

# REGIONAL AIRPORTS NEWSLETTER

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## Welcome to Ford Sumner Lawyers' Regional Airports Newsletter

After discussion with some of our regional airport clients, we have identified that the sector could benefit from a regular update on legal issues impacting airports (and the businesses they operate).

This newsletter reports on actual and proposed legislative changes, new case law, and other helpful legal matters.

We hope you will find the content relevant. Feel free to reach out to us anytime regarding the content of this newsletter or your legal matters.

## Take-off for the Civil Aviation Act 2023 this Saturday – Don't miss the runway!

The Civil Aviation Act 2023 ("the Act") comes into force on 5 April 2025 and is set to replace both the Airport Authorities Act 1966 ("the Airport Authorities Act") and the Civil Aviation Act 1990. The Act updates New Zealand's aviation law in many ways, including regulating drone use, introducing stronger drug and alcohol management obligations and enhancing consultation requirements, with the overall purpose of ensuring safe aviation throughout New Zealand.

### Airport operators – the new norm

One major change is the requirement to register under the Act as an 'airport operator', rather than as an 'airport authority' under the Airport Authorities Act.

Under the previous legislation, to be an airport authority, a local authority or airport company must be authorised to establish, operate or manage an airport (including those who could exercise the powers of a local authority). In contrast, an airport must apply to be an 'airport operator' under the Act. Its application will be successful, if it can show:

- those who will be substantially affected by the registration have been consulted;
- registering the operator in relation to the aerodrome is consistent with the purposes of the Act; and

- there is no reason to believe that the applicant will not comply with their airport operator obligations.

Any new application to be a registered airport operator under the Act must be submitted to the Secretary, the Chief Executive of the Ministry of Transport ("the Ministry") by way of the Ministry's website. The Ministry currently anticipates applications that provide all required information will take approximately 4 weeks to process.

### Applications and the register of airport operators

Under the Airport Authorities Act, the Ministry grants airport authority status. An issue that we have come across is it is often difficult to determine whether an airport or aerodrome was granted airport authority status. This is due to the lack of a centralised place detailing all current airport authorities.

When airport operators are successfully registered, the details will be logged into a new registration system on the Ministry's website. The registration system will detail airport operators' compliance with their obligations, removing ambiguity around what airport operators exist in New Zealand and the area they cover.

The register will hold the following information in relation to each airport operator:

## Take-off for the Civil Aviation Act 2023 this Saturday – Don't miss the runway! (Continued)

- the aerodrome and any other area covered by registration;
- the name of the operator;
- when the operator was registered;
- if the registration has been suspended or cancelled, and the date on which the suspension or cancellation took effect;
- any space requirements that apply in relation to the airport operator;
- whether a regulatory airport spatial undertaking has been accepted;
- any other prescribed information; and
- any other information the Secretary thinks fit.

### What happens to existing airport authorities?

While the Act comes into force on 5 April 2025, the Airport Authorities Act will continue to apply to existing airport authorities until they register as airport operators under the Act. Upon registration, its status as an airport authority under the Airport Authorities Act will cease. Importantly, any charges or bylaws made under the Airport Authorities Act will not be extinguished or removed upon registration as an airport operator. While existing airport authorities will keep their status in the meantime, all airport authorities will have to register as an airport operator under the Act by 5 April 2030.

### Key Takeaways

The Act is modernising the regulatory system relating to airport operators and the aviation sector. We expect the transition period to be helpful by allowing current airport authorities to consider their application under the Act; this period will also allow the Government to prepare for the transition by implementing rules for the Act. Ultimately, by having the rights and obligations of airport operators in one place in the Act, the system will be clearer for all. From Saturday 5 April, airports can apply to register as an airport operator. Get in touch for assistance with your airport operator application.



## MoT and the rollout of the Civil Aviation Act 2023 – Key Information

With the rollout of the new Civil Aviation Act 2023 ("the Act") underway, we thought it would be helpful to explain the role of the Ministry of Transport ("the Ministry") in the Act and some of the key resources the Ministry has published that will help airports in the coming months.

### Our key takeaways are:

- The Ministry (which recently attended the New Zealand Airports forum) has formed a regulatory operations team to implement the requirements of the new Act.
- The Ministry and the Civil Aviation Authority (CAA) are jointly responsible for implementing the new Act. The Ministry and the CAA have been working closely to develop and implement secondary legislation

(new or remade regulations etc), create new systems, processes, and functions, and update systems to support business continuity ([refer here](#)).\*

- Guidance supporting airports to register as airport operators is [available here](#). \*\*
- From Saturday 5 April, an online application form will be available on the Ministry's website for airports seeking airport operator registration. We anticipate that the Ministry will be publishing more helpful information to support airports with the registration process in the coming months. Look out for these updates in our upcoming editions of this newsletter.



