

111. The correct functioning of radio aids to navigation, and therefore the safety of aircraft, depend on regular and systematic calibration. This should be the responsibility of the Civil Aviation Directorate, which should have the necessary fully equipped aircraft at its disposal. The technical personnel employed for calibration should be provided in the staff of the Civil Aviation Directorate, and the aircrews, if not so employed, should be regularly assigned for this duty.

CHAPTER 8—REGULATION OF CIVIL AVIATION

Defects in procedure

112. In considering the instruments under which civil aviation is regulated in New Zealand, we have been impressed by the vigour with which the post-war problems have been tackled and the amount of thought and work which have been devoted to them, but we observe certain trends which call for comment :—

- (a) There is a tendency to extend Government control, through the medium of Regulations, Directions, Notices to Airmen, Notices to Aircraft Owners and Engineers, Requirements, and other instructions, beyond the usual level of Government regulation of an activity. Measures which have been taken amount also to an assumption of the management of operations.
- (b) Broadly speaking, the regulation of an activity should be directed in accordance with a published code of law—that is, Regulations, Directions, &c.—issued with statutory authority. The administration of such a code inevitably involves the exercise in some degree of the technical judgment of the Government officials entrusted with it, but a code of law whose substantive content is limited to a requirement to satisfy an officer of Government conflicts with the spirit and traditions of British jurisprudence.
- (c) Regulations or rules of comparable importance have been promulgated both in Regulations issued under the Acts and in Directions issued in pursuance of the Regulations. There appears to be no advantage in maintaining two forms—*i.e.*, Regulations and Directions—for the promulgation of rules having statutory effect. Instructions on procedure need not be issued in a document having statutory effect.
- (d) There is doubt in our minds of the legal force of Directions, no provision for which is made in the Act. Infringement of a Direction appears not to be subject to penalty.
- (e) Directions have been issued to amend or repeal Air Navigation Regulations issued under the Act. There can be no doubt that these Directions are *ultra vires*.