Office of the Minister for Economic Development and Science and Innovation
Chair, Cabinet Economic Growth and Infrastructure Committee

Outer Space and High Altitude Activities Bill: Final Policy Decisions

Proposal

1. This paper provides further advice on issues that have arisen during the development of a regulatory regime for commercial space launches from New Zealand, including:

   - a proposal to include certain very high altitude ('near space') activities within the scope of the regulatory regime;
   - the decision-making process for issuing a national security certificate (which has the effect of vetoing the proposed activity);
   - the offences and penalties regime under the Outer Space and High Altitude Activities Act (the Act); and
   - confirmation that the review of the Act after three years will be a legislative requirement.

Executive Summary

2. In December 2015, Cabinet approved the high-level design of a regulatory regime to enable commercial space launches and the operation of payloads (e.g. satellites) from New Zealand. During the development of the legislation, a small number of policy issues have arisen that require Cabinet approval in order to finalise the proposed legislation.

The inclusion of high altitude activities within the scope of the proposed space regime

3. New technologies are being developed to operate at very high altitudes (from about 100km down to the normal operating altitudes of aircraft, an area often referred to as 'near space'). Some of these technologies perform similar functions to satellites. The advice from officials from the Ministry of Business, Innovation and Employment (MBIE), the Ministry of Transport, Defence and Security agencies, including relevant officials from the Department of the Prime Minister and Cabinet, is that certain high altitude activities should be included within the scope of the proposed space regime. This will 'future proof' the legislation for advances in technology and ensure that different technologies that perform similar functions are treated consistently. It will also ensure that New Zealand is well positioned to control high altitude activities that originate from New Zealand.

4. The group of officials referred to above have discussed the appropriate lower limit to apply to the high altitude regime and recommend that it be set with reference to flight level 600 (this is currently the altitude that is the upper limit of controlled airspace and is approximately 18kms above ground level). This reference point emphasises the connection with the civil aviation regime and the intended continuity between the two regimes.

5. The Minister responsible for the administration of the proposed Outer Space and High Altitude Activities Act (the responsible Minister) will have the ability to exempt or exclude (as may be appropriate) specified (classes) of high altitude vehicles which undertake activities

that are not intended to be subject to the high altitude regulatory regime, and are otherwise regulated as appropriate under aviation legislation and regulations.

The decision-making process for issuing a national security certificate

6. Cabinet has agreed that serious national security concerns associated with the application for a space licence, or with the operation of a space object, will result in the issue of a national security certificate (which will act as a veto on the proposed activity).

7. The Minister in Charge of the NZSIS and Responsible for the GCSB and I would like to propose a new model for managing national security considerations for the proposed Outer Space and High Altitude Activities Act. The core elements of the model are described below:

- The national security Minister(s) would be consulted as part of the decision-making process on the proposed activity.
- The nature and significance of the risk and extent to which it can be mitigated would be taken into account in the decision-making process (both Ministers can agree on the mitigations that should be imposed).
- In the event that either Minister believes a launch should not proceed, the matter is referred to the specified group of Ministers designated by the Prime Minister.
- The Minister in Charge of the NZSIS and Responsible for the GCSB can issue a certificate vetoing the activity, with the agreement of the specified group of Ministers.

8. s 9(2)(f)(iv)

Offences and penalties regime

9. I propose an offence and penalty regime to deter conduct that could cause serious harm (such as damage to people, property and the environment) or that could breach New Zealand's international obligations, including our obligations under the Technology Safeguards Agreement with the United States.

10. The proposed offences and penalties are based on the closest domestic analogues including the Civil Aviation Act 1990 (e.g. for licensing offences such as launching or procuring the launch of a space object without a licence) and the trade secrets offences under the Crimes Act (e.g. for offences relating to 'interference with space objects').

11. For serious licensing offences, I propose that there be a power to arrest offenders and, if necessary, to extradite them back to New Zealand. This requires serious offences to be eligible for a term of imprisonment (not less than one year). The Civil Aviation Act provides for an additional financial penalty of three times the value of any commercial gain resulting from a licensing offence where the offence was committed for financial benefit. The same approach is proposed under this regime.