- The Ministry will play a key consultation role in an airport's adoption of new bylaws. Guidance on the bylaw adoption process can be [found here](#). \*\*\* You can contact the Ministry at: [civilaviationact@transport.govt.nz](mailto:civilaviationact@transport.govt.nz)
- The Ministry will not just have a key role in implementing the Act. Airports will also need to consult with the Ministry on other occasions, including changes to airport operator registration and changes to airport bylaws.

We expect that there will be a lot more updates from the Ministry to assist airports navigating the new Act. We will keep you posted as we hear more!

\* <https://www.transport.govt.nz/area-of-interest/air-transport/air-transport-regulatory-information/civil-aviation-act-2023/about-the-civil-aviation-act-2023>

\*\* <https://www.transport.govt.nz/area-of-interest/air-transport/air-transport-regulatory-information/airports/airport-operator-registration>

\*\*\* <https://www.transport.govt.nz/area-of-interest/air-transport/air-transport-regulatory-information/airports/spatial-plans-and-bylaw-consultation>

## Understanding Continuity Of Employment Within an Airport Setting

### When was the last time you reviewed the Employment Relations Act 2000 (ERA)'s restructuring provisions against your airport's circumstances and contracts?

Restructuring usually has a significant impact on employees and those operating in the aviation sector are no exception.

Commonly known as "the vulnerable employee provisions", Part 6A of the Employment Relations Act 2000 ("ERA") provides important protections for employees who perform services within particular sectors in which workplace restructures occur frequently.

Within an airport facility or the aviation sector, these provisions apply specifically (and exclusively) to employees who undertake cleaning and food catering services. These 'vulnerable employees' must be offered the opportunity to transfer their employment to a new employer where a defined type of restructuring occurs ("captured employees").\*

### What do the vulnerable employee provisions consider "restructuring"?

Restructuring in an airport context can take various forms for captured employees, including:\*\*

- 1. Sale or transfer of a company's shares:** When an airport company (or airport operated cleaning or food catering business) sells part or all of its operations to another entity, cleaners and food caterers of the original business will be eligible to transfer to the new owner.
- 2. Contracting In Services:** When cleaning or food-catering services previously outsourced to a contractor are brought in-house by an airport, the workers providing those services must be offered the opportunity to transfer their employment to the airport as new employer.
- 3. Contracting Out Services:** Conversely, when cleaning and food catering services are provided in-house by an airport and the airport then chooses to contract with an independent contractor company for those same services, employees performing cleaning and/or food catering services for the airport must be given the option to transfer their employment to the new provider.
- 4. Subsequent Contracting:** If an existing contract between a cleaning or food catering service provider and an airport is terminated and a new contractor is engaged to provide services of the same nature by the airport, employees working for the original contractor have the right to transfer their employment to the new independent contractor.

For example, an airport company may contract with a third party company to provide food catering services at the airport.

If this contract terminates and a new contract for those services is entered into by the airport, employees from the first contractor must be given the chance to elect to transfer their employment to the new contractor, and on a continuous basis. As a result, all the transferring employees' service-related entitlements will transfer to their new employer. However, the vulnerable employee provisions do not apply to all scenarios. For instance, if an airport company subleases its premises to a café business, and that sublease is terminated or expires – the café business' employees will not be caught within one of the defined restructuring scenarios. This is because a lease or sublease (granting a leasehold interest in land) is distinct from a contract for services. It does not capture what an independent contractor arrangement does.

### Why These Provisions Matter

Cleaning and food catering services at airports are often outsourced or subcontracted, leaving workers without any clear job security. The ERA guarantees these employees a right to transfer to a new employer where any of the above restructuring situations occurs.

Employers in an aviation context should carry a strong base understanding of the vulnerable employee provisions to ensure the rights afforded to captured employees are upheld. Doing so will reduce the risk of an unwanted personal grievance claim being brought by a captured employee.

### Considerations to Watch Out For

If your business is caught within one of the above defined restructuring scenarios, key considerations are:

- Captured employees must be given a reasonable opportunity to elect to transfer to the new employer, typically within 10 working days of the restructuring commencing.
- It's crucial to plan for employee transfers when selling, contracting out or altering service arrangements at the airport. Employee transfer costs (including transferring employees' accrued annual leave entitlements) will be relevant to any purchaser/new contractor and these costs are often one of the variables driving that party's position on the underlying purchase price (or fees, in the case of a service contract).
- Employees must be provided with sufficient information to make an informed decision about transferring their employment, including details of the new employer.

