

S15A Investigation Policy

Purpose

This policy refers to the Director's powers to investigate an aviation document holder (document holder).

The purpose of a s15A investigation is to gather information to determine the nature and extent of any safety or security risk involving a document holder, to establish if action is required to mitigate or remove the risk to prevent future harm.

The information gathered during the s15A investigation shall be used to:

- determine whether a safety or security risk is present;
- understand the cause and future level of the risk; and
- make recommendations regarding what action, if any, is required to be taken to mitigate or remove the risk.

Quick Fact: The primary purpose of a section 15A investigation is to help determine if action is required to prevent future harm.

Scope

This policy applies to all CAA employees who hold the necessary delegation to undertake an investigation under s15A of the Civil Aviation Act 1990 (the Act) and other persons involved in s15A investigations.

This policy does not apply to the following modes of investigation:

1. **Aviation Related Concern (ARC) investigation:** a review of safety and security information obtained from a variety of sources to determine the nature and extent of risks that exist within the aviation environment, for the purpose of making a recommendation on what action, if any, to take;
2. **Safety investigation:** an analysis of system defences and influences to enable potential unsafe system states to be addressed or prevented, improving the resilience of the aviation system;
3. **Enforcement investigation:** to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and recommend a suitable response to the decision maker responsible for determining what, if any, action should be taken in the public interest, to enforce the legislation; and
4. **Health and Safety Investigation:** to determine the causes of harm in the workplace, whether action has been taken or needs to be taken to prevent recurrence or where effective and appropriate compliance and enforcement

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measures (including prosecutions) may be necessary to secure compliance with the Health and Safety at Work Act 2015.

A s15A investigation must be carried out in accordance with this policy and with regard to the following:

- the Act;
- Civil Aviation Rules (CARs);
- NZ Bill of Rights Act 1990, in particular section 27 [*Right to Natural Justice*];
- Regulatory Operating Model (ROM);
- Regulatory Tools Policy (RTP); and
- s15A investigation procedure
- the State Services Commission’s Model Standards for Information Gathering Associated with Regulatory Compliance
- the Code of Conduct for State Servants

Definitions

Administrative action	The removal or mitigation of unacceptable risks to safety through administrative actions to suspend, revoke, or impose conditions on an aviation document or detain aircraft, seize aeronautical products or impose prohibitions and conditions.
Aviation document	Means any licence, permit, certificate, or other document issued under the Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product, or aviation related service.
Holder	In relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document.
Natural Justice	Section 27 of the NZ Bill of Rights Act 1990 provides that every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person’s rights, obligations, or interests protected or recognised by law. With respect to a s15A investigation, natural justice requires a fair and proper procedure be used when making a decision.
s15A Investigation team/panel	Appropriately qualified and trained staff responsible for conducting the investigation.

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Standard of Proof	The relevant standard of proof that must be applied to a section 15A investigation is “on the balance of probabilities”, that is, it must be more probable than not that the relevant facts that gave rise to the allegations or concerns have been made out. This is in contrast to a criminal investigation where the evidential requirement is <i>beyond reasonable doubt</i> .
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Policy

The Director’s function and powers

A document holder is required to meet their obligations with respect to the Act, the CARs and regulations. Section 72(3)(b) of the Act requires the Director to take such action as may be appropriate in the public interest to enforce the provisions of the Act and of regulations and rules made under the Act, including the carrying out or requiring of inspections and monitoring.

The ROM, RTP and CAA operating policies and procedures provide guidance on how CAA interventions may be used to influence the behaviour of aviation participants, remove or reduce risk, and ensure that desired safety and security outcomes are achieved.

Power of Director to Investigate Document Holder

Section 15A of the Act empowers the Director to require any document holder to undergo an investigation conducted by the Director if the Director believes, on reasonable grounds, that it is necessary in the interests of safety and security, and if the Director–

- (a) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of section 12; or
- (b) considers that the privileges or duties for which the document has been granted are being carried out in a careless or incompetent manner.

Triggering a s15A Investigation

The Deputy Director with regulatory oversight for the particular safety or security concern (Deputy Director) is responsible for determining whether a s15A investigation should be commenced. This decision is informed through a recommendation(s) from the operational unit manager responsible for the oversight of the document holder (operational unit manager) or another recommendation methodology employed by the operational group.

Relevant factors to take into account when assessing whether to commence a s15A investigation include:

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- the circumstances of the safety or security concern, including the level of risk and whether the need for a s15A investigation should be escalated due to the risk manifesting itself as an event;
- the source of the information and whether the document holder in question has openly self-disclosed the occurrence, breach, or deficiency;
- the nature and extent of the document holders involvement in the aviation system;
- the quality and relevance of information received which highlights a potential safety or security concern;
- the behaviour of the document holder;
- the compliance record of the document holder;
- the time that has elapsed since the events that gave rise to the safety or security concern;
- whether there is evidence of a systemic problem, indicating a pattern of conduct or a widespread problem;
- the appropriateness of the s15A investigation as a means of gathering information and whether other methods may be more suitable; and
- any other information or evidence deemed relevant.

