



IATA Response on New Zealand Civil Aviation Bill Exposure

Table 1: Issues relating to Aviation Safety

No.	Issue	IATA Response
1.	Aviation Safety: Amendments relating to unmanned aircraft (drones)	<p>IATA supports the amendments relating to unmanned aircraft.</p> <p>IATA notes that ICAO Asia Pacific is publishing the "Draft Regulatory Guidance for the Safe Operation of Unmanned Aircraft System (UAS) in the National Airspace System" in 2019.</p> <p>Therefore, IATA recommends that any review of legislation and regulations on unmanned aircraft technology in New Zealand should refer to and align with the ICAO guidance as far as practicable. In particular, with regard to drone detection, the draft ICAO document currently includes guidance regarding Regulated Acceptable Risk of Category C UAS Operations when in ICAO Class B,C,D or E airspace and in all cases of operation above 400 feet AGL.</p> <p>IATA also recommends that regulations on unmanned aircraft technology should include requirements (or consideration thereof) for unmanned aircraft to be equipped with position fixing and geo fencing capability enabling the exclusion of the operation from areas specified by the designated authority, as this is now common in regulations in many States.</p> <p>CAA NZ should be appointed with and exercise the power to levy charges on drone operators. Costs associated with the regulation of drones and their operators are being borne by airlines, which is not as per the ICAO guideline of cost-relatedness and subsequently unacceptable and unsustainable.</p>
2.	Aviation Safety: Protection of safety information (a 'Just Culture' approach)	<p>IATA strongly supports the adoption of a 'Just Culture' approach. IATA believes that the protections introduced through the amendments will help to underpin a robust Safety Culture and support incident reporting thereby improving aviation safety.</p>
3.	Aviation Safety: Drug and alcohol management	<p>IATA notes that all signatories to the Convention on International Civil Aviation (the Chicago Convention), including New Zealand, have responsibilities to address the misuse of alcohol and psychoactive substances by aviation personnel, given the potential hazards that such misuse may pose to aviation safety.</p> <p>The International Civil Aviation Organization (ICAO) has been leading a global effort to ensure that these responsibilities are met and uniform standards are developed in order to mitigate negative impacts to the global aviation operating environment. Given its extensive expertise in this subject matter and the close collaboration with member states, IATA believes that ICAO remains the proper forum to address this issue.</p> <p>IATA is concerned that the adoption of unilateral regulatory actions in the absence of coordination with ICAO and aviation authorities of other ICAO Member States would result in a confusing, complex, and haphazard regulatory regime as well as operational delays throughout the global aviation environment, which consists of over 100,000 daily flights, without any tangible enhancements to global aviation safety. Given the importance of the mitigation of alcohol and substance abuse for aviation safety, it is crucial that regulations be synchronized globally to ensure consistency across industry operators.</p>