Please get in touch with [Jaesen Sumner](#) and [Emily Gardiner](#), if you would like to understand more about how the vulnerable employees provisions operate in practice or for us to assess whether your business may be caught by one of the above restructuring scenarios.

\* Part 6A of the ERA.

\*\* Note, these are defined restructuring situations in the ERA and are different to the typical internal business restructure which are more commonly known in an employment context.



## Bylaws 101: Everything you need to know about the Civil Aviation Act 2023 update to airport bylaws

The Civil Aviation Act 2023 ("the Act") was introduced to Parliament in 2021 to repeal and replace both the Civil Aviation Act 1990 and the Airport Authorities Act 1966 ("the Airport Authorities Act") with a single, modern statute. A key modernisation in the Act relates to how airport bylaws are made and amended by airport operators.

Section 9 of the Airport Authorities Act allowed airport authorities (or local authorities) to make bylaws for the airport as they thought fit. Section 9 provided for a number of purposes for which an airport authority could make bylaws, including for the good rule and management of the airport and regulating traffic. However, airport authorities had to seek the approval of the Minister of Transport, or the Governor-General by Order in Council, when making bylaws.

The Act provides several updates including changes to the process that airport operators go through to make bylaws. Some of those changes relate to making bylaws, consultation requirements and the Minister's new role.

### Making bylaws

Section 235 of the Act empowers airport operators to make bylaws, replacing section 9 of the Airport Authorities Act. The purposes that allow airport operators to make bylaws under the Act are similar to those under the Airport Authorities Act. The key difference is, under the Act, airport operators cannot make bylaws that affect the roads, as defined in the Land

Transport Act 1998, which includes streets and places which the public has access to. Airport operators can still make bylaws that affect the roads, but this must be done under Part 3 of the Land Transport Act 1998, in its capacity as a "road controlling authority".

### Consultation

Section 236 of the Act requires airport operators to consult with a number of parties when making bylaws under the Act. This replaces the requirement to seek approval from the Minister or Governor-General, under the Airport Authorities Act. Consultation is different for airport operators who are local authorities, and those who are not. For example, airport operators must consult with parties including the Civil Aviation Authority, the Police, the Chief Executive of the Ministry of Transport (the 'Secretary') and any parties who the airport authority believes may be affected by the bylaw. Conversely, local authorities must consult the public in accordance with section 156 of the Local Government Act 2002.

### Publication

Once the consultation phase is complete, the airport operator must give public notice that the bylaws are in place, stating:

- When the bylaws come into force; and
- That copies of the bylaws can be inspected and obtained at the office of the airport operator.

Public notice, holding copies of bylaws at the airport operator's office, making bylaws available online and supplying bylaws to anyone who requests a copy, are required by airport operators to finalise bylaws that have been made or amended. This removes the formality of bylaws having to be approved by the Minister of Transport.

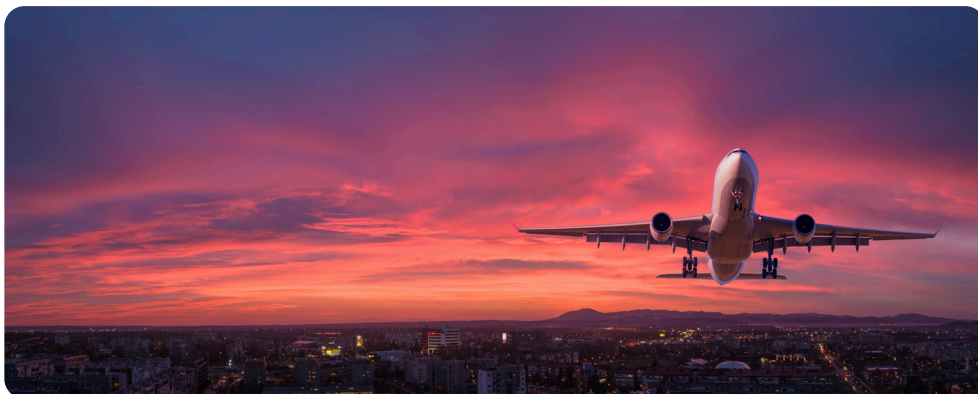
### Minister's role

Section 238 of the Act allows for the Minister of Transport to amend, replace or disallow bylaws either wholly or partly. The Minister can only do so if the bylaw is inconsistent with any enactment or is "unreasonable or undesirable" to the extent that it relates to or may affect traffic. The intention of the consultation process is to ensure this power is not required to be used by the Minister. However, it is likely that the Ministry will attempt to advise the airport operator about the issues/concerns, prior to the Minister taking such action.

