22 July 2019

Ministry of Transport
3 Queens Wharf
Wellington 6011
New Zealand

Via email: ca.bill@transport.govt.nz

QANTAS GROUP SUBMISSION TO THE NEW ZEALAND CIVIL AVIATION BILL

The Qantas Group (the 'Group') welcomes the opportunity to comment on the New Zealand Civil Aviation Bill ('Bill').

The Group has been a long-term operator to and from New Zealand. In FY18, Qantas flew two million passengers and operated over 12,000 services between Australia and New Zealand.

Given the Group's significant footprint to, from and within New Zealand, the Group appreciates the opportunity to participate in this review and is pleased to see several enhancements proposed with respect to the economic regulation, safety and security of the New Zealand civil aviation regime.

Industry has demonstrated just how broken the airport regulatory system is, allowing airports to increase fees and charges at the expense of the travelling public. We are pleased to see that the Ministry of Transport ('Ministry') has listened, and that this Bill contains measures to restrain airports from abusing their monopolistic market power.

In stark contrast, the Australian Productivity Commission ('PC') in their recent Inquiry into the Economic Regulation of Airports Draft Report dismissed the voices of airport users and experts and green-lighted the continuation of a regulatory regime which allows exorbitant airport charges. The fact that the PC saw no case for reform, given very similar regulatory challenges, calls into question their credibility on this matter.

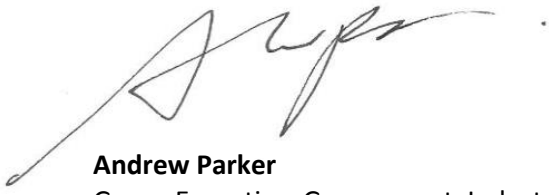
Therefore, the Group strongly supports the proposal to remove airports' ability to price as they see fit. As natural monopolies, New Zealand airports currently have no effective competition and are subject to minimal regulation to contain airport price increases. This proposal is a recognition of the limited countervailing power of airlines and will balance increases in aviation costs in the interests of the traveling public.

The decision to lower the consultation threshold on airport expenditure is also welcome. However, we believe that the recommended thresholds are still too high and would allow airports too much scope to make significant capital expenditure decisions without effective engagement with airlines.

Indeed, while most of the proposed amendments will help ensure air travellers, airport users and the community are protected from monopolistic pricing by New Zealand airports, the Group believes a negotiate-arbitrate regime is the most effective method to achieve this objective in a manner that delivers better outcomes for the community and the economy. The Group has completed considerable work in assessing the economic benefits of a negotiate-arbitrate model for the industry in partnership with BARNZ and A4ANZ and would welcome the opportunity to further discuss our work on this key reform with the Ministry.

We have set out the Group submission in Appendix A for your consideration and evaluation.

Your sincerely,



Andrew Parker
Group Executive, Government, Industry, International, Sustainability

APPENDIX A

ECONOMIC REGULATION

Airport price setting

The Group strongly supports the Ministry's proposed repeal of Section 4A of the Airport Authorities 1966 ('AA Act'), which allows airport companies to 'set charges as they see fit'.

As natural monopolies, airports in New Zealand have the ability to unilaterally increase airport charges without the acceptance of airlines and to the detriment of the community. It is unreasonable and unsustainable for airlines to continually absorb price rises by New Zealand monopoly airports to keep airfares affordable for travellers.

However, while the Group supports the repeal of this provision, further change is required to remove the monopolistic rights New Zealand airports enjoy when it comes to price setting and restrain their ability to impose charges without consideration of the impact of the charge itself.

In addition to the repeal of Section 4A, the Group recommends the Ministry also introduce a negotiate-arbitrate regime as a means of resolving commercial disputes, including those which relate to price setting. Access to transparent and independent arbitration as a last resort is needed to incentivise good performance, provide a 'circuit breaker' for disputes and deter New Zealand airports from abusing their monopoly market power at the expense of the travelling public.

The Group also recommends the Ministry consider introducing aeronautical pricing principles, like those in place in Australia. However, unlike Australia, we recommend these principles be binding and enforceable to improve commercial discipline by airports. The Group has previously requested the introduction of such principles in its 2014 submission on the proposed amendment to the AA Act.

Consultation on charges and capital expenditure

Meaningful consultation by New Zealand airports on capital expenditure plans is the most effective way to ensure proposed capital works meet industry and passenger requirements, are fit-for-purpose, provide value for money and achieve operational efficiency.

It is also essential given the extent to which large capital projects directly influence the airport charges imposed by these monopoly airports and the resulting airfares paid by passengers. In the Group's view, it would be unreasonable for airports to significantly increase their charges without prior consultation. Therefore, the Group supports the Ministry's proposal to retain the provisions in the AA Act which require airport companies to consult regarding charges and capital expenditure.

