BARNZ

VOICE OF THE AIRLINE INDUSTRY

Submission

Civil Aviation Bill – exposure draft (Public version)

To Ministry of Transport

22 July 2019

Contents

Introduction 3
Overview and summary 3
Aviation economic regulation 3
Aviation safety 4
Aviation security 5
Legislative framework 5
Aviation Economic Regulation 5
Airports' ability to price as they think fit and negotiate/arbitrate regulation 5
Airport capital expenditure consultation thresholds 11
Approval of airline alliances 13
Airport powers in relation to leases 14
Airline responsibilities for lost and damaged baggage 15
Aviation safety 15
Drones 15
Drug and alcohol management 15
Aviation security 16
NZDF acting as Aviation Security Officers at Ohakea 16
AvSec's landside powers 18
Definition of dangerous goods 18
Airlines permitted to provide aviation security services 19
Alternative airport configurations 19
Jurisdiction to address unruly passenger offences 19
Legislative framework 19
Purpose statement 20
Rule-making, innovation and technology changes 20
Removal of Airways' statutory monopoly 21
Appendix – List of BARNZ Members 22

Introduction

1. This is the submission by the Board of Airline Representatives New Zealand (BARNZ) to the Ministry of Transport on the exposure draft of the Civil Aviation Bill.
2. This submission is made on behalf of the BARNZ members, listed in the Appendix. Some members may make their own submissions. This submission contains some confidential information, marked BARNZ CONFIDENTIAL INFORMATION [ ]. We have provided a public and confidential version of this submission.
3. BARNZ's contact person for this submission is:

Ian Ferguson
Manager – Pricing and Policy
ian@barnz.org.nz
021 120 6810

Overview and summary

4. BARNZ and our airline members are very pleased that the Civil Aviation Bill has progressed to the stage where an exposure draft has been prepared for consultation. The legislation is in need of updating and modernisation and we support the efforts to develop a new, fit-for-purpose statutory framework that will set up New Zealand's aviation sector for the next 30 years. Given the importance of this legislation to the sector, and the amount of time we have been waiting for these reforms, we are keen for the Bill to be finalised within this term of Parliament.
5. We are especially pleased by the removal of airports' ability to price as they think fit and the reduction in airport consultation thresholds. These are important steps towards a robust regulatory regime for New Zealand's monopoly airports. However, to fully deliver a robust regulatory regime the Bill should introduce negotiate-arbitrate regulation directly for Auckland, Wellington and Christchurch Airports. BARNZ maintains that negotiate-arbitrate regulation is crucial to create balance in airport and airline negotiations. Meeting future aviation demand growth is going to require airports and airlines to work together on a partnership basis like never before, and that requires airlines to have an equal seat at the negotiating table. Nothing less is needed to protect consumers from the harm caused by monopoly pricing.

Aviation economic regulation

6. In summary, BARNZ:
    a. Supports removing the ability for an airport to 'price as it thinks fit'. Section 4A of the Airport Authorities Act is an anachronism that is not needed for its original purpose, but underpins monopoly pricing by airports that unnecessarily inflates the price of air travel. It also undermines recent improvements to airport regulation under the Commerce Act.

b. Recommends the Bill goes further and introduces negotiate-arbitrate regulation directly for New Zealand's major international airports – there is clear evidence of airports over-charging consumers in New Zealand and there needs to be stronger regulatory intervention to protect consumers from harm and make sure our aviation sector remains globally competitive.

c. Supports reducing the capital consultation thresholds, with one change. We propose creating a new threshold where consultation on capital projects of more than $20m is required for airports with between 3 million and 10 million passengers per year. So the $30m consultation threshold would apply to airports with more than 10 million passengers per year. Our analysis suggests these thresholds best fit with the scale of projects that airlines should be consulted on at the different airports.

d. Recommends creating a new 'capital project agreement threshold'. This would mean airports would need to get the agreement of at least one substantial customer before undertaking any aeronautical project more than ten times the value of the consultation threshold (eg if the consultation threshold is $30m, the 'agreement threshold' applies to projects of $300m or more). It is reasonable that for projects of this magnitude at least one substantial customer should agree – if no customer supports it, you would need to ask why the airport is making such a large investment.

