

**NEW ZEALAND CIVIL AVIATION BILL  
SUBMISSION ON EXPOSURE DRAFT**

## OVERVIEW

Airlines for Australia and New Zealand (A4ANZ) welcomes the opportunity to provide comments on the draft of the Civil Aviation Bill (the Bill).

A4ANZ supports replacing the Civil Aviation Act 1990 and the Airport Authorities Act 1966 with a single new statute to reflect the contemporary aviation environment in New Zealand. A4ANZ congratulates the Ministry of Transport on the development of this comprehensive new Bill and believes that it will facilitate; improved safety and security of the New Zealand aviation sector, legislation which reflects a continuously growing and evolving industry, and improved usability of both new and existing legislation.

A4ANZ's submission to this consultation covers the following key areas;

- economic regulation (including changes to the authorisation of airline cooperative arrangements, airport price setting, and consultation requirements for capital expenditure),
- aviation security (including the addition of airlines to the list of organisations permitted to provide aviation security services), and
- regulatory oversight of the Airways Corporation.

A4ANZ would welcome the opportunity to further discuss in person the issues addressed in this submission, with the Ministry of Transport.

## ABOUT A4ANZ

A4ANZ is an industry group, established in 2017 to represent airlines based in Australia and New Zealand, including: Air New Zealand, QANTAS, Virgin Australia, Regional Express (REX), Jetstar and Tigerair. Member-funded and representing international, domestic, regional, full service and low-cost carriers, A4ANZ advocates on key public policy issues relevant to airline operations, including efficient access to domestic airport infrastructure.

The A4ANZ Board identified at the time of the organisation's formation that one of its highest priority issues was ensuring that the regulatory and pricing environment for monopoly airports:

- Encourages competition and innovation;
- More accurately reflects cost inputs;
- Accurately reflects a reasonable and fair return on assets;
- Keeps growth at reasonable not exponential rates;
- Supports investment and maintenance of infrastructure that is fit for purpose, efficient and timely; and
- Maintains accessible airfares for consumers across all areas of Australia and New Zealand.

### **Improving the regime for authorisation of airline cooperative arrangements**

As an industry group of competitor airlines, A4ANZ does not participate in conversations or applications relating to airline alliances. Accordingly, we make comment on the section draft Bill relating to airline cooperative arrangements at a principle level only.

A4ANZ welcomes the provisions to improve the process and transparency of the authorisation of airline cooperative arrangements as detailed in the draft of the Civil Aviation Bill – and supports the Minister of Transport retaining decision-making power.

A4ANZ notes that, as the Bill is drafted, sections 27 – 30 of the Commerce Act do not apply. A4ANZ and its airline members welcome this, and believe that the main and additional purposes detailed in the draft Civil Aviation Bill provide appropriate guidance for the Minister to make a decision on whether or not to grant an authorisation. A4ANZ further notes that competition issues and the public interest are to be considered as part of the authorisation process, and believes that this is appropriate given the Minister's sector-specific knowledge of aero-political issues.

### **Airport price setting**

A4ANZ and its airline members strongly support the proposed repeal of Section 4A of the AA Act, which allows for airports to 'price as they see fit'. As noted by the Ministry, although not the intent of the provision, Section 4A may be interpreted as giving airports greater discretion when setting airport charges than they would otherwise have.

There is compelling evidence to show that the major airports in New Zealand have historically set prices that are designed to target large profits but are not in the long-term interest of consumers. For example, Auckland Airport provides a clear case study of how this practice has continued over time – with the Commerce Commission noting in their 2018 review of AIAL's pricing decisions that airport operators were targeting excessive profits.<sup>1</sup> The Commission found that AIAL's target return would result in an additional cost to consumers of up to \$53 million.<sup>2</sup>

A4ANZ shares the Commission's concerns regarding the pricing decisions of New Zealand's major airports. Independent analysis undertaken by Frontier Economics found that the total value of excess returns to Auckland and Wellington airports (across all airport operations) since privatisation is more than \$3.6 billion and \$400 million, respectively (in 2017 dollars).<sup>3</sup>

These excessive profits have come at a cost to the New Zealand community, both financially and through lost opportunities for improving the quality and efficiency of airport services. Clearly, more effective regulatory pressure is required to prevent excessive profits by airports and return more value to consumers and the economy.