In general, the Group does not oppose infrastructure investments which are fit-for-purpose, efficient and necessary to meet increasing passenger demand or relieve airport capacity constraints. However, the Group does not support airports' building ahead of demand or exploiting flaws in the current regulatory framework to 'gold-plate' airport infrastructure in order to inflate their commercial returns from airlines. Therefore, the retention of the consultation provision remains crucial to ensure airports engage with industry and invest reasonably and at the right time.

While the proposed changes to clause 205 are indeed an improvement, the Group would support a further reduction of the threshold for consultation, as well as incorporating 'second-tier' airports, such as Queenstown and Dunedin, into the list.

In the Group's view, the proposed thresholds of >$5 million, >$10 million and >$30 million put forward by the Ministry are still too high to capture some major capital works such as runway overlays, apron and taxiway extensions and terminal development, particularly if the works are staged over more than five years. Therefore, the Group recommends the thresholds be lowered further to >$1 million, >$2 million and >$5 million respectively.

Finally, the Group notes that there is no definition or guidance as to how 'consultation' is to be interpreted. In the Group's experience, 'consultation' tends to be more aligned with 'information sharing' rather than meaningful consultation where feedback and alternative solutions are genuinely considered by airports. Therefore, the Group would support the introduction of a 'consult and agree' framework for significant capital expenditure projects at major airports in New Zealand.

Improving the regime for authorisation of airline cooperative arrangements

The Group notes the retention of the provision which provides that the Minister may authorise international airline cooperative arrangements ('alliances'). The proposed regime to improve the process and transparency of authorisation by specifying certain factors the Minister must consider when determining if an alliance is in the public interest is also supported by the Group.

However, the Group would like to highlight a few comments and recommendations, as specified below:

- The Group notes that authorisation applications will require completion of a 'prescribed form.' Given the importance of this matter, it is essential that industry is granted an opportunity to provide feedback on the proposed form prior to its finalisation.
- Unlike the Australian Competition Consumer Commission ('ACCC') authorisation process, the Bill does not include any specific timelines for decision making by the Minister. We recommend a reasonable timeframe be imposed for certainty and to assist with commercial planning needs.
- Section 192 provides the Minister with the ability to impose conditions and time limits on authorisations, as well as vary authorisations. However, there is no basis specified for a variation or revocation. In the Group's view, there needs to be a basis for variation or revocation in the Bill – similar to the 'material change' provisions in an ACCC authorisation context – to provide airlines with more certainty in cases where there may be minor amendments to a commercial cooperation arrangement but no change to the scope of coordination being implemented.

Airways New Zealand

The Group recognises the important role Airways New Zealand ('Airways') plays in the provision of air traffic management services. However, unless monopoly service providers like Airways are subject to appropriate regulation and oversight, they will not have a genuine incentive to become more efficient in their operations, price more competitively or consult and genuinely consider feedback provided by their stakeholders.

Therefore, as the Group sees no benefit to passengers or industry by embedding Airways as a monopoly service provider, we strongly oppose the proposed repeal of the 1992 amendment to the Civil Aviation Act 1990 ('CA Act') which allows for the termination of Airways' status as a statutory monopoly provider.

Airways' unrestricted monopolistic behaviour was illustrated in their recent pricing decision where they increased their pricing by 21.4% for the 2019-2022 period. This significant increase was announced despite industry raising opportunities for Airways to reduce costs and highlighting concerns regarding the substantial pressure it will place on the cost of airfares. Airways was not required to meaningfully consult and reach agreement with airlines around pricing.

Given their monopoly status, more robust regulatory oversight by the Ministry is urgently required to ensure Airways does not operate as an unregulated monopoly to the detriment of the travelling public. For example, this oversight could involve the implementation of a reporting framework and performance benchmarking of service quality, or formal assessment of pricing methodologies applied by Airways. Such measures will ensure that the decisions made by Airways with respect to pricing and service quality genuinely result in improved outcomes and adequately consider the cost impact to passengers. The Group welcomes the opportunity to discuss options for a formalised regulatory oversight regime with the Ministry.

Amendments to airline liability provisions

Disputes Tribunal jurisdiction to hear claims regarding airline liability

The Group as a matter of principle will always seek to enter early resolution of claims and participate in the adjudication of claims in a conciliatory fashion (if required), regardless of the forum of dispute.

The Group notes the CA Act would be the primary legislation for settling passenger claims relating to New Zealand domestic operational delays and this aviation specific legislation does not appear to have a developed body of case law interpreting its terms. In addition, all claims relating to internationals delays and baggage issues are covered exclusively by the terms of the Montreal Convention 1999 (MC), a Convention interpreted by a complex body of international caselaw.