e. Supports the reforms to the airline alliance approval process and supports this responsibility sitting with the Minister of Transport. This is the best solution because it recognises that the aviation sector is different (mergers are much harder to achieve within the airline sector) and because the Civil Aviation Bill's Purpose Statement is better suited to guide decisions on airline alliances than the Commerce Act's Purpose Statement.

f. Agrees that the Disputes Tribunal is a reasonable body to adjudicate claims in relation to lost and damaged baggage. Any regulations requiring airlines to give consumers information about their rights in this area will need to be carefully designed to manage costs.

Aviation safety

g. Supports the proposed changes regarding drones. In particular, regulations are needed to levy drone users for the costs they impose on the aviation system, which are currently being borne by airlines. Also, the Minister should have powers to require drones to be equipped with geo-fencing and similar capabilities, so this power is available if it is needed.

h. Supports in principle the proposal to strengthen drug and alcohol management requirements, but the standard applying to international airlines needs to be consistent across jurisdictions and this process should be led by the International Civil Aviation Organisation (ICAO).

Aviation security

i. Supports the ability of NZDF personnel to act as aviation security officers in certain circumstances. We strongly believe this should include the ability for NZDF personnel to handle security requirements in the very rare circumstances where a passenger plane may need to offload passengers at Ohakea. This is explained in more detail below.

j. Considers that AvSec's landside powers need to be exercised cautiously to ensure AvSec does not end up providing general airport campus security, which should be the responsibility of the airport company.

k. Recommends the definition of dangerous goods is updated to reflect the IATA Dangerous Goods regulations, which apply a stronger and more widely applied standard than the ICAO Technical Standards.

l. Supports adding airlines to the list of organisations that can provide aviation security services.

m. Opposes the proposal that the Director could authorise alternative airport configurations. These are likely to cause delays to passengers and flights and increase costs for airlines and passengers, in order to support a particular commercial outcome for an airport.

Legislative framework

n. Supports the Purpose Statement but recommends the term 'cost-effective' is added to clause 4(a). This is a gap in the exposure draft purpose statement, which does not have a clear statement that an objective is to deliver efficient / cost-effective outcomes across the aviation system.

o. Recommends more is done to ensure the legislation is future proofed and supports faster decision-making where possible, particularly in response to technology change.

p. Opposes the removal of the power for Ministers to revoke Airways' statutory monopoly.

q. Supports the amalgamation of the Civil Aviation Act and Airport Authorities Act into a single piece of legislation.

Aviation Economic Regulation

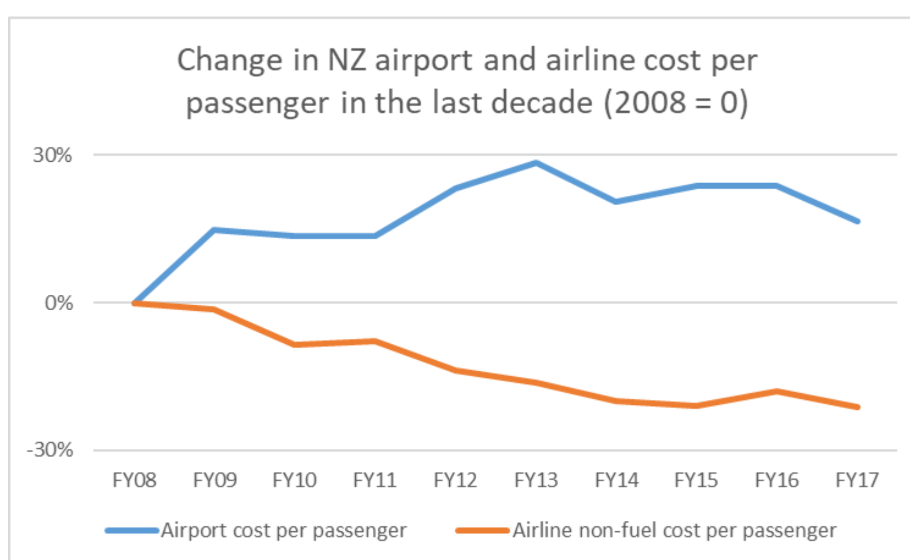
Airports' ability to price as they think fit and negotiate/arbitrate regulation

7. BARNZ and our airline members are delighted that the exposure draft removes section 4A of the Airport Authorities Act, which gave each airport the power to "set such charges as it from time to time thinks fit for the use of the airport". We think the Bill should go even further and also amend the Commerce Act 1986 to apply negotiate-arbitrate regulation to New Zealand's major airports.