Review of the Act

12. Cabinet has agreed that there will be a review of the Act three years after its enactment. I propose that this review be a requirement in the legislation as this will create certainty that the review will be undertaken and provide assurance that, since the legislation has some novel elements, there is a clear process to review and adjust these elements as required.

Background

13. New Zealand has certain natural advantages as a space launch location due to our clear skies and seas, and access to particular launch angles. New Zealand's status as a responsible international citizen with trusted security partners is also an important enabler for space launches to take place from New Zealand. We already have one highly innovative company, Rocket Lab, located here and intending to launch from New Zealand. This positions New Zealand at the threshold of exciting new developments associated with low cost rocket launches and the placement of small satellites in space.

14. The Government is putting in place a modern and internationally credible regulatory framework to enable space activities to be located in New Zealand. The regulatory framework will mean that we can be part of these exciting new developments whilst ensuring that they are in the national interest.

15. In December 2015, Cabinet approved the high-level design of a regulatory regime to enable commercial space launches from New Zealand and the operation of payloads (e.g. satellites) in outer space in order to:

- facilitate the development of safe, secure and responsible space activities;
- implement New Zealand's international obligations for space activities (including United Nations outer space treaties and the proposed Technology Safeguards Agreement); and
- to manage New Zealand's liability that may arise from space launches (EGI 15 Min 0175 refers).

16. The legislation will establish a licensing regime (an overarching licence to launch a space object with a permitting regime for specific payloads such as satellites, with specific requirements implemented through licence conditions) to enable the Government to control the launch and operation of space objects from New Zealand. This is consistent with international practice for commercial space activities legislation.

17. Cabinet also authorised a group of Ministers to have power to act to make decisions on the detail of the legislation consistent with the policy framework in the Cabinet paper. During the subsequent development of the legislation, a small number of policy issues have arisen that have broader implications for the content of the regulatory regime and therefore require further Cabinet consideration. These are:

- a proposal to include certain very high altitude ('near space') activities within the scope of the space regime;
- the decision-making process for the issue of a national security certificate (which has the effect of a veto on the proposed activity);

- the offences and penalties regime under the new Act; and
- a proposal that the review of the new regulatory regime after three years be a legislative requirement.

Comment

Including high altitude activities within the space activities regulatory regime

18. Developments in technology are enabling new types of operating systems to be deployed in 'near space' (from about 100km down to the normal operating altitudes of aircraft). These systems (including high altitude balloons, high altitude drones and pseudo-satellites) are being developed by commercial and military interests to carry out similar functions to satellites[1], including earth observation, border surveillance, maritime control and internet connectivity. A recent example of such an experimental activity is NASA's super pressure balloon, which took flight from New Zealand in recent months to undertake scientific experiments. As these technologies develop, they have the potential to become a popular choice for certain scientific missions that would otherwise require more expensive rocket launches.

19. While the use of high altitude vehicles operating in near space for these types of applications is still developing, military and civil utilisation of this zone is increasing with the consequent need to address issues such as national security and safety. Operations in near space are a potential hazard for air traffic and for the public in the case of technology failures or malfunctions.

20. The safety aspects of such systems if they are aircraft (including balloons and drones) are regulated under the Civil Aviation Act 1990 (the CA Act). However, the CA Act has a focus on the promotion of aviation safety and does not take account of national security and national interest requirements. s 9(2)(f)(iv)

21. The establishment of a legal regime for high altitude activities will ensure that New Zealand is well positioned to control these activities in future as technological advances and circumstances require. It will also benefit private entities by providing regulatory certainty and a consistent legal framework for investment in experimental technologies.

22. The key design questions associated with how best to regulate very high altitude activities include:

- which regulatory regime should apply to high altitude activities – the (new) space activities regime, or the (revised) civil aviation regime; and
- determining the appropriate lower limit to apply to a high altitude regime.