Table 2: Issues relating to Aviation Economic Regulation

No.	Issue	IATA Response
1.	Aviation Economic Regulation: Airport price setting	<p>IATA strongly supports the removal of the 'set charges as they think fit' provision as the re economic regulatory regime.</p> <p>Further, the provision in its current form could be misinterpreted by airports as being given an unrestricted autonomy to set charges and be seen as incompatible with the provisions in the Commerce Act 2018 whereby greater scrutiny by the Commerce Commission leading to an inquiry would override the authority/ability "for airport companies to set charges as they see fit" for the specified airport services.</p> <p>Beyond the removal of the provision, IATA would like to take the opportunity to reiterate the necessity for New Zealand to move beyond the light-handed regime for the three major international airports with full economic regulatory oversight by an independent agency to yield a balanced outcome for all parties, and to more effectively protect consumers. The merit of a negotiate-arbitrate model should also be considered seriously by the Government as an effective regulatory backstop to deter airports from exercising their market power, which is prevalent in the current setup.</p> <p>The Civil Aviation Act in its present form, based on its definition of specified services has led to the regulation of terminal/tarmac services only under the Commerce Act, not the commercial services and profits arising. This dual till setting has resulted in airports investing heavily into commercial assets and underinvested in aeronautical assets – a situation which ought to be resolved. IATA maintains that Single Till mechanism is the most appropriate approach in regulating airports to drive a balanced outcome for airports and its customers.</p>
2.	Aviation Economic Regulation: Airport consultation on certain capital expenditures	<p>IATA supports the proposal that provisions in the AA Act requiring airport companies to consult regarding charges and certain capital expenditure be retained as the requirement to consult regarding charges and capital expenditures should be prescribed clearly to remove any ambiguity about the non-negotiable aspect of this requirement. These provisions would support the specific consultation framework and requirements, be it in the present or in the future.</p> <p>As a general rule, all capital expenditures within the terminal should be consulted regardless if it comes under specified or non-specified services on the basis that there is a need to understand the flows and the impact of commercial activities on the terminal requirements etc. Consultation is key to ensure capital plans are fit for purpose, in line with demand and are not gold-plated.</p> <p>In addition, pricing consultation should not be limited to only capital expenditures but to include all the parameters underpinning the calculation of charges (operating costs, capex, asset base, return on capital, depreciation, traffic, service levels, etc.), including the overall master planning of airports, phasing plan and (10-year) rolling capital expenditures plan agreed with users.</p>
3.	Aviation Economic Regulation: Airline liability - delay and damaged, lost and delayed baggage	<p>IATA notes that New Zealand is party to the Montreal Convention 1999 that establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo. IATA supports the proposal for the Disputes Tribunal to settle cases involving small claims as court involvement for such cases would lead to increased costs for airlines and passengers alike.</p> <p>However, IATA is concerned that the New Zealand Government is looking at introducing requirements for airlines to inform passengers of their right to seek compensation as such requirements could increase the administrative and operational burden on airlines, without clear enhancement to passenger rights awareness. IATA would like to suggest that the New Zealand Government conducts a thorough consultation with the industry prior to the introduction of such requirements.</p>
4.	Aviation Economic Regulation: Improving the regime for authorization of airline cooperative arrangements	<p>IATA supports the amendments as they allow the Minister of Transport to authorize alliances between airlines through a more transparent process.</p>

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5.	Aviation Economic Regulation: Airport Authorities powers	IATA supports the amendment as it will yield greater transparency and good governance to management of monopoly assets.
6.	Aviation Economic Regulation: Threshold for consultation on airport expenditure	IATA is supportive of the proposed change to provide greater clarity of the capital expenditure threshold based on total value within the following 5 years rather than basing the threshold on percentage of asset value, and the threshold being differentiated based on the size of the airport.
7.	Article 204: Airport Companies must consult concerning charges	While this issue was not identified for feedback in the commentary document, IATA would like to highlight that in addition to requiring airports to conduct consultations when (1) charges change or (2) every five years (maximum), there is a need to consider instances where there are indications that charges should be reduced (e.g. substantial increase in traffic than projected). IATA proposes to include a provision for users (such as airlines) to be able to unilaterally request a consultation on charges.
8.	Article 336: Rebate of fees or charges	While this issue was not identified for feedback in the commentary document, IATA recommends that regulations on any rebates provided by airports and service providers state clearly that such rebates will not be considered as a cost by the airport/service provider but be funded from its profit.

Table 3: Issues relating to Aviation Security

No.	Issue	IATA Response
1.	Aviation Security: Clarifying Avsec's powers to deal with dangerous goods	<p>IATA supports the screening of dangerous goods prior to a flight.</p> <p>However, the proposal assigning Avsec officers to screen dangerous goods could result in the unintended consequence of diverting them from their core purpose of enforcing aviation security by screening for prohibited items.</p> <p>The screening and transportation of dangerous goods should be in accordance with Annex 18 and its associated Technical Instructions, as certain dangerous articles or substances are classified as dangerous goods by Annex 18 and the associated Technical Instructions for the Safe Transport of Dangerous Goods by Air (Doc 9284).</p>
2.	Aviation Security: Avsec's institutional arrangements	IATA supports the separation, but clarification is needed on who the appropriate authority to ICAO/Avsec Regulator will be.
3.	Aviation Security: Enabling New Zealand Defence Force personnel to act as ASOs	IATA supports the amendments but recommends that a robust process be put in place to ensure defense force personnel are adequately trained and certified to perform screening, if they are deployed to conduct screening at security checkpoints and to specify the circumstances under which such personnel are deployed.
4.	Aviation Security: Airport identify cards (AIC)	IATA suggests that in addition to defining authorized person, it may be worthwhile to consider defining areas of access as well, as not every security personnel, despite having appropriate security clearance, should be granted the same level of access to the security restricted/enhanced area unless there is a reason to do so.
5.	Aviation Security: Clarifying the Avsec search powers in the landside part of security designated aerodromes	The search powers in the landside part of the airport rests with the State. IATA recommends that the entities responsible for the implementation of landside security measures are clearly identified including their roles and responsibilities and stated in the National Civil Aviation Security Program (NCASP). This could include airport operators, airport and/or local police, national authorities, military, and others. Furthermore, it is crucial for the entities to understand one another's roles and ensure the establishment of clear lines of communication.
6.	Aviation Security: Clarifying that Avsec can search suspicious items of hold baggage without passenger consent	The power to authorize the search of the suspicious items in the hold baggage rests with the State. However, IATA urges that such power to perform the search without passenger consent must be clearly stated in the NCASP, along with clear indication of the circumstances under which Avsec is able to conduct such searches, to enable the airlines to explain to the passengers should there be a need to do so, be able to effectively comply with the requirements and not be held accountable for issues arising from the searches.
7.	Aviation Security: In-flight Security officers	<p>While the decision to implement an IFSO program rests with the State, IATA strongly urges New Zealand to thoroughly study all relevant aspects including performing a threat assessment and its aviation security needs for the IFSO deployment prior to the establishment of an IFSO program.</p> <p>IATA further recommends that the national legislation including procedures and specific implementing instructions with respect to IFSO should be established only following careful consultation with the airlines and other stakeholders engaged in such deployment, as IFSO activities should be carefully planned and coordinated with airports and aircraft operators. The criteria for IFSO should also be clearly defined along with their training standards and the rules of engagement.</p>