As such, A4ANZ supports the proposed policy change, and believes that, together with recent changes to the Commerce Act, it will begin to facilitate a more robust regulatory regime for New Zealand's major airports.

### **Consultation on capital expenditure**

A4ANZ notes that the Ministry is also seeking comment on the proposed preservation of provisions in the Act requiring airport companies to consult regarding charges and certain capital expenditure.

It is evident that airport charges are directly affected by infrastructure investment decisions. Clearly, investment in infrastructure is necessary, however A4ANZ believes that investment must be fit for purpose; that is, aligned with the needs of passengers using the facilities and demand for air services. The best way to determine requirements and ensure this fit is through industry consultation. This would reduce overcapitalisation, prioritise efficient operations, and in doing so, would ensure that consumers are not the ones ultimately paying through higher charges.

A4ANZ therefore supports the retention of these provisions, and believes that they are still appropriate if, in the future, major airports in New Zealand were subject to a different regulatory regime under the Commerce Act; for which A4ANZ has previously advocated.

As noted earlier in this submission, and indeed by the Commerce Commission itself, the current regime has appeared to allow at least Auckland Airport to generate excessive returns – and whilst repealing Section 4A is a positive step, there is more that could be done to address problems in the current regulatory environment.

International evidence suggests that the most effective regulatory solution and the one that is most likely to result in genuine commercial negotiations between airlines and airports to effect fair outcomes for airport users, is a negotiate-arbitrate model. A4ANZ therefore supports this type of regulation being implemented across the major New Zealand airports.

Greater oversight by the regulator to encourage and, where required, force constructive, commercial engagement is needed to minimise the negative impact of the airports' monopoly powers. The threat of regulation by the Commission acting as an arbitrator would result in genuine commercial negotiations, greater investment by airlines and improved efficiency in the allocation of resources.

Importantly, international experience suggests that concerns about invoking a system of independent dispute resolution – including regarding the costs - are unfounded, and in fact would take the current light-handed regulatory model forward.<sup>4,5</sup>

If the major airports were to be subject to a different type of regulation, for example a negotiate-arbitrate regime, the provisions regarding consultation on capital expenditure would still be appropriate, and indeed would act as a minimum level of consultation.

## AVIATION SECURITY

### **Addition of 'airlines' to the list of organisations permitted to provide aviation security services**

A4ANZ and its member airlines welcome the addition of airlines to the list of organisations permitted to provide aviation security services at New Zealand airports.

Whilst A4ANZ recognises that AvSec will continue to be the sole provider of security screening at New Zealand airports presently, we believe that this proposed change is a positive step in facilitating improved consumer outcomes by challenging the monopoly charges on security.

Experience from Australia shows that there is generally a significant difference between security screening services managed by airlines, and the cost of equivalent services charged at common user terminals which are managed by the airport authority.<sup>6</sup> In some cases, the difference in price is so stark that airlines opt to pay a competitor airline with screening authority to undertake security

screening services on their behalf, rather than pay the exorbitant prices charged by the airport; which may be almost double that of the airline's price.

Anecdotal evidence indicates that the situation is not dissimilar in New Zealand, given AvSec's monopoly position, and a continual rise in security charges.

Allowing airlines an option to provide security screening services, as a reasonable and viable alternative to AvSec may allow for increased efficiency in security screening operations. It is widely accepted that monopolies have minimal incentive to reduce operating expenditure, as these costs can simply be passed on to airport users. The impact of this is ultimately felt by the individual consumer, who may face reduced flight and/or pricing options, and a more expensive travel journey.

## AIRWAYS NEW ZEALAND

A4ANZ notes that the draft Bill proposes that the 1992 amendment to the Civil Aviation Act allowing the termination of Airways New Zealand's statutory monopoly provider status be repealed.

While A4ANZ recognises that Airways New Zealand is functioning as a monopoly provider of air control services, we do not believe that it is necessary or beneficial to preserve Airways' monopoly. A4ANZ therefore opposes the removal of the 1992 amendment.