Why we need stronger regulatory settings for airports

8. Air travel and air connectivity matter more to New Zealand than most other countries, given our geographic position in the world. We need affordable, efficient air travel to connect New Zealanders to the world, promote our travel, trade and tourism sectors and generally secure our economic wellbeing.

9. Airlines are working hard deliver more affordable and efficient travel. Excluding the cost of fuel (which is well known to be volatile), airlines globally and in New Zealand have been highly successful at finding efficiencies to keep the cost of travel down and pass these savings on to consumers. But as the chart below proves, monopoly airports have not been doing their bit: their costs have been going up, undermining the efforts of airlines to make travel more affordable for all.



Source: BARNZ and IATA analysis using airline annual reports and airport information disclosures[1]

10. We have seen clear examples of unjustified over-charging at all three major New Zealand airports:

    a. The Commerce Commission last year concluded that Auckland Airport's current charges are not justified and the airport's prices will over-charge consumers by $53m over the years 2017-2022.[2] The Airport has since agreed to lower its prices to return $33m of this to airlines, but is retaining the rest.

[1] Costs comprise opex and depreciation. Airports included are Auckland, Wellington and Christchurch. Airlines included are those with the largest share of the NZ market: Air NZ, Qantas Group, Emirates, Virgin Australia, Singapore Airlines and LATAM. The index is based on weighted average costs: for airports, the weights are the share of FY17 passenger numbers; for airlines the weights are seats operated to Auckland in the year ending May 2018.

[2] Commerce Commission final report on AIAL PSE3 pricing decision, paragraphs X14-X18.

b. A Commission review of Wellington Airport's pricing in 2013 found that their profits were excessive and unjustified, by an amount in the range of $38m - $69m.[3]

c. In its 2012-2017 pricing decision, Christchurch Airport was seeking excessive profits in the range of $21-$35m.[4]

11. Today, Auckland Airport is investing in a large-scale expansion of its operations, much of which airlines support. However, airlines will pay for this while the airport maintains a policy of paying 100% of Net Profit After Tax as dividends to shareholders. Over the past decade, Auckland Airport has transferred $2 billion of profit to its shareholders rather than investing in terminal and other infrastructure. In the context of the billion-dollar investments being made by Auckland Airport, it is unacceptable that airport shareholders are not contributing to the cost to help keep air travel at the airport affordable.

12. Airports are able to over-charge in this way and minimise shareholder contributions to major projects because they can set prices as they think fit and are only subject to limited disclosure-based regulation.

Ideally, negotiate-arbitrate regulation would be introduced through the Bill

13. A specific question for submitters in the Commentary Paper is *"Does the proposed policy change [ie removing the right to 'price as the airport thinks fit'], along with recent changes to the Commerce Act 1986, support a robust regulatory regime for major international airports?"*

14. BARNZ and airlines think that removing the ability for airports to price as they think fit, and the changes to the Commerce Act, are important steps towards a robust regulatory regime, but do not deliver a fully robust regime

15. Our long-standing view is that negotiate-arbitrate regulation is the best model, because it would put airlines and airports on a level playing field in terms of negotiating power and thus drive the parties to work together to reach agreement. And if they cannot agree, there would be an independent arbitrator.

16. We believe the most straightforward approach is for the Bill to amend Part 4 of the Commerce Act to directly apply negotiate-arbitrate regulation to Auckland, Wellington and Christchurch Airports. This would remove any need for a drawn-out review process involving the Minister of Commerce and the Commerce Commission before regulation can be introduced. It would give certainty to all parties who can then get on with negotiating commercial outcomes on an equal footing.