It may not be necessary to trigger a s15A investigation when the CAA already holds sufficient information to inform the Director's administrative decision making.

Suspension of Aviation Document during s15A Investigation

The operational unit manager shall assess the available information and consider whether it is necessary, in the interest of safety, to make a recommendation to the Deputy Director to suspend or place conditions on an aviation document while the s15A investigation is carried out.

As well as the interests of safety, the operational unit manager shall take into account the specific criteria set out in section 17 of the Act [*Power of Director to suspend aviation document or impose conditions*], in particular if he or she:

- a) considers such action necessary to ensure compliance with this Act or rules made under this Act; or

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- b) is satisfied that the document holder has failed to comply with any conditions of an aviation document or with the requirements of section 12 [*General requirements for participants in civil aviation system*]; or
- c) is satisfied the holder has contravened or failed to comply with section 49 [*Communicating false information or failing to disclose information relevant to granting or holding of aviation document*]; or
- d) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.

When making this assessment the operational unit manager shall consider the level of risk and whether it is present or on-going. The operational unit manager will also be guided by information that is generated and provided to him/her during the s15A investigation.

The criteria in s19 of the Act must always be considered when taking administrative action including suspension action under s17.

This involves consideration of the following:

- the document holder's compliance history with transport safety regulatory requirements;
- any criminal convictions for transport safety offences (including any overseas convictions);
- any evidence the document holder has committed a transport safety offence and/or evidence of their non-compliance with Civil Aviation Rules; and
- any other matters, evidence or information that may be relevant to the assessment.

Conduct of s15A Investigation

Terms of Reference

The operational unit manager is responsible for generating a terms of reference (ToR) document which establishes a scope and focus for the s15A investigation.

The ToR and any accompanying correspondence shall set out:

- why a decision has been made to trigger a s15A investigation;
- details of the investigation team/panel;
- the statutory requirements that apply; and
- anticipated timeframes for completing the investigation.

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The completed ToR shall be sent to the document holder under investigation to inform them of the existence of the investigation, the basic facts and any allegation(s) against them, as well as provide them with clarity as to how the investigation will be carried out. This notification should occur as early as possible in order that the ToR provide the document holder with information about when the investigation will begin (refer s15A(2)(b)(i)).

The information sources to be used during a s15A investigation will largely be determined by the nature and scope of the terms of reference. Information sources may include:

- information from the CAA's business systems
- information from publicly accessible social media platforms such as YouTube or publicly accessible Facebook accounts
- interviews of witnesses
- interviews of the subject
- expert advice from internal or external sources
- Airways data

It would not be appropriate in the context of a s15A investigation to use covert surveillance or surveillance governed by the Search and Surveillance Act to gather information to support the investigation.

Sometimes the CAA will receive information from anonymous sources relevant to a person who is the subject of a s15A investigation. Such information should be treated with caution as there is no way to test the credibility or bona fides of the informant. While the anonymous information may be used to direct further lines of enquiry, the information itself should not be treated as having any evidential value unless it is able to be corroborated by independent enquiries.

Any unsolicited information received from third parties, even if they are identifiable, should be tested hard for credibility and accuracy and, wherever possible, be corroborated by further independent CAA enquiries.

The investigation must comply with the requirements of the Privacy Act in terms of the collection, use and storage of information, in that:

- personal information should only be collected where it is relevant to the concerns under investigation – as set out in the terms of reference. If, as the investigation progresses, it is considered that the nature of the information to be collected needs to expand, the terms of reference should be amended accordingly;

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- information that is collected as part of a s15A investigation is gathered for the purpose of determining whether a participant can safely exercise their privileges under the Civil Aviation Act and Rules. This information may accordingly be used for that same purpose by others within CAA, e.g. in the subsequent consideration of the participant's fit and proper status;
- information gathered as part of a s15A investigation must be managed and stored in accordance with the Privacy Act and Privacy Principles – refer to the Authority's Privacy Policy for further guidance in relation to this:
<http://cirrus/PolicyAndProcedures/Word Document Versions of PDF/Privacy Policy.docx>
Information we gather during the course of surveillance activity will be collected, stored and managed in accordance with the CAA's Information and Records Management Policy.

Parallel Interventions

A parallel investigation may occur when the operational unit manager determines, after applying the RTP, that other forms of regulatory intervention should take place in parallel with the s15A investigation, arising out of the same set of facts that gave rise to the safety or security concern. Depending on the circumstances, the parallel intervention can occur in tandem (simultaneously) or in succession with the s15A investigation.

If a parallel intervention is appropriate, the operational unit manager shall ensure that a coordinated approach is undertaken where the assigned investigators communicate, confer, strategise and, where appropriate, share information. Legal advice should be sought in this situation.

Natural Justice

Any document holder subject to a s15A investigation shall be treated in accordance with the principles of natural justice. Natural justice requires any CAA staff involved in a s15A investigation to:

- inform the document holder under investigation of the substance of any allegations or concerns against them and give them an opportunity to respond;
- provide all parties with a reasonable opportunity to put their case, whether in writing, at a meeting/interview or otherwise;
- consider all submissions carefully before finalising the s15A investigation report;
- make reasonable enquiries or investigations before making a recommendation;

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- take into account all relevant factors;
- act fairly and without bias; and
- conduct the investigation without undue delay.

