

CIVIL AVIATION AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill empowers the Minister of Civil Aviation and Meteorological Services to authorise all or any provisions of a contract, arrangement, or understanding made between 2 or more persons in respect of international carriage by air so far as the provisions provide for the fixing of tariffs or capacity or both.

The Bill also provides that sections 27 to 29 of the Commerce Act 1986 are not to apply in respect of any provision so authorised.

Clause 1 relates to the Short Title and date of commencement.

The date of commencement is 1 March 1987.

Clause 2, subclause (1) repeals section 29A of the principal Act and substitutes new sections 29A to 29D.

New section 29A: Subsection (1) defines the terms “capacity”, “commission regime”, “international carriage by air”, and “tariff”.

Subsection (2) empowers the Minister to authorise all or any provisions of a contract, arrangement, or understanding made between 2 or more persons in respect of international carriage by air so far as the provisions provide for the fixing of tariffs or capacity or both.

Subsection (3) provides that in considering whether to grant authorisation the Minister is to —

- (a) Have regard to policies on external aviation from time to time promulgated by the Government of New Zealand; and
- (b) Ensure that the granting of authorisation will not prejudice compliance with any relevant international convention, agreement, or arrangement to which the Government of New Zealand is a party.

Subsection (4) provides that, subject to subsection (5), authorisation is not to be given to any provision of any contract, arrangement, or understanding which—

- (a) Provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not the person is a party to the contract, arrangement, or understanding;
- (b) Has the purpose or effect of breaching the terms of a commission regime issued under the new section 29B:

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- (c) Unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs;
- (d) So far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates;
- (e) Has the purpose or effect of preventing any party from seeking approval, in terms of the new section 29C, for the purpose of selling international carriage by air at any other tariff so approved;
- (f) Prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.

Subsection (5) provides that, notwithstanding the provisions of subsection (4), the Minister may authorise any provision of any contract, arrangement, or understanding if the Minister believes that to decline authorisation would have an undesirable effect on international comity between New Zealand and any other State.

Subsection (6) provides that if the Minister declines to authorise any provision of any contract, arrangement, or understanding under this section the Minister shall give notice in the *Gazette* that authorisation has been declined.

New section 29B authorises the Minister, by notice in the *Gazette*, to issue, amend, and revoke commission regimes.

New section 29C empowers the Minister to authorise any tariff in respect of international carriage by air where the relevant places of departure and destination are within the territories of 2 countries, one of which is New Zealand, whether or not there is to be a break in the carriage or a transshipment.

In giving such authorisation the Minister is to have regard to the matters referred to in the new section 29A (3) (a), and to—

- (a) Whether the proposed tariff is excessive in terms of a reasonable return on investment by the supplier of the carriage; and
- (b) Whether it is likely that supply of the relevant carriage can be carried on for a reasonable period at the level of tariff proposed; and
- (c) Whether there is likely to be a substantial degree of benefit accruing to consumers generally, or to a significant group of consumers, as a result of the application of the proposed tariff—

and shall ensure that the granting of such authorisation will not prejudice compliance with any international convention, agreement, or arrangement to which the Government of New Zealand is a party.

New section 29D provides that nothing in sections 27 to 29 of the Commerce Act 1986 is to apply to or in respect of—

- (a) The negotiation or conclusion of any contract, arrangement, or understanding so far as it contains a provision relating to international carriage by air, so long as that provision is not given effect to before its authorisation under the new section 29A;
- (b) Any provision of a contract, arrangement, or understanding relating to international carriage by air so long as it is not given effect to before its authorisation under the new section 29A.

Subclause (2) is a consequential repeal.

Subclause (3) repeals section 111 (3) and (4) of the Commerce Act 1986, which provide that nothing in sections 27 to 29 and sections 80 to 82 of that Act is to apply, before 1 March 1987, in respect of any contract, arrangement, or understanding so far as it relates to international carriage by air or to the giving or carrying out of a covenant relating to international carriage by air.

Hon. Richard Prebble

CIVIL AVIATION AMENDMENT

ANALYSIS

Title	
1. Short Title and commencement	"29B. Minister may issue commission regimes
2. New sections substituted	"29C. Approval of tariffs by Minister
"29A. Authorisation of contracts, arrangements, and understandings relating to international carriage by air	"29D. Application of Commerce Act 1986

A BILL INTITULED

An Act to amend the Civil Aviation Act 1964

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

- 1. Short Title and commencement**—(1) This Act may be cited as the Civil Aviation Amendment Act 1986, and shall be read together with and deemed part of the Civil Aviation Act 1964* (hereinafter referred to as the principal Act).
- 10 (2) This Act shall come into force on the 1st day of March 1987.