17. However, in the absence of negotiate-arbitrate regulation, we consider that removing 'price as thinks fit' alongside last year's Commerce Act amendments, will jointly deliver the next best option.

[3] Commerce Commission final 56G report for WIAL, paragraph X10.
[4] Commerce Commission draft 56G report for CIAL, table E2 on page 89. This should be read in conjunction with paragraph E20 and footnote 135 of Commerce Commission final 56G report for CIAL.

'Price as airport thinks fit' is not needed for airports to charge for their services

18. We agree with the Ministry of Transport that a specific legislative provision is not needed to enable airport companies to set charges.[5] Section 4A is an anachronism and it is not needed to serve its original purpose (to confirm that airports can indeed charge for their services). Section 4A is a major impediment to fair and reasonable pricing by monopoly airports. It plays a significant role in pushing up the cost of travel for air passengers and making New Zealand less competitive as a destination.

19. We understand New Zealand's airports have been arguing the current provision, or something like it, is essential for their ability to operate successfully. We have considered this carefully and can see no basis for the airport position. In the table below, we comment on the key reasons put forward by the airports, as summarised in paragraph 119 of the Commentary Paper:

Airport view on the 'price as thinks fit' power	BARNZ comment
"The provision serves a broader purpose and is a material part of the statutory economic regulation framework for airports"	As we discuss in the next section, the ability of airports to price as they see fit undermines recent changes to the Commerce Act, which were designed to strengthen regulation for airports. If the provision remains in place, the recent reforms will not succeed. We disagree with NZ Airports' Association that the provision is in some way jointly required alongside the section 4B obligation to consult.[6] Consultation is good practice but without a statutory requirement, airports may choose not to consult with airlines. However, we can be confident that airports will continue to set prices for their services even without section 4A because it is in their interests to do so. Importantly, removing section 4A would not need to change the airport pricing consultation dynamic – airports could still choose to consult primarily with the substantial customers only, or with a wider audience. This decision is not affected by removing the ability to 'price as thinks fit'.
"It is a 'circuit breaker' when agreement cannot be reached"	This is simply untrue. Airports are suppliers of monopoly services with no regulatory price control, so they can decide their pricing without any assistance from primary legislation. Removing this section does

[5] Commentary Paper, paragraph 120.
[6] NZ Airports' Association submission on Civil Aviation Bill consultation, 31 October 2014, paragraph 134(c).

Airport view on the 'price as thinks fit' power	BARNZ comment
	not remove the ability for airports to set their own prices. To take an example, clause 1.3 of Christchurch Airport's standard terms and conditions for aeronautical charges[7] (which were not consulted on during the 2017 pricing consultation but imposed alongside the new prices at the end of it) specify that by using the airport each airline is deemed to have fully accepted the terms and conditions. The Christchurch Airport standard terms include several non-price clauses that an airline would not normally commercially sign up to (eg clause 5 limits the airport's liability in as many ways as possible but does not limit the airline's liability in any way at all). The Airport is clearly able to impose its own non-price contractual terms onto airlines without the support of statutory powers from the Airport Authorities Act. So we do not accept that airports need section 4A to be able to determine their own prices.
"Without it, there would need to be a fundamental change in the basis for pricing decisions, creating uncertainty for airports"	This is also untrue. As monopolies, airports have the power to set their terms and conditions and can determine prices for their airline customers with or without section 4A. The concept of 'substantial customer' under section 4B would be retained, so there is no question that airports would somehow be forced to negotiate with all airlines separately – most smaller airlines would not want this option in any case.
"Repeal would lead to litigation"	We see no evidence this is true (and the previous submission NZ Airports' Association seems conflicted on this topic[8]). We question why airports, alone of any service supplier across the economy, should have this

[7] https://www.christchurchairport.co.nz/media/873985/aeronautical_prices_and_terms_and_conditions__1_july_2017_.pdf

[8] NZ Airports' Association submission on Civil Aviation Bill consultation, 31 October 2014, paragraph 139 seems to suggest both that removing section 4A would remove scope for judicial review and also create a risk that new legislation would be legally tested. It is not clear whether they think litigation would increase or not overall.