Regardless of whether the amendment is repealed, A4ANZ urges the Ministry of Transport to ensure effective governance of this monopoly service. It is generally accepted that monopoly operators have the ability to raise prices above a level that would prevail in competitive markets, and have little incentive to improve services above a minimum standard of service quality – to the detriment of both economic efficiency and the living standards of consumers.<sup>7</sup>

Airways New Zealand has demonstrated this monopoly behaviour with the recent announcement that it will raise its charges by 21.4% over 3 years – including a 12.7% increase from 1 July 2019. Furthermore, this situation highlights that, in the absence of appropriate regulation, a monopoly operator (whether private or Government-owned) is able to avoid:

- Genuine consultation with stakeholders;
- Acknowledging feedback from customers/users of their services;
- Providing reasonable justification for increases in charges;
- Ensuring standards of service quality are met; and
- Seeking more efficient ways to operate.

Ensuring that the regulatory settings across the aviation sector are fit-for-purpose is critical for ensuring that the competitive market is not stifled by egregious monopoly behaviours and charges. This is important in any sector, but given the importance our citizens and economies place on affordable air travel in New Zealand, there is now an urgency to introducing sensible regulatory reform. A4ANZ urges the New Zealand Government to consider introducing more rigorous regulatory oversight of Airways New Zealand.

## CONCLUDING COMMENTS

Apart from the areas specified, A4ANZ broadly supports the Civil Aviation Bill as drafted and thanks the Ministry of Transport for the opportunity to make a submission on this important piece of legislation.

A4ANZ members are committed to building, maintaining and improving positive, constructive commercial relationships with airports; with a view to seeing airports, and the whole aviation sector prosper. It is not only in the airlines' interests, but also in their passengers' interests, as well as the Government's and New Zealand economy's interests for this to occur. We believe that this Bill is a positive step towards ensuring a thriving, and sustainable New Zealand aviation sector.

A4ANZ would welcome the opportunity to further discuss in person the issues addressed in this submission, with the Ministry of Transport.

## A4ANZ CONTACT

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<sup>1</sup> Commerce Commission. 2018. Review of Auckland International Airport's Pricing Decisions & Expected Performance (July 2017 – June 2022): Final Report. At: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0023/103991/Final-report-Review-of-Auckland-International-Airports-pricing-decisions-and-expected-performance-July-2017-June-2022-1-November-2018.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0023/103991/Final-report-Review-of-Auckland-International-Airports-pricing-decisions-and-expected-performance-July-2017-June-2022-1-November-2018.pdf)

<sup>2</sup> Commerce Commission. 2018. Review of Auckland International Airport's Pricing Decisions & Expected Performance (July 2017 – June 2022): Final Report. At: [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0023/103991/Final-report-Review-of-Auckland-International-Airports-pricing-decisions-and-expected-performance-July-2017-June-2022-1-November-2018.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0023/103991/Final-report-Review-of-Auckland-International-Airports-pricing-decisions-and-expected-performance-July-2017-June-2022-1-November-2018.pdf)

<sup>3</sup> Frontier Economics. 2018. *The performance of airports in New Zealand*. Report prepared for A4ANZ.

<sup>4</sup> Stephen C Littlechild. 2010. Australian airport regulation: exploring the frontier.

<sup>5</sup> Vertigan, M. 2016. Examination of the current test for the regulation of gas pipelines – final report. At: <http://www.coagenergycouncil.gov.au/sites/prod.energycouncil/files/publications/documents/Examination%20of%20the%20current%20test%20for%20the%20regulation%20of%20gas%20pipelines%20-%20Final%20Report.pdf>

<sup>6</sup> Norton White. 2018. Memorandum of Advice on Aviation Security. At: [https://www.pc.gov.au/\\_data/assets/pdf\\_file/0020/231383/sub048-airports.pdf](https://www.pc.gov.au/_data/assets/pdf_file/0020/231383/sub048-airports.pdf)

<sup>7</sup> Bureau of Infrastructure, Transport and Regional Economics (BITRE). 2017. Measuring infrastructure asset performance and customer satisfaction: a review of existing frameworks, Report 147, BITRE, Canberra ACT. At: [https://bitre.gov.au/publications/2017/rr\\_147.aspx](https://bitre.gov.au/publications/2017/rr_147.aspx)