- 2. New sections substituted**—(1) The principal Act is hereby amended by repealing section 29A, and substituting the following sections:
- 15 **"29A. Authorisation of contracts, arrangements, and understandings relating to international carriage by air**—
- (1) In this section and in sections 29B to 29D of this Act, unless the context otherwise requires,—

20 " 'Capacity' means a statement, expressed to apply to 1 or more specified airlines, or to all airlines other than 1 or more specified airlines, or to all airlines,

*R.S. Vol. 16, p. 41

specifying the number of flights to be undertaken in a period or successive periods by the airline or airlines, whether or not by reference to specified classes of aircraft or the number of seats or volume of cargo space to be provided: 5

“ ‘Commission regime’ means a statement, expressed to apply to any specified international carriage by air, specifying the rates and bases of calculation of agency commissions to be allowed, charged, disbursed, given, offered, paid, provided, or retained, in relation to the international carriage by air to which it is expressed to apply, and the circumstances and conditions under and subject to which any such commission is to be so allowed, charged, disbursed, given, offered, paid, provided, or retained; and different rates, bases, circumstances, and conditions may be specified in respect of all or any of the following: 10 15

“(a) International carriage by air provided by different airlines: 20

“(b) International carriage by air arranged by persons of different classes:

“(c) International carriage by air provided for persons of different classes:

“ ‘International carriage by air’ means the carriage by air of persons, baggage, or cargo— 25

“(a) Between New Zealand and any place outside New Zealand; or

“(b) Where that carriage is purchased, sold, or arranged in New Zealand, between places outside New Zealand: 30

“ ‘Tariff’ means a statement, expressed to apply to 1 or more specified airlines, or to all airlines other than 1 or more specified airlines, or to all airlines, specifying— 35

“(a) The fares, rates, and charges applicable to international carriage by air between specified points (whether direct or indirect, and whether or not including any stopovers) that may at any time be provided by the airlines to which it is expressed to apply; and 40

“(b) Any conditions subject to which any such fares, rates, and charges, or any of them, are to apply to international carriage by air between those points.

“(2) The Minister may from time to time specifically authorise all or any provisions of a contract, arrangement, or understanding made between 2 or more persons in respect of international carriage by air and related to such carriage so far
5 as the provisions provide for the fixing of tariffs or capacity or both.

“(3) In considering whether to grant authorisation pursuant to **subsection (2)** of this section, the Minister shall—

10 “(a) Have regard to policies on external aviation from time to time promulgated by the Government of New Zealand; and

“(b) Ensure that the granting of such authorisation will not prejudice compliance with any relevant international convention, agreement, or arrangement to which the Government of New
15 Zealand is a party.

“(4) Subject to **subsection (5)** of this section, authorisation shall not be given under this section to any provision of any contract, arrangement, or understanding which—

20 “(a) Provides that any party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not the person is a party to the contract, arrangement, or understanding;

25 “(b) Has the purpose or effect of breaching the terms of a commission regime issued under **section 29b** of this Act:

“(c) Unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs:

30 “(d) So far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates:

35 “(e) Has the purpose or effect of preventing any party from seeking approval, in terms of **section 29c** of this Act, for the purpose of selling international carriage by air at any other tariff so approved:

40 “(f) Prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.

“(5) Notwithstanding the provisions of **subsection (4)** of this section, the Minister may authorise any provision of any contract, arrangement, or understanding under this section if the Minister believes that to decline authorisation would have

an undesirable effect on international comity between New Zealand and any other State.

“(6) If the Minister declines to authorise any provision of any contract, arrangement, or understanding under this section the Minister shall give notice in the *Gazette* that authorisation has been declined. 5

“29B. **Minister may issue commission regimes**—The Minister may from time to time, by notice in the *Gazette*,—

“(a) Issue commission regimes:

“(b) Amend or revoke any commission regime so issued. 10

“29C. **Approval of tariffs by Minister**—(1) The Minister may from time to time specifically authorise any tariff in respect of international carriage by air where the relevant places of departure and destination are within the territories of 2 countries, one of which is New Zealand, whether or not there is to be a break in the carriage or a transshipment. 15

“(2) In giving authorisation under this section the Minister shall have regard to the matters referred to in section 29A (3) (a) of this Act, and to—

“(a) Whether the proposed tariff is excessive in terms of a reasonable return on investment by the supplier of the carriage; and 20

“(b) Whether it is likely that supply of the relevant carriage can be carried on for a reasonable period at the level of tariff proposed; and 25

“(c) Whether there is likely to be a substantial degree of benefit accruing to consumers generally, or to a significant group of consumers, as a result of the application of the proposed tariff—

and shall ensure that the granting of such authorisation will not prejudice compliance with any international convention, agreement, or arrangement to which the Government of New Zealand is a party. 30

“29D. **Application of Commerce Act 1986**—Nothing in sections 27 to 29 of the Commerce Act 1986 shall apply to or in respect of— 35

“(a) The negotiation or conclusion of any contract, arrangement, or understanding so far as it contains a provision relating to international carriage by air, so long as that provision is not given effect to before its authorisation under section 29A of this Act. 40

“(b) Any provision of a contract, arrangement, or understanding relating to international carriage by

air so long as it is not given effect to before its
authorisation under **section 29A** of this Act.”

(2) Section 2 (1) of the Civil Aviation Amendment Act 1982 is
hereby consequentially repealed.

5 (3) Section 111 (3) and (4) of the Commerce Act 1986 are
hereby repealed.