

# ***Legal Framework of Delegations***

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# Outline

- The Civil Aviation Authority
- General principles relating to delegations
- Obligations of Delegation holders
- Liability & Insurance
- Health and Safety at Work Act
- CAA Notices

# *Civil Aviation Authority*

- **CAA is a Crown Entity**
- This means that we are a part of government, but have a little operational distance from Ministers and the executive government
- But we do need to comply with the policy direction set by the government
- Everything we do is governed by the Civil Aviation Act, the Civil Aviation Rules, and the Crown Entities Act

# Director's functions and powers

- Control of entry into, exit from and monitoring while in the system – e.g. granting aviation documents (set out in the Civil Aviation Act)
- Technical Approvals and Acceptance – e.g. approval of modifications and repairs under Rule 21

# General Principles Relating to Delegations

- Director can delegate his powers (other than the power to revoke aviation documents)
- If the delegation is to a person who is not employed by the CAA, the Director needs the Minister's approval for the delegation
- The Minister has in turn delegated the power to approve the delegation to the Secretary of Transport

# *Delegations* contd

- CAA needs to have strong controls around:
  - Who is granted the delegations; and
  - How the powers associated with those delegations are performed.
- Need to know that the delegate is exercising their delegated functions appropriately and robustly, because...

# *Delegations* contd

- ...even when you delegate power, you are still responsible for the exercise of the power!
- You can delegate the power to act, but can never delegate the responsibility.

# *Delegations* contd

- So it is incumbent on the CAA to maintain a close interest in the activities of people and organisations who hold delegations from the Director



# *So what does this mean for Part 146 Delegation Holders?*

- When you exercise your delegated powers, you are standing in the shoes of the Director
- You are exercising a public function!

# *What does this mean?* contd

- When you exercise a public function:
  - There are legal and behavioral expectations of you;
  - You are subject to judicial review (review of your decisions by the High Court)
  - You are expected to demonstrate standards of behaviour that reflect well on the state service and the CAA (e.g State Sector Code of Conduct)

# *Judicial review*

- Judicial review is the High Court's review of decisions by public authorities (not merit based review)
- The Court will look at:
  - the way the decision was made, the process behind it
  - whether the decision-maker was operating within their lawful authority
  - whether the decision-maker considered the right evidence
  - whether the decision was rational and reasonable
  - whether the decision-maker acted with bias or a conflict of interest

# *Bias and conflict of interest*

- It is critical to understand when these issues arise
- Bias is a predisposition (or the appearance of a predisposition) to make a certain decision
- Conflict of interest is when a decision-maker has, or appears to have, a personal interest in a decision
- The appearance of bias or conflict of interest is equally as damaging as actual bias or conflict

# *When does a conflict of interest arise?*

- If you have a personal relationship with a party involved in the decision
- If you have a financial interest in the decision
- If you have had a close professional relationship with a party involved in the decision
- If you have a known prejudice

# *What do you do when a conflict arises?*

- No-one is at fault just because a conflict arises – NZ is a small country and we all have 100s of relationships
- if you suspect a conflict, you should :
  - remove yourself from the decision, or
  - contact the CAA to discuss
- The best way of managing a conflict, is to declare it
- Be conservative

# *Who is responsible?*

- Director remains responsible – s 75 Crown Entities Act 2004

## *Responsibility as delegate*

- Know what the powers are that you are exercising
- Follow the procedural steps required by the legislation or conditions on the delegations
- Act only within the terms of the delegation
- Understand the exact scope of the delegation and warrant.

# *Insurance & Liability*

- The CAA can only effect insurance to its members, office holders and employees (NOT DELEGATE holders).
- However CAA may indemnify delegation holders in relation to any particular claim or proceeding
- In practice the CAA will indemnify a delegate who acts in good faith and within the scope of the delegation.



# HSWA

Health and Safety at Work Act 2015

- CAA been designated by Government to administer HSWA with respect to aircraft in operation
- CAA takes very seriously and HSWA is becoming more prominent
- CAA cannot advise you on your own specific PCBU obligations
- CAA does have a lot of education material available – see <http://hsu.caa.govt.nz/>

# CAA Notices

- Made pursuant to a specific empowering rule
- Contain mandatory requirements or conditions etc
- Different from Advisory Circulars in that they are mandatory
- Will likely contain technical specifications for equipment or technology, procedures for training, or conditions associated with the use of an aircraft or other aviation product

# CAA Notices cont

- Likely to be relevant to DDH
- There will be consultation prior to issue of a CAA Notice or any variation
- Encourage DDHs to participate and provide input
- Benefits of CAA Notices:
  - **Supports performance based regulation**
  - **Adaptable to technological change**
  - **Responsive to immediate safety issues**
  - **Can reference specific technology**

# Questions?