Natural justice will require that the draft s15A report be sent to the document holder for their comment regardless of whether or not they have elected to participate in the s15A investigation.

The draft investigation report shall be legally reviewed before it is finalised or distributed to the document holder for comment.

Public Interest

In the context of a s15A investigation public interest considerations are solely focussed on the prevention of future harm.

In assessing the relevance of the information collected, the s15A investigation team must consider the principles of *proportionality* and *consistency*.

Proportionality

The following factors need to be considered by the s15A investigation team when assessing the information gathered and compiling the investigation report:

- potential for harm in the future:
 - Ø the nature and extent of the aviation activity to be conducted;
 - Ø behaviour of participant – whether the document holder has demonstrated positive behaviours by, for example, accepting accountability at an early stage, showing a genuine willingness to learn from the event, and implementing meaningful change. This assessment may be informed by whether a genuine mistake has been made; or if the circumstances disclose deliberate, deceptive or dishonest conduct;
 - Ø compliance – the aviation document holder’s previous compliance history;
- whether the potential for harm can be adequately mitigated without using the Director’s administrative powers.

Consistency

Within the context of a s15A investigation, consistency is a case of like circumstances resulting in like treatment by the regulator. This can be achieved by:

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- applying the fit and proper person (FPP) criteria detailed in s10 of the Act;
- considering the forward looking focus of the FPP assessment; and
- reviewing indicators as to how the document holder might exercise the privileges of his/her aviation document in the future.

Resources

The operational unit manager shall ensure that the assigned investigation team/panel is provided with sufficient resources and appropriate direction and oversight to complete the s15A investigation in a timely manner.

This may require operational staff to be reassigned from normal duties to fully commit to the investigation process, including completion of the draft investigation report.

The CAA does not use external consultants or security consultants to conduct s15A investigations.

Additional Risks Identified During Investigation

The investigation/panel team leader shall promptly advise the operational unit manager if the s15A investigation discloses a significant safety or security risk that requires urgent consideration of administrative action.

Safety of CAA Employees

During a s15A investigation all practicable steps must be taken to ensure the safety of CAA employees and contractors, in accordance with the Health and Safety at Work Act 2015.

A risk assessment is mandatory for certain high-risk activities prescribed in regulations 5 to 8 of the Health and Safety at Work (General Workplace and risk Management) regulations 2016.

A risk assessment shall be undertaken when:

- how a hazard may cause injury or illness is uncertain;
- the work activity involves different hazards, and the workers involved don't know how those hazards interact to produce new or greater risks;
- workplace changes may impact on the effectiveness of control measures;
- new or different risks are associated with a change in work systems or work location.

Reporting

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Investigation Team/Panel

At the conclusion of the s15A investigation the investigation team/panel shall prepare a written report for the operational unit manager that sets out the concerns, how the investigation was conducted, relevant facts, any feedback provided on the draft report from the document holder under investigation along with any changes made to the report as a consequence, conclusions, findings and recommendations.

Operational Unit Manager

When reviewing the written report the operational unit manager shall ensure that:

- CAA policy and procedure has been complied with;
- the subject of the s15A investigation has been treated in accordance with the principles of natural justice; and
- relevant facts have been established and documented to enable the Deputy Director to reach appropriate conclusions based on the available evidence.

The operational unit manager shall include a covering report to the Deputy Director which sets out their view on the recommendation(s) made.

Legal review

All s15A investigation reports must be reviewed by a CAA lawyer (or an external lawyer appointed by the Chief Legal Counsel). The legal review must canvass:

- the sources of information used, to ensure that they were lawful, reasonable and appropriate in the circumstances;
- the analysis, to ensure that it is supported by the available evidence;
- the recommendations, to ensure that they are proportionate, reasonable and appropriate to address the nature and extent of any aviation risk identified.

Decision maker

The Deputy Director is responsible for reviewing the final s15A report, along with any submissions made by the subject of the report on the draft report they were provided earlier, and determining what action, if any, will be taken against the document holder.

There are a range of possible outcomes available to the Deputy Director, which may include:

- no further action; or

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- referral of the matter to an external agency for further investigation; or
 - suspension of an aviation document and/or the imposition of conditions, pursuant to section 18 of the Act, where such action is considered necessary in the interests of safety; and/or
 - referral to the Director for consideration of revocation action under section 18 of the Act; and/or
 - referral to the operational unit manager to consider other forms of interventions in accordance with the RTP.

Referral to the Director

The s15A report will only be referred to the Director for a decision if the recommendation includes revocation of an aviation document pursuant to section 18 of the Act, and the Deputy Director agrees with this recommendation.

Provision of Results to the Document Holder

Section 15A(2)(b)(ii) requires that the document holder be advised of the results of the investigation, including any recommendations arising out of the investigation, and the grounds for those recommendations.

In practice, this means the section 15A report shall be provided to the document holder as soon as it is finalised and presented to the relevant CAA operational manager.