

[AS REPORTED FROM THE COMMUNICATIONS AND ROAD SAFETY  
COMMITTEE]

*House of Representatives, 19 February 1987.*

**Words struck out are shown in italics within bold round brackets, or with black rule at beginning and after last line; words inserted are shown in roman underlined with a single rule, or with single rule before first line and after last line.**

*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 Parliament of New Zealand as follows:

**1. Short Title and commencement**—(1) This Act may be  
5 cited as the Civil Aviation Amendment Act (1986) 1987, and  
shall be read together with and deemed part of the Civil  
Aviation Act 1964\* (hereinafter referred to as the principal  
Act).

(2) This Act shall come into force on the 1st day of March  
10 1987.

**2. New sections substituted**—(1) The principal Act is  
hereby amended by repealing section 29A, and substituting the  
following sections:

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

No. 95—2

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**“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,—

“‘Capacity’ means a statement, expressed to apply to 1 5  
 or more specified airlines, or to all airlines other than  
 1 or more specified airlines, or to all airlines,  
 specifying the number of flights to be undertaken  
between specified points in a period or successive  
 periods by the airline or airlines, whether or not by 10  
 reference to specified classes of aircraft or the  
 number of seats or volume of cargo space to be  
 provided:

“‘Commission regime’ means a statement, expressed to  
 apply to any specified international carriage by air, 15  
 specifying the rates and bases of calculation of  
 agency commissions (including any benefit, whether  
 in monetary form or otherwise, supplied to an agent)  
 to be allowed, charged, disbursed, given, offered,  
 paid, provided, or retained, in relation to the 20  
 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, 25  
 bases, circumstances, and conditions may be  
 specified in respect of all or any of the following:

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

“(b) International carriage by air arranged by 30  
 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— 35

“(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 40  
 New Zealand:

“‘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—

5 “(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

10 “(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; and

*New*

“(c) Any conditions subject to which international carriage by air between those points is to be provided on such fares, rates, and charges.

15 “(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 as the provisions (*provide for the fixing of tariffs or capacity or both.*)  
 20 relate, whether directly or indirectly, to the fixing and application of tariffs or the fixing of capacity or both.

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

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

30 “(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 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—

35 “(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(:); or

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

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

“(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(.); or 5

“(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(.); or 10

“(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. 15

“(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. 20

“**29B. Minister may issue commission regimes**—The Minister may from time to time, by notice in the *Gazette*,— 25

“(a) Issue commission regimes:

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

“**29c. (Approval) Authorisation 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. 30

“(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— 35

“(a) Whether the proposed tariff is excessive in terms of a reasonable return on investment by the supplier of the carriage; and 40

“(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—  
5 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.

“29D. **Application of Commerce Act 1986**—(1) Nothing in  
10 sections 27 to 29 of the Commerce Act 1986 shall 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,  
15 so long as that provision is not given effect to before its authorisation under **section 29A** of this Act:

“(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  
20 authorisation under **section 29A** of this Act.”)

*New*

“(2) Every authorisation by the Minister under **section 29A** or **section 29c** of this Act and every issue or amendment of a commission regime under **section 29B** of this Act is hereby  
25 declared to be a specific authorisation by an enactment for the purposes of section 43 of the Commerce Act 1986.”

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

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