Which regulatory regime should apply to high altitude activities?

23. The two candidates for a high altitude regime are the proposed Outer Space Activities Act or the civil aviation regime (the CA Act is currently under review). Officials from MBIE, the Ministry of Transport, the Department of the Prime Minister and Cabinet, and Defence and security agencies have discussed the options and consider that the proposed space regime is the best fit for regulating certain high altitude activities.

1 Although there is no legal definition of Outer Space, this is generally accepted as the area extending beyond 100km above Earth, beyond which the atmosphere will not support an aircraft operating below orbital speed.

24. The objectives of the proposed space regulatory regime (including economic development and innovation, and managing risks to safety, security and the environment) are equally applicable to activities in near space as they are to activities in outer space. Extending the scope of the space regime to include certain high altitude activities does not significantly alter the costs or benefits associated with establishing the new regime. Moreover, the development of a high altitude regime as part of the proposed space regime will ensure that different technologies providing similar functions are regulated consistently regardless of the altitude at which they operate. This will help 'future proof' the space regime for developments in technology.

25. The civil aviation regime already applies to all aircraft regardless of altitude, but it is predominantly focused on safety of New Zealand's air transport services and does not enable regulation on national security or national interest grounds. s 9(2)(f)(iv)

26. The inclusion of certain high altitude activities within the proposed space activities regime will mean that:

- payloads that New Zealand authorities deem capable of being operated at very high altitudes (i.e. near space) are within the scope of the space regime; and
- high-altitude vehicles (i.e. the carrier systems that New Zealand authorities deem capable of taking payloads up into the high altitude region) are also within the scope of the proposed space regime, but (if they are aircraft), the safety aspects of their operation will still be addressed through established Civil Aviation Authority procedures.

27. s 9(2)(h), s 9(2)(j)

28. s 9(2)(h), s 9(2)(j) the high altitude provisions will be drafted as a separate part of the Bill so that they operate as a set of standalone requirements and definitions. This also means that, if necessary, they can be decoupled from the main outer space provisions without impacting on the integrity of those parts of the Bill. I also propose that the title of the new Act be amended from the Space Activities Act to the Outer Space and High Altitude Activities Act.

Defining the lower limit at which the high altitude regime will apply

29. There are three main options for defining the limit at which the high altitude regime will apply. The following table lists the options and the advantages and disadvantages associated with them:

Option	Comment
1. Reference to flight level 999 (about 30km above ground)	This is the limit of New Zealand's flight information region. The advantage of using this limit is that it effectively represents the upper limit of airspace likely to be subject to air traffic control and used by 'ordinary' civil aircraft providing air services. s 6(a)
2. Reference to an altitude of 20km above ground	This is a height at which some scientists believe 'near space' begins. s 6(a) Its disadvantage is that it may appear arbitrary.
3. Reference to flight level 600 (about 18km above ground)	This is the current altitude that is the limit of controlled airspace in New Zealand. s 6(a) As the limits of controlled airspace are made by a designation under the CA Act, this option also has a practical connection with the civil aviation regime which is helpful given the need to harmonise certain criteria for authorising activities under the two regimes.

30. The group of officials referred to in paragraph 24 recommend that the appropriate limit at which the high altitude regime will apply should be set with reference to flight level 600 (option 3 above). This option strikes a balance between:

- the risks of setting the limit too high and thereby failing to regulate activities occurring between this limit and the lower options;
- the risks of setting the limit too low and thereby inadvertently bringing within the scope of the regulatory regime a whole lot of activity that we do not want to capture. It is possible that flight level 600 will capture aircraft such as weather balloons which are not intended to be in scope. However, this can be dealt with by including a power for the responsible Minister to make regulations that exempt or exclude, as may be appropriate, specified vehicles or aircraft or classes of vehicles or aircraft which undertake certain activities that are not intended to be subject to the high altitude regulatory regime, and are otherwise regulated as appropriate under civil aviation law; and
- the need to ensure an efficient alignment between the Outer Space and High Altitude Activities Act and the CA Act, and to reduce any uncertainty and complexity in relation to the interface between the two regimes.