Airport view on the 'price as thinks fit' power	BARNZ comment
	level of protection against legal challenges from their customers in relation to pricing. There is no principled reason to give them this protection that we can see.
"Repeal could have significant impacts on airport investment"	This is a typical argument put forward by monopoly infrastructure providers when any challenge to their position is mooted. In our experience, this type of claim is never followed through with actual reductions in investment. In practice, airport monopolies will always continue to invest because it is in their interest to do so (both reputationally and to support continued growth in airport retail and land transport revenues).

'Price as airport thinks fit' is in direct conflict with recent improvements to the Commerce Act

20. Late last year, the Commerce Amendment Act 2018 was passed. The Minister of Commerce and the rest of government saw a clear need to strengthen the legislation applying to monopoly airports.
21. The Commerce Amendment Act created a more credible regulatory threat for New Zealand's major monopoly airports. It did not impose any more direct regulation on airports, but instead introduced a stronger regulatory incentive for airports to behave more reasonably in their pricing decisions. It did this by creating a process in which negotiate-arbitrate or price-quality regulation could be imposed on airports by Order in Council.
22. Crucially for the debate about 'price as thinks fit', both negotiate-arbitrate regulation and price-quality regulation would enable a party other than the regulated airports to determine their pricing levels for specified airport services. Under negotiate/arbitrate regulation, in most cases we expect the pricing would be agreed between airports and airlines – but there is a backstop provision for the arbitrator to determine the pricing. Under price-quality regulation, the pricing (or total revenues) would be decided by the Commerce Commission.
23. So it is clear that if the Civil Aviation Bill continues to allow an airport to 'price as it thinks fit', the credible threat of further regulation from the Commerce Amendment Act reforms are nullified – because the regulation options available under the Commerce Act depend on other parties being able to directly determine the prices of the airport.

Removing 'price as thinks fit' does not cause problems in terms of determining a price setting event

24. We understand airports have raised a concern that the trigger for the Commerce Commission review of airport price setting events may need to change if section 4A was repealed. We have considered this and it would be a simple drafting issue to resolve. The

definition of *price setting event* in the Commerce Commission's Input Methodologies Determination for Airports is:

> "means a fixing or altering of price for a specified airport service by an airport under s 4A and s 4B of the Airport Authorities Act 1966…"

25. This definition would need to be updated if section 4A is repealed. But even if section 4A was retained the definition would need to be updated to reference the new section in the new Act, so the need to update the definition is not a material barrier.
26. While the new definition in the Input Methodologies will ultimately be a matter for the Commerce Commission, we think the most straightforward approach would be to adopt similar wording to current section 4B and define a *price setting event* as "the fixing or altering of a charge by a substantial customer to the airport company in respect of any or all specified airport services".

Airport capital expenditure consultation thresholds

Threshold for consultation

27. It is essential that airports consult with their substantial customers on large capital projects. Substantial customers are large airline organisations with relevant expertise and a strong interest in making sure airports are well designed and operate smoothly. Their input and feedback are valuable in making sure the right investment decisions are made.
28. We agree with the Ministry of Transport that the capital consultation thresholds in the Airport Authorities Act are too high. The 20% of asset values threshold mean that only investments of more than $140m at Auckland Airport and more than $45m-$55m at Wellington and Christchurch Airports would need to be consulted on. We commend Auckland Airport in particular for voluntarily consulting, in depth, with airlines on investments with a value below this statutory threshold. The proposed new thresholds in clause 205 of the Bill are a step in the right direction.
29. We understand airports may argue the consultation thresholds are too low. We disagree. For Auckland Airport, we have reviewed the current schedule of its investments and there are key projects within the $30m-$60m range that we believe airlines absolutely need to be consulted on. These include: BARNZ CONFIDENTIAL INFORMATION [
30.

] Also, Auckland Airport is currently consulting airlines on these projects so setting the threshold at $30m should not be onerous.

