



Crombie Lockwood Tower
Level 16, 191 Queen Street
PO Box 7244
Wellesley Street
Auckland 1141
New Zealand

Phone: +64 9 377 5570
Email: info@infrastructure.org.nz

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Ministry of Transport
3 Queens Wharf
Wellington 6011
New Zealand

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

Infrastructure New Zealand is the peak industry body for the infrastructure sector and promotes best practice in national infrastructure development through research, advocacy and public and private sector collaboration. Infrastructure New Zealand members come from diverse sectors across New Zealand and include infrastructure service providers, investors and operators.

This submission represents the views of Infrastructure New Zealand as a collective whole and may not necessarily represent the views of individual member organisations.

Infrastructure New Zealand feedback on the Civil Aviation Bill exposure draft

Summary

The current draft of the Civil Aviation Bill proposes to remove Section 4A of the Aviation Authorities Act (the Act), which currently allows airports in New Zealand to set charges as they see fit. These charges are necessary to fund the development, maintenance, and upgrade of airport infrastructure to meet current needs and future demand.

We want to ensure that airports are providing good infrastructure at a fair price.

We are concerned that the repeal of Section 4A may increase revenue uncertainty, introduce added costs, and not lead to optimal investment in airport infrastructure.

We consider that stronger monitoring of airports' infrastructure investment would help ensure that New Zealand's airports are keeping up with the maintenance and development of infrastructure critical to a functioning industry.

Therefore, we oppose the repeal of Section 4A of the Aviation Authorities Act but recommend that further work be done on whether or not the current regulatory regime is in fact ensuring good infrastructure now and into the future at fair and reasonable prices.

Repealing Section 4A May Reduce Airport Revenues and Harm Infrastructure Investment

The commentary document states that Section 4A is redundant because it explicitly empowers airports to charge fees to airlines which, as commercial enterprises, they are already able to do.

However, the explicit power in Section 4A means that airports are not forced to negotiate with every airline they work with – simplifying the process for airports and limiting the costs of individually negotiating prices with every airline.

Despite the wording of the Act (“set such charges as it...thinks fit”), this power does not allow airports to set prices at any level they desire since they are obligated to consult with airlines and, in the case of Auckland, Wellington, and Christchurch, are subject to information disclosure requirements under the Commerce Act.

These two mitigating factors have thus far been effective in ensuring that prices have remained reasonable. For instance, Auckland Airport reduced its planned charges in March 2019 following criticism from the Commerce Commission that their prices were unjustifiably high.¹

The removal of Section 4A would alter the regime such that, in the absence of any collective negotiation, airports would need to negotiate with every airline they work with. This could cause airlines, particularly major customers with high (or total) market share at airports, to negotiate lower prices. This loss of revenue may be dramatic enough to unsustainably harm infrastructure investments, particularly at smaller airports that have only one or two major carriers and that are more vulnerable to competition from neighbouring airports.

While airlines are not interested in underfunding airport infrastructure such that it leads to disrepair and inadequacy, and while airports are not interested in pricing airlines out of their airport, both parties are likely to disagree about what price levels are needed to achieve the airport infrastructure investments required.

Price negotiations may also become contentious, similar to what has happened between Qantas and Perth Airport in Australia.² In these situations, the added expense of both the protracted negotiations and the litigation is costly to both airports and airlines – limiting the ability of both parties to adequately invest in their infrastructure and businesses. This is not a situation New Zealand wants to find itself in.

¹ <https://comcom.govt.nz/news-and-media/bulletin/auckland-airports-pricing-response-welcomed>

² <https://www.flightglobal.com/news/articles/perth-airport-to-sue-qantas-over-unpaid-airport-fees-454466/>

Further Investigation Needed to Ensure Appropriate Infrastructure Investment

While we support the ability of airports to set standard prices without individual negotiations, we believe more must be done to ensure that airports are effectively using that revenue to maintain and develop infrastructure that benefits the airlines (and their consumers) paying those fees.

There is a risk that airports, particularly in the absence of regulatory oversight, may charge fees with the goal of major infrastructure investment but do not fully deliver these services.

Airports are private businesses that, in some cases, enjoy the benefits of local monopolies since they face limited competition. Depending on the destination, passengers can have highly inflexible demand and airports can be assured of customers regardless of their investment in infrastructure.

Airports are commercial enterprises and, in the absence of strong competitive forces, may postpone infrastructure investments in favour of more profitable passenger-facing improvements.

We believe the Commerce Commission should not only be able to comment on the appropriateness of airport pricing, which it currently does with limited enforcement powers, but also have regard to the state of airport infrastructure and the suitability of planned infrastructure investment.

Good Infrastructure at a Fair Price

We want to ensure that airports are providing good infrastructure at a fair price.

“A fair price” means that airports are able to, through consultation with airlines and with oversight from the Commerce Commission, set prices that are not unreasonably high or unsustainably low and be able to expect airlines to comply with those prices in a reliable and reasonable manner.

“Good infrastructure” means that airports are answerable to an expert monitoring agency and ultimately the public as to how well they are using their revenues to invest in the core airport infrastructure needed to keep New Zealand competitive for passengers, cargo, and other airport users.

We have yet to see compelling evidence that the repeal of Section 4A will lead to stronger infrastructure investment. In fact, repeal may reduce revenues and introduce added costs.

We believe a process needs to be put in place to ensure that New Zealand’s airports are keeping up with the development and maintenance of infrastructure critical to a healthy and functioning industry consistent with the prices charged.