31. s 9(2)(h), s 9(2)(j)

s 9(2)(h), s 9(2)(j)

32. The current review of the CA Act will provide a further opportunity to ensure consistency and alignment of the regulatory regimes in the (new) Outer Space and High Altitude Activities Act and the (revised) CA Act in relation to high altitude activities. There will also be a review of the Outer Space and High Altitude Activities Act three years after its enactment, which will provide a further opportunity to ensure harmonisation between the two regulatory regimes.

National security assessment process

33. The domestic regulation of space and high altitude activities is new for New Zealand, and requires consideration of how best to manage national security risks that may arise from these activities. s 9(2)(f)(iv)

34. In December 2015, Cabinet agreed that the responsible Minister must not grant a licence if:

- the grant of a licence would be inconsistent with New Zealand's international obligations; or
- the Minister in Charge of the New Zealand Security Intelligence Service (NZSIS) certifies that the grant of a licence would pose an undue risk to national security; or
- the responsible Minister is not satisfied the applicant is a 'fit and proper' person; or
- the grant of a licence would be contrary to New Zealand's national interests (EGI 15 Min 0175 refers).

35. Under New Zealand law, national security issues are managed in different ways ranging from The Telecommunications Interception Capability and Security Act 2013 where a national security Minister has powers of direction to address national security issues to the regimes in Passports and Immigration law where the decision on national security risk is left to the responsible Minister.

36. The Minister in Charge of the NZSIS and Responsible for the GCSB and I would like to consider a new model for the proposed Outer Space and High Altitude Activities Act. This is described below.

Proposed national security regime as it would apply to the space regime

The consultation process

37. When considering an application for, renewal of, or change to a space licence or permit (or a high altitude licence[1]), the Minister responsible for the Outer Space and High Altitude Activities Act (the responsible Minister) will receive information and advice from the Minister in Charge of the NZSIS and/or the Minister Responsible for the GCSB about any actual and

[1][1] A space licence is required for the launch into space of one or more **launch vehicles** of a specified type. A space permit is required for the launch into space or one or more **payloads** of a specified type. A high altitude licence is required for the launch of one or more **vehicles** of a specified type **capable of reaching high altitude**, whether or not carrying a payload.

potential national security risks, whether those risks can be mitigated, and (if so) the mitigation measures recommended.

38. The consultation process may conclude that there are no significant national security risks from the proposed application, or that any risks identified can be adequately mitigated through changes to the proposed activity or through imposing conditions on it. The responsible Minister may impose conditions on a space licence, space permit, or high altitude licence that he or she considers necessary and desirable to protect national security. When considering whether to impose a discretionary condition, the responsible Minister must consult with the Minister in Charge of the NZSIS and the Minister Responsible for the GCSB.

39. It is also proposed that the consultation process apply when: the responsible Minister considers whether an authorisation granted in a country other than New Zealand be treated as a space licence or permit; for the renewal of a space licence or permit; or for changes to a licensee or permit holder. The consultation process will also apply to the granting, renewal, variation, revocation or suspension of a high altitude licence.

The certification process

40. The consultation process will be sufficient to manage most national security risks. However, in the event that either the Minister in Charge of the NZSIS and Responsible for the GCSB and the Minister responsible for the Outer Space and High Altitude Activities Act consider that there is a significant security risk and that the risks are not sufficiently mitigated, either Minister can refer the application to a specified group of Ministers (including the Prime Minister, the Minister in Charge of the NZSIS, the Minister Responsible for the GCSB, the Minister responsible for the Outer Space and High Altitude Activities Act, the Minister of Defence, the Minister of Foreign Affairs, and any other Minister specified by the Prime Minister).

41. The Minister in Charge of the NZSIS and Responsible for the GCSB can issue a certificate vetoing the activity, with the agreement of the specified group of Ministers.