31. The proposed $30 million threshold is too high for Christchurch and Wellington Airports. In Christchurch Airport's most recent pricing consultation, the two most controversial capital projects had values of $20 million and $10 million respectively. The $20 million project was an extension to the airport's cross-runway – exactly the type of project airlines want to be and should be consulted about.
32. We propose creating a new threshold of $20m for airports with passenger movements of between 3 million and 10 million per annum. This means the table in clause 205 would be as follows:

Annual passenger movements of airport company	Amount
Less than 1,000,000	$5,000,000
1,000,000 or more but not more than 3,000,000	$10,000,000
3,000,000 or more but not more than 10,000,000	$20,000,000
More than 10,000,000	$30,000,000

33. As a final point, should these thresholds turn out to be inappropriate for a particular project or group of projects, airlines and airports can agree for there not to be any consultation process (clause 205(3) of the Bill), so this will guard against airports being required to consult unnecessarily.

Threshold for 'agreement'

34. The consultation thresholds, while helpful, ultimately do not prevent airports making major decisions that benefit themselves but not their customers.
35. The most striking example of this is Wellington Airport's runway extension project, which is strongly opposed by the airport's airline customers, is not supported by any credible business case and where there is clearly no demand for the longer runway asset. However, Wellington Airport seems to be pressing ahead with the project in the face of customer feedback that it is not wanted.
36. We consider that the Bill should provide protection for airlines and their passengers against major unwanted investments. In principle, we believe it is reasonable to expect an airport to have the support of at least one substantial customer (which could be an airline providing just 5% of the airport's revenues) before it makes a major investment such as a large-scale runway extension, a new runway or a new terminal.
37. We propose that the Bill requires airports to have the agreement of at least one substantial customer before making very large investments. We propose a threshold 10 times the consultation threshold for the respective airport (eg where the consultation threshold is $30,000,000, the airport would be required to get agreement from at least one substantial customer before making an investment of more than $300,000,000).

38. Airlines wanting to fly to a particular region have no choice but to use the airport, while airports can build assets and force airlines to pay – putting in this safeguard is a moderate and reasonable protection for passengers against over-investment by airports.

The consultation thresholds would still be relevant under a different regulatory regime

39. The Commentary Paper asked the question:

> *"It is proposed that provisions in the AA Act requiring airport companies to consult regarding charges and certain capital expenditure be retained. Would these provisions still be appropriate if, in future, major airports were subject to a different regulatory regime under the Commerce Act?"*

40. Our view is that the consultation requirements in clause 205 would still be relevant if airports were subject to a different regulatory requirement under the Commerce Act (ie negotiate-arbitrate regulation, or price-quality regulation).

41. Consultation on major capital expenditure is an important part of an airport's planning process and is distinct from the price setting process. Capital expenditure plans are of course taken into account in airport price setting decisions – this is true under the current arrangements and would be true under different regulatory settings. However, prices are often set using relatively high-level estimates of the cost of capital projects.

42. Once pricing decisions are made, airports then move to more detailed design considerations for the major projects – airlines can and do have useful input at these stages as we can give considered feedback on price/quality trade-off decisions. This would still be a useful process even if negotiate-arbitrate regulation or price-quality regulation applied.

Approval of airline alliances

43. As an industry association, BARNZ does not participate in applications for airline alliances and cannot comment on the process itself. We will comment on this topic at a principled level.

44. The exposure draft leaves the power to determine airline alliances with the Minister of Transport but improves the process for the decisions (for example specifying the issues that the Minister must take into account, specifying requirements for consultation on and publication of decisions and allowing conditions to be imposed). Feedback from our airline members is that they support the decision-making power to remain with the Minister. The improvements to the process set out in the exposure draft will resolve the concerns with the current process.

45. The airline industry is different from other industries in the economy due to the degree of overlapping national and international regulation that applies. As the Ministry of Transport will be aware, bilateral air services agreements and restrictions on foreign ownership of national carriers have had a material impact on the structure of international airlines globally. One outcome of this is to drive airline alliances as a model to achieve some of the benefits of scale and connections that in other industries can be achieved by merger.

Given this underlying dynamic, there is a case for a separate competition regulatory focus for airlines than for other sectors.

46. We consider that the Purpose Statement of the Civil Aviation Bill is likely to