) The rules are amended by revoking the following rules:

- (a) rule 61.35(b) to (d) (medical requirements): 10  
(b) rule 63.23(b) (medical requirements):  
(c) rule 63.23(c) (medical requirements):  
(d) rule 65.25(b) (medical requirements):  
(e) rule 65.25(c) (medical requirements):  
(f) rule 67.03(b) (application): 15  
(g) rule 67.05 (aviation medical assessors and designated medical examiners):  
(h) rule 67.07 (medical examinations):  
(i) rule 67.09 (issue of medical certificates):  
(j) rule 67.13 (review assessments): 20  
(k) rule 67.15 (special medical assessments):  
(l) rule 67.19(a) (certificates, reports and records):

**New (unanimous)**

- (m) rule 67.53 (general requirements).

- (2) Rule 1.1 (general definitions) is amended by revoking the definitions of **aviation medical assessor**, **designated medical examiner**, and **flexibility**. 25

**Struck out (unanimous)**

- (3) Rule 1.1 (general definitions) is amended by inserting, after the definition of **escorted passenger**, the following definition:  
“**examiner** means a person designated by the Director under the Act as a medical examiner or an aviation examiner”. 30

- (4) Rule 1.1 (general definitions) is amended by revoking the definition of **valid**, and substituting the following definition:  
“**valid** means,—  
“(a) in respect of a licence or rating, the document has been issued in accordance with the Civil Aviation Rules, and is not expired, suspended, or revoked; and  
“(b) in respect of a medical certificate, the medical certificate has been issued in accordance with the Act, and is not expired, suspended, or revoked.”
- (5) Rule 61.35(a)(1) (medical requirements) is amended by omitting the words (“*Part 67*”) “Part 67 of these rules”, and substituting the words “the Act”. 10

**New (unanimous)**

- (5A) Rule 61.43(a) (examination for continued fitness or proficiency) is amended by—  
(a) omitting the words “undergo a medical or other”, and substituting the words “take an”; and  
(b) omitting the words “continued fitness or”. 15
- (5B) Rule 61.43(b) (examination for continued fitness or proficiency) is amended by omitting the words “medical or other” in both places where they appear. 20
- (5C) Rule 61.43(c) (examination for continued fitness or proficiency) is amended by omitting the words “undergoes a medical or other”, and substituting the words “takes an”. 25
- (5D) The heading to rule 61.43 (examination for continued fitness or proficiency) is amended by omitting the words “continued fitness or”. 25
- (5E) Rule 63.27(a) (examination for continued fitness or proficiency) is amended by—  
(a) omitting the words “undergo a medical or other”, and substituting the words “take an”; and  
(b) omitting the words “continued fitness or”. 30
- (5F) Rule 63.27(b) (examination for continued fitness or proficiency) is amended by omitting the words “medical or other” in both places where they occur.

**New (unanimous)**

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|---|----|
| (5G) Rule 63.27(c) (examination for continued fitness or proficiency) is amended by omitting the words “undergoes a medical or other”, and substituting the words “takes an”.   |    |
| (5H) The heading to rule 63.27 (examination for continued fitness or proficiency) is amended by omitting the words “continued fitness or”.  | 5  |
| (5I) Rule 65.27(a) (examination for continued fitness or proficiency) is amended by—<br>(a) omitting the words “undergo such medical or other”, and substituting the words “take such an”; and<br>(b) omitting the words “fitness or”.  | 10 |
| (5J) Rule 65.27(b) (examination for continued fitness or proficiency) is amended by omitting the words “undergoes a medical or other”, and substituting the words “takes an”.   |    |
| (5K) The heading to rule 65.27 (examination for continued fitness or proficiency) is amended by omitting the words “continued fitness or”.  | 15 |
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| (6) Rule 67.03(a) (application) is amended by omitting the words “this Part”, and substituting the words “the Act”.   |    |
| (7) Rule 67.03(a)(4) (application) is amended by omitting the words “and the relevant Aviation Medical Assessor”.   | 20 |
| (8) Rule 67.03(a)(5) (application) is amended by omitting the words “Aviation Medical Assessor or Designated Medical Examiner”, and substituting the word “examiner”.   |    |
| (9) Rules 61.105(2) (student pilots flying solo), 61.153(a)(2) (private pilots licences), 61.203(3) (commercial pilot licences), 63.23(a)(1) (flight engineers licences), 63.53(2) (eligibility requirements), 65.25(a)(1) (air traffic controller licences), 65.53(a)(2) (eligibility requirements), and 105.5(c)(3) are amended by omitting the expression “Part 67”, and substituting the words “the Act”. | 25 |
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**Schedule**  
**Consequential amendments to principal Act**

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**Section 15(1)(b)**

Insert, after the word “procedure”, the word “; or” and the following paragraph:

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“(c) is designated as an *(examiner)* aviation examiner or medical examiner under Part 2A.”

**Struck out (unanimous)**

**Section 49(1)(b)**

Insert, after the word “document”, the words “or medical certificate”.

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**Section 49(1)(c)**

Insert, after the word “document”, the words “or medical certificate”.

Insert, after the words “section 9(3) of this Act”, the words “or that is required to be provided under **section 27D or section 27I**”.

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**Section 66(5) (as enacted by the Civil Aviation Amendment Act 2001)**

Add, after paragraph (d), the following paragraph:

“(e) by the Director regarding the issue of a medical certificate under **Part 2A** of this Act.”

**Legislative history**

20 February 2001

Introduction (Bill 104–1)

27 February 2001

First reading and referral to Transport and Industrial Relations Committee