42. Where a certificate is issued, the responsible Minister will decline the licence or permit accordingly.

43. In all cases, a national security risk assessment will be undertaken. s 6(a) [redacted] However, the administrative arrangements that sit behind the decision on the national security certificate will not be included in the legislation as the level of detail would unnecessarily complicate the legislation.

44. The certification process will not limit the responsible Minister's authority to consider an application for, a renewal of, or a change to a licence for a space or high altitude activity. s 6(a) [redacted]

s 9(2)(f)(iv)

[redacted]

Dealing with national security issues in court proceedings

s 9(2)(f)(iv), s 9(2)(g)(i)

[redacted]

Offences and penalties under the Outer Space and High Altitude Activities Act

49. In December, Cabinet agreed that there should be offences necessary to support the Space Activities Bill with penalties that apply to comparable conduct under existing criminal law. This paper seeks Cabinet approval to detailed offence and penalty provisions to include in the Bill. The Ministry of Justice has been consulted and their advice has been incorporated into these proposals.

Licensing offences

50. The nearest domestic analogue for the licencing aspects of the regime is the penalty regime in the CA Act, although it is arguable that there is the potential for greater harm arising from licensing offences against the space regime (including public safety, national security, international relations, and international liability for damage).

51. A matter of importance in relation to very serious licencing offences in the Outer Space and High Altitude Activities Bill is that there is power to arrest offenders and, if necessary, to extradite them back to New Zealand from another country. This requires these types of offences to be imprisonable.

52. The CA Act provides for an additional financial penalty of three times the value of any commercial gain resulting from a licencing offence where the offence is committed for commercial gain. I propose adopting the same approach under this regime.

53. I propose that the following licensing offences and penalties be adopted:

a. **Launching or procuring the launch of a space object without a permit.** This offence will be punishable by: in the case of an individual, a term of imprisonment not exceeding one year, or a fine not exceeding $50,000, or both; and in the case of a body corporate, a fine not exceeding $250,000;

b. **Intentionally failing to comply with conditions of a permit.** This offence will be punishable by: in the case of an individual, a term of imprisonment not exceeding one year, or a fine not exceeding $50,000, or both; and in the case of a body corporate, a fine not exceeding $250,000;

c. **Failing to comply with a licence or permit condition.** This offence will be punishable by: in the case of an individual, a fine not exceeding $2,000; and in the case of a body corporate, a fine not exceeding $10,000.

d. **Penalty for commercial gain or Crown international law liability.** I propose an additional penalty of three times the amount of any commercial gain where the offence is committed for commercial gain. This additional penalty is modelled on s47 of the CA Act and seems appropriate given the well-financed nature of the space industry.

e. There will also be offences for **operating a high altitude vehicle without a permit, failing to comply with high altitude permit conditions, and making false and misleading statements** in a permit application. These will attract the same penalties as the licencing offences under the space regime.

Interference (with a space object) offences

54. The offences relating to 'interference with space objects' are necessary to implement our international obligations under the TSA with the US and are akin to the trade secrets offence in the Crimes Act 1961. This offence is punishable by a term of imprisonment not exceeding five years. The TSA is cast in absolute terms, which means that there will need to be a strict liability offence punishable by a fine. However it is proposed that there also be more serious offences punishable by five years' imprisonment for interference with space objects with intent to obtain a trade secret.

55. The TSA also requires us to have offences relating to security and enhanced security areas, including offences relating to failing to display identity badges. Of these, the most serious relates to being found in a security area and requested by an enforcement officer to leave

but refusing to do so. This is akin to a trespass offence and we propose that it be penalised accordingly.

