

# What are my review options?

This CAA Medical Information Sheet (MIS) outlines options available to applicants for a CAA medical certificate who are dissatisfied with a decision made in respect of their application. This could include a decision to decline the issue of a medical or a decision to issue a medical certificate with conditions, restrictions, or endorsements.

## What is the legal basis of CAA Medical Certification decisions?

The primary legislation that is the basis of the CAA medical certification system is contained in Part 2A of the Civil Aviation Act 1990 (the Act). The Director's power to issue medical certificates is granted by Section 27B of the Act. The Director is also granted other powers and responsibilities under other sections of the Act. These include powers, under sections 27H and 27I, to investigate the medical condition of a licence holder and to revoke, suspend, or amend medical certificates.

The Director of Civil Aviation is able to delegate these functions to others, so the term the *Director*, used in this document, will refer to both the Director of Civil Aviation and his delegates.

Part 67 of the Civil Aviation Rules contains further legislation, secondary to the Act, relating to medical certification, medical standards, and medical examiners.

Additional requirements are contained in the various General Directions, published by the Director of Civil Aviation, under the provisions of Section 27G of the Act.

## What are my review options?

If an applicant is dissatisfied with a decision relating to their medical certificate then they may elect to pursue any of a number of options. Those options include: Review by the Convener; District Court Appeal; and Judicial Review.

## What review option should I use?

The CAA cannot provide advice regarding which review options an applicant should use.

## What review options have others used?

Since 2002 the number of Convener Reviews sought has been much greater than the number of District Court appeals. During the period 2002—2009 there were no Judicial Reviews concerning CAA medical certification matters.

## What is the Convener?

The Convener is a person appointed by the Minister of Transport for the purpose of performing reviews of medical certification decisions. The legislation requires that the Convener be a medical practitioner, be experienced or knowledgeable in civil aviation, and be able to represent the public safety in aviation safety. (See *Looking at the Law* section at the end of this MIS)

## What is Review by the Convener?

Section 27L of the Act provides for Review of decisions regarding medical certificates or applications. Under this section an applicant may, within 20 working days, request the convener to review a decision.

The types of decisions that can be reviewed by the convener are:

- any decision taken under section 27B to:
  - grant an application for a medical certificate, or
  - grant an application but impose conditions, restrictions, or endorsements on the medical certificate, or
  - decline an application for a medical certificate.
- any decision under section 27I other than decisions relating to the suspension, or the imposition or amendment of conditions, on the medical certificate. The exceptions are specified in section 27L(1)(b).

This right to Convener Review does not apply to a decision taken under section 27B(5)(b) which permits the Director to require an applicant to undertake further tests, examinations or re-examinations or to provide further information as specified. (See *Looking at the Law* section at the end of this MIS)

## How do I apply for Review by the Convener?

The Ministry of Transport has published information about *Aviation Medical Convener Review* on their website<sup>1</sup>. This webpage includes links to an *overview* and a *guidelines* document concerning the Convener Review process, as well as an application form for Review of a Medical Certification Decision.

An application for Convener Review must be sent to the Convener, c/o the Ministry of Transport, and not to the CAA.

## District Court appeal

Section 27P of the Act affirms the right of any person affected by any decision taken by the Director under sections 27B, 27I(7), 27I(11), 27L, or 27M to appeal to the District Court under section 66 of the Act. This right of appeal does not apply to a decision taken under section 27B(5)(b) which permits the Director to require an applicant to undertake further tests, examinations or re-examinations or to provide further information as specified.

The CAA cannot provide advice to applicants regarding their rights to District Court appeal. Assistance and advice should be sought from a lawyer when considering a District Court appeal.

## Judicial Review

An applicant also has the right to make an application for Judicial Review, to the High Court, of any decision made by the Director pursuant to functions under the Act or powers granted under the Civil Aviation Rules.

The CAA cannot provide advice to applicants regarding their rights to Judicial Review. Assistance and advice should be sought from a lawyer when considering Judicial Review.

## Are there any other review options?

The roles and responsibilities of the CAA medical certification system are subject to the requirements of many other items of legislation (e.g. The Privacy Act). Because of this, there are potentially other review options that might relate to certain aspects of CAA medical certification.

The CAA cannot provide advice to applicants regarding such other review options.

## New medical information

The CAA will also routinely review a medical decision when new medical information relevant to the case is provided.

1. See <http://www.transport.govt.nz/aviation-medical-convener-review>

## Looking at the law

### Civil Aviation Act

**Section 27L** of the Act, *Review of decisions regarding medical certificates or applications*, includes the following:

- (1) A licence holder or an applicant may, within 20 working days of a decision being made, ask the convener in writing to review the following decisions made by the Director about that person's medical certificate or application:
  - (a) any decision made under section 27B, other than a decision made under section 27B(5)(b):
  - (b) any decision made under section 27I, other than a decision made under—
    - (i) section 27I(1); or
    - (ii) section 27I(2)(a); or
    - (iii) section 27I(2)(c); or
    - (iv) section 27I(3)(a)(i); or
    - (v) section 27I(3)(a)(iii).
- (2) If such a request is made, the convener must, as soon as practicable, review the decision.

**Section 27P** of the Act, *Right of appeal to District Court*, states that:

Any person affected by a decision of the Director under section 27B (other than a decision made under section 27B(5)(b)), section 27I(7), section 27I(11), section 27L, or section 27M has a right of appeal to a District Court under section 66.

**Section 27J** of the Act, *Appointment of convener and deputy convener*, includes a requirement that the Convener (and Deputy Convener) must:

- (a) be medical practitioners who are suitably qualified, and experienced or knowledgeable in civil aviation; and
- (b) be able to represent the public interest in aviation safety.

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