Table 4: Issues relating to Legislative Framework

No.	Issue	Proposed IATA Response
1.	Legislative Framework: Transport instruments	IATA supports the provision to allow the Director of Civil Aviation to make amendments on behalf of the Minister of Transport on matters that are purely technical or require frequent amendments as it will make the regulatory process more efficient and responsive to changes. However, any changes impacting the aviation industry should only be introduced after a robust consultation process and views of the industry thoroughly considered, to ensure that they deliver clearly defined, measurable policy objectives in the least burdensome way, in alignment with IATA's Smart Regulation principles.
2.	Legislative Framework: Repeal of latent legislation relating to Airways Corporation	<p>IATA observes that the rationale for this repeal is that the provision has not been used for 20+years. The main reason for this is the provision of aerodrome only services is generally uneconomic as a stand-alone business. IATA would like to highlight that strong oversight would be required by CAA to ensure safety, service levels and system interoperability are maintained.</p> <p>In addition, IATA recommends that pricing should be subject to close oversight and governance from an independent body, preferably (e.g. the Commerce Commission) regardless of the services being provided by a new entrant or current monopoly provider. This will help to ensure that prices set are reasonable regardless of the number of providers.</p> <p>This closer oversight and governance should also ensure the service provider exercises stronger cost management discipline than currently shown, whereby commencing July 2019, charges for Airways services will increase by 21.4% over a three - year period. Also, when economic conditions dictate, forensic analysis of cost building blocks should be conducted with input from stakeholders, to identify what is critically required, and what can be removed or deferred into future periods.</p> <p>IATA further recommends that the requirement to follow ICAO guidelines for the setting of Airport and ANS charges should be enshrined in regulations and preferably legislation.</p> <p>IATA also suggests that the New Zealand Ministry of Transport review the monopoly position of related providers of air navigation products and services. This should include the production of aviation MET products operationally required by airlines under ICAO Annex 3 where the provider advises they can only do so with significant cost increase. The rules should enable airspace users to exercise options to obtain necessary MET information from any other sources when not made available at acceptable cost by the monopoly provider.</p>
3.	Unruly Passengers	<p>While this issue was not identified for feedback in the commentary document, IATA notes that the exposure draft includes provisions for unruly passenger offences.</p> <p>IATA welcomes the strengthening of the deterrent against unruly passengers but would like to recommend that New Zealand ratify MP14 and ensure that the proposed changes are aligned to MP14 to ensure that there is a strong international deterrent across jurisdictions against unruly passengers.</p> <p>IATA would like to also suggest that the New Zealand Ministry of Transport refer to ICAO Document 10117 Manual on the Legal Aspects of Unruly and Disruptive Passengers, as it contains guidance on legislation covering acts and offences, as well as elements of an administrative sanctions regime, which will assist New Zealand, as an ICAO Contracting State, in implementing the appropriate legal measures to prevent and deal with unruly and disruptive passenger incidents.</p>