56. I propose the following interference offences and penalties:

a. **Interfering with a launch vehicle or payload with intent to obtain a trade secret**. This offence will be punishable in the case of an individual with a term of imprisonment not exceeding five years, or a fine not exceeding $100,000, or both; and in the case of a body corporate, a fine not exceeding $500,000;

b. **Interfering with a space object or payload without a lawful excuse**. This offence will be punishable by a fine not exceeding $1,000 in the case of an individual; and in the case of a body corporate, a fine not exceeding $10,000. These lower penalties reflect the less culpable nature of this offence compared to the offence in e) above;

c. **Refusing to state name, address, authority to be in security area, or refusal to leave a security area after an enforcement officer asks**. This offence will be punishable by: in the case of an individual, a term of imprisonment not exceeding three months and/or a fine not exceeding $2,000, or both; or for minor offending, an infringement offence with a fine not exceeding $1,000.

d. **Failure to maintain a system for ensuring persons in a secure area wear identity cards.** This offence will be punishable by a fine not exceeding $50,000 in the case of an individual; and in the case of a body corporate, a fine not exceeding $100,000.

False or misleading information

57. I propose the following offences and penalties in relation to supplying false and misleading information:

a. **False and misleading information in a licence application**. This offence will be punishable by a fine not exceeding $10,000 in the case of an individual; and in the case of a body corporate a fine not exceeding $50,000; or for minor offending where someone unintentionally provides false or misleading information in a final license application, there could be an infringement offence not exceeding $1,000.

b. **Providing false or misleading information to an enforcement officer.** This offence will be punishable by: in the case of an individual a fine not exceeding $10,000; and in the case of a body corporate a fine not exceeding $50,000; or for minor offending where someone unintentionally provides false or misleading information there could be an infringement offence of $1,000.

Proposal that the review of the Act be a legislative requirement

58. Cabinet has agreed that there will be a review of the Act three years after its enactment. I propose that the review should be a legislative requirement as this will create certainty to all interested parties that the review will be undertaken and also provide assurance that, while the legislation has some novel elements, there is a clear process to review and adjust these requirements as needed.

Authorisation for a group of Ministers to take technical decisions during the final drafting stages

59. There may be a number of additional second order policy decisions that are required in order to finalise the legislation so that it can be introduced into the House in August. s 9(2)(f)(iv) [redacted]

60. For this reason, I wish to retain the Cabinet authority given to the following group of Ministers (the Minister for Economic Development, the Minister of Defence, the Minister in Charge of the NZSIS and Responsible for the GCSB, and the Minister of Transport) to take any second order policy decisions required to finalise the legislation before it is introduced into the House. I propose to amend this list to also include the Minister of Foreign Affairs.

Consultation

61. The following government agencies have been consulted: the Ministry of Foreign Affairs and Trade, the Ministry of Transport, the New Zealand Defence Force, the Ministry of Defence, the Department of the Prime Minister and Cabinet, the New Zealand Security Intelligence Service, the Government Communications Security Bureau, the Ministry of Justice, The Treasury, and the New Zealand Police. The Department of Land Information New Zealand has been consulted on the high altitude proposals in the paper.

Financial Implications

62. The set-up costs associated with developing the space and high altitude activities regime are being absorbed by agencies until the new legislation is enacted. The law will establish regulations to enable the costs of regulatory work (e.g. the granting of licences and permits, monitoring and enforcement) to be met by the parties that benefit from the regulatory activity. An implementation work stream has been established by MBIE that will identify the resourcing implications associated with the new space policy and regulatory functions, and any ongoing budget implications will be addressed in the 2017 Budget.

Human Rights

63. MBIE will work with the Ministry of Justice during the drafting process to address any Bill of Rights issues that arise.

Legislative Implications

64. The Outer Space and High Altitude Activities Bill has a category 2 on the 2016 legislative programme. The Bill will be presented to the Cabinet Legislation Committee in August following the completion of the parliamentary treaty examination process of the Technology Safeguards Agreement Treaty.

65. I propose to release a disclosure draft of the Outer Space and High Altitude Activities Bill for targeted consultation. In the first instance I propose to make it available to the Foreign Affairs, Trade and Defence Select Committee for its information to assist with their consideration of the Technology Safeguards Agreement (TSA) Treaty. I consider that the Bill will provide important context for how the New Zealand proposes to facilitate the development of a safe, secure and responsible space industry of which the TSA is but one part.