With this in mind, and given the importance to airlines of these laws being applied with clarity and in a manner consistent with the intention of the drafts people, the Group recommends the Bill clarifies whether a party would have a right to appeal (to a District Court or higher and on a point of law or otherwise) a decision applying the terms of either the CA Act or the MC. Where no right of appeal currently exists in either the Bill or the Disputes Tribunal Act 1988, the Group submits one should be created to allow decisions to be reviewed, where required.

Regulations relating to information disclosure

The Group is committed to continuously improving the customer experience of its passengers and to ensure those passengers are well informed when disruptions occur.

The Group notes the Bill proposes to enact a head of power to allow specific legislation to be drafted in respect of information disclosures. The Group currently makes numerous disclosures to its passengers about their rights and has invested in automated systems which ensure passengers are adequately informed and assisted in the event of a flight disruption or baggage incident.

The Group will fully cooperate with the Ministry should regulations relating to information disclosure be endorsed, however we would appreciate the opportunity to review and comment on any specific information disclosure legislation subsequently proposed to ensure they are achievable, fit-for-purpose and meet the needs of our passengers. The need to inform passengers of their rights in respect of flight disruptions and baggage incidents must also be balanced with the need to present various other forms of essential information to passengers in the lead up to their travel (for example, check-in details and information relating to airports, immigration and dangerous goods restrictions).

AVIATION SAFETY

Protection of safety information

Qantas is committed to fostering a culture which supports open and honest reporting of safety and security-related matters and continuously improving safety in the aviation sector.

The Group strongly supports the adoption of 'just culture' approach for incident reports filed under the CAA's incident reporting system. However, the Group also notes that an important balance must be struck to ensure that mechanisms for investigation and appropriate action are still available to employers where the circumstances require it. Further, the Group would welcome further clarity on how the Director of Civil Aviation ('Director') would determine the 'public interest' test when deciding whether these protections would not apply.

Drug and alcohol regulation

The Ministry has proposed to strengthen the management of the risk of drug and alcohol impairment in the commercial aviation sector. As safety is the Group's first priority, we support, in principle, the introduction of a mandatory drug and alcohol testing regime in New Zealand and believe the transitional provisions relating to Clear Heads are reasonable and achievable.

The Group notes that the Exposure Draft (the 'Draft') requires random testing of operators but does not specify at what rate this shall occur and does not enable other safety-related types of testing such as pre-deployment, post-incident or accident or reasonable suspicion. Further, we note that the Draft does not mention education as a key pillar in reducing risks of drug and alcohol impairment and therefore, would encourage the Ministry to consider this for inclusion.

Finally, the requirement for the Director to approve all Drug and Alcohol Management Plans ('DAMP') may be impractical. This was evident in the Australian context when CASA initially intended to approve all DAMPs but later amended their approach. Therefore, we recommend an audit of DAMP as an alternative.

AVIATION SECURITY

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

While the Bill does not change the monopoly status afforded to Aviation Security Service ('Avsec') to provide aviation security services, the Group strongly supports inclusion of 'airlines' as a third potential authorised provider at New Zealand airports.

Permitting another organisation to provide security services will challenge Avsec to be more efficient and competitive in their security charging at New Zealand airports. As a monopoly provider who passes on costs to airport users, creating an incentive for continuous improvement in service and cost is key to ensure passengers can access affordable travel and have a positive customer experience.

Clarifying Avsec's powers to deal with dangerous goods

The Group notes that under the Bill, the definition for 'dangerous goods' still only covers articles and substances in accordance with the ICAO Technical Instructions for the Safe Transport of Dangerous Goods by Air. This is despite most airlines defining 'dangerous goods' in accordance with the IATA Dangerous Goods Regulations ('IATA Regulations') when screening for dangerous goods.

As the IATA Regulations are more robust and impose a higher standard of safety than the ICAO Instructions, the Group recommends the Ministry amend the Bill to also include reference to the IATA Regulations.

LEGISLATIVE FRAMEWORK

Amalgamation of the CA and AA Acts

The Group supports the proposal to consolidate the CA and AA Act as it is a positive step towards simplifying New Zealand aviation legislation.

While the proposal does not appear to impact the existing provisions in the CA Act which provide AOC's with Australian New Zealand Aviation ('ANZA') privileges, it is critical that the New Zealand civil aviation regime continues to give full credit and effect to the ANZA mutual recognition principle. This principle recognises that comparable safety outcomes can be achieved even though the aviation safety regulatory systems between Australia and New Zealand may differ and will minimise the need for individualised NZ CA Act approvals or exemptions.