### Key Takeaways

Existing bylaws implemented under the Airport Authorities Act will continue to apply if the airport is reregistered under the Act as an airport operator prior to 5 April 2030. If an existing airport authority does not reregister under the Act, its existing bylaws (and airport authority status) will expire on 5 April 2030 when the Airport Authorities Act is repealed.

If any airports have been contemplating changes to their current bylaws, it may be beneficial to wait until you are registered under the Act, as we view the bylaw updates to be more user friendly. Airports should also consider how registration under the Act will affect the airport's bylaws and what amendments should be made to the bylaws once registered under the Act.



## 'Prompt' law change required for Wildlife Act permits – Warning to Airports!

If you haven't already caught up on it, the Government is planning a "prompt" law change to prevent a court ruling on the Wildlife Act 1953 ("the Act") holding up roading and other infrastructure projects. This development is important for airports relying on permits under section 53 of the Act to authorise the taking or killing of wildlife at the airport, whether it's related to runway safety or during the completion of infrastructure developments.

The High Court recently found that it was unlawful for the Director General of the Department of Conservation ("DoC") to authorise the NZ Transport Agency Waka Kotahi under section 53 of the Act to harm and potentially kill protected wildlife species while constructing the Mt Messenger bypass in Taranaki.

Conservation Minister Tama Potaka says the High Court's ruling from Justice McHerron invalidated Waka Kotahi's permit to inadvertently kill protected wildlife during construction of the Mt Messenger bypass in Taranaki. Waka Kotahi also has permits under section 71 of the Act, so construction isn't affected. However, the Minister said that other developments relying on section 53 approvals, or projects awaiting approvals under that section, may be. Examples the Minister cited included power generation projects, pest control, and powerline

maintenance. In our view, this legal development is a concern for airports.

The Minister has issued a statement noting:

*"The Government intends to promptly change the law to enable these important activities to go ahead lawfully, including the building of houses and roads for example, as they have in the past with safeguards for wildlife. These amendments will provide certainty for existing projects"*

*"While developers are absolutely expected to make the best possible effort to protect our precious wildlife when getting on with their mahi, they should have confidence they won't be prosecuted if their projects incidentally kill protected wildlife despite having previous authorisation and complying with the conditions set."*

The Act is widely recognised as being out of date and a recent review completed by DoC in late 2023 involving a panel of experts, key stakeholders, iwi and other Crown agencies recommended a full repeal and replacement.

A copy of the proposed amendment bill hasn't been released yet and there is no information regarding when it will be introduced, but this is a developing area airports should be watching closely.

## About Ford Sumner Lawyers

Ford Sumner is a commercial law firm based in Wellington that services a national and international client base. We are passionate about working with airports and aviation participants. We have a wealth of experience across airport legal matters, including commercial contracts, property, construction, employment, dispute resolution and legislative compliance matters. Please contact us if we can be of assistance to you.



### **Sarah Churstain, Partner**

An expert corporate and commercial lawyer, Sarah leads Ford Sumner's Commercial Team. Acting for regional airports, Sarah is an expert in the commercial contracts and regulatory issues that arise in the aviation sector. Sarah's experience includes the full spectrum of issues in the airport legal environment, from airline agreements to property development, including renewable energy projects.

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### **Jason Kelly, Senior Associate**

Jason draws upon over 10 years' experience in corporate and commercial law, with a particular focus on business acquisitions, shareholder and company structure matters and commercial contracts and lease matters. In the aviation space, he has particular expertise in large projects and commercial property matters.

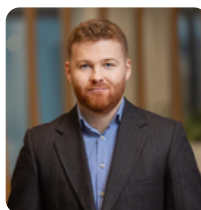
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### **Jaesen Sumner, Partner**

An experienced litigator with significant expertise in civil litigation and employment law, Jaesen leads Ford Sumner's Dispute Resolution Team. He has acted for airports over a number of years, advising on a wide range of matters including construction disputes, complex restructures, civil aviation, environmental protection and trespass issues.

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### **Jordan Todd, Associate**

Working for our commercial and corporate practice, Jordan has a strong focus on property, company and construction matters. He has particular experience assisting airport clients with large projects, commercial leasing matters and Local Government Act issues.

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