Regulatory Impact Analysis

66. When the original Cabinet decisions on the development of a regulatory regime for commercial space launches from New Zealand were sought, a Regulatory Impact Statement (RIS) was prepared. This Cabinet paper extends the space regime to include certain high altitude activities and the RIS has been amended accordingly to reflect this, and is attached to the Cabinet paper. The inclusion of certain high altitude activities within the space regime does not significantly change the costs and benefits associated with the development of a domestic regulatory regime for space activities.

Publicity

67. I intend to issue a public announcement that the Government is developing a comprehensive and robust regulatory regime to enable commercial space launches and the operation of payloads to take place from New Zealand and to regulate certain high altitude activities. I am considering making the announcement after Cabinet has considered the proposed TSA text, which is planned to take place on 30 May.

Recommendations

The Minister for Economic Development recommends that the Committee:

68. Note that a small number of policy issues have arisen during the development of a domestic regulatory regime for commercial space launches and the operation of payloads from New Zealand, including:

a. a proposal to include certain high altitude ('near space') activities within the scope of the space regulatory regime;

b. the decision-making process for the issue of a national security certificate (which has the effect of a veto on the proposed activity);

c. the offences and penalties regime under the new Act; and

d. confirmation that the review of the new Act after three years will be a legislative requirement.

High altitude ('near space') regime

69. Note that developments in technology mean that high altitude vehicles operating in 'near space' are being designed to provide a range of functions similar to satellites including earth observation, surveillance, communications, maritime control and internet connectivity;

70. Agree that New Zealand needs to be well positioned to control future activities carried out at high altitudes that originate from New Zealand's territory;

71. Agree that a high altitude activities regime be included as a separate part in the proposed Outer Space Activities Bill to control activities carried out at high altitudes that originate from New Zealand, and specifically that:

a. Payloads that New Zealand authorities deem to be capable of being operated at very high altitudes are within the scope of the proposed space regime; and

b. High altitude vehicles (i.e. the carrier systems that New Zealand authorities deem to be capable of taking payloads up into the high altitude region) are also within the scope of the proposed legislation, but (if they are aircraft) the safety aspects of their operation will still be addressed through established Civil Aviation Authority procedures;

s 6(a), s 9(2)(h), s 9(2)(j)

73. **Agree** that the lower limit at which the high altitude regime will apply to certain vehicles that originate from New Zealand will be set with reference to flight level 600 (this is currently the altitude that is the limit of controlled airspace in New Zealand and is about 18kms above ground);

74. **Agree** that the responsible Minister will have the ability to make regulations that exempt or exclude (as may be appropriate) specified vehicles or aircraft or classes of vehicles or aircraft which undertake certain activities that are not intended to be subject to the high altitude regulatory regime and are otherwise regulated as appropriate under aviation legislation and regulations;

75. **Agree** that the title of the proposed legislation be the Outer Space and High Altitude Activities Act;

National security considerations

76. **Note** that a strong and credible national security regime is a precondition for space launches to take place from New Zealand;

77. **Note** that, in December 2015, Cabinet agreed that the responsible Minister must not grant a licence if:

    a. the grant of a licence would be inconsistent with New Zealand's international obligations; or

    b. the Minister in Charge of the New Zealand Security Intelligence Service (NZSIS) certifies that the grant of a licence would pose an undue risk to national security; or

    c. the responsible Minister is not satisfied that the applicant is a 'fit and proper' person; or

    d. the grant of a licence would be contrary to New Zealand's national interests;

78. **Agree** (subject to legislative drafting) to a model for managing national security considerations comprising the following elements to be applied in the Outer Space and High Altitude Activities Act:

a. The national security Minister(s) would be consulted as part of the decision-making process on the proposed activity.

b. The nature and significance of the risk and extent to which it can be mitigated would be taken into account in the decision-making process (both Ministers can agree on the mitigations that should be imposed).

c. In the event that either Minister believes a launch should not proceed, the matter is referred to the specified group of Ministers designated by the Prime Minister.

d. The Minister in Charge of the NZSIS and Responsible for the GCSB can issue a certificate vetoing the activity, with the agreement of the specified group of Ministers.

s 9(2)(f)(iv)

[redacted]

Offences and penalties

82. Agree that the Outer Space and High Altitude Activities Act will provide for the following offences and penalties based on similar domestic analogues:

a. Launching or procuring the launch of a space object without a permit. This offence will be punishable by: in the case of an individual, a term of imprisonment not exceeding one year, or a fine not exceeding $50,000, or both; and in the case of a body corporate, a fine not exceeding $250,000;

b. Intentionally failing to comply with conditions of a permit. This offence will be punishable by: in the case of an individual, a term of imprisonment not exceeding one year, or a fine not exceeding $50,000, or both; and in the case of a body corporate, a fine not exceeding $250,000;

c. Failing to comply with a licence or permit condition. This offence will be punishable by: in the case of an individual, a fine not exceeding $2,000; and in the case of a body corporate, a fine not exceeding $10,000;

d. Penalty for commercial gain or Crown international law liability of three times the amount of any commercial gain where the offence is committed for commercial gain;

e. There will also be offences for operating a high altitude vehicle without a permit, failing to comply with high altitude permit conditions, and providing false and misleading statements in a permit application. These will attract the same penalties as the licencing offences under the space regime;

f. Interfering with a launch vehicle or payload with intent to obtain a trade secret. This offence will be punishable in the case of an individual with a term of imprisonment not exceeding five years, or a fine not exceeding $100,000, or both; and in the case of a body corporate, a fine not exceeding $500,000;

g. Interfering with a space object or payload without a lawful excuse. This offence will be punishable by a fine not exceeding $1,000 in the case of an individual; and in the case of a body corporate, a fine not exceeding $10,000;

h. Refusing to state name, address, authority to be in security area, or refusal to leave a security area after an enforcement officer asks. This offence will be punishable by: in the case of an individual, a term of imprisonment not exceeding three months and/or a fine not exceeding $2,000, or both; or for minor offending, an infringement offence with a fine not exceeding $1,000;

i. Failure to maintain a system for ensuring persons in a secure area wear identity cards. This offence will be punishable by a fine not exceeding $50,000 in the case of an individual; and in the case of a body corporate, a fine not exceeding $100,000;

j. Providing false and misleading information in a licence application. This offence will be punishable by a fine not exceeding $10,000 in the case of an individual; and in the case of a body corporate, a fine not exceeding $50,000; or for minor offending where someone unintentionally provides false or misleading information in a final license application, there could be an infringement offence not exceeding $1,000;

k. Providing false or misleading information to an enforcement officer. This offence will be punishable by: in the case of an individual, a fine not exceeding $10,000; and in the case of a body corporate, a fine not exceeding $50,000; or for minor offending where someone unintentionally provides false or misleading information there could be an infringement offence of $1,000;

Requirement to review the Outer Space and High Altitude Activities Act

83. Note that Cabinet has agreed that the Act be reviewed three years after its enactment;

84. Agree that the review of the Outer Space and High Altitude Activities Act three years after its enactment be a legislative requirement;

85. Agree that the following group of Ministers (the Minister for Economic Development, the Minister of Foreign Affairs, the Minister of Transport, the Minister of Defence, the Minister in Charge of the NZSIS, the Minister Responsible for the GCSB) be authorised to take any technical decisions required to finalise the legislation before it is introduced into the House;

Release of disclosure draft of the Outer Space and High Altitude Activities Bill

86. **Agree** that the Minister of Economic Development releases a disclosure draft of the Outer Space and High Altitude Activities Bill for targeted consultation;

87. **Agree** that the disclosure draft Bill be provided to the Foreign Affairs, Trade and Defence Select Committee for its information;

Authorised for lodgement
Hon Steven Joyce, Minister for Economic Development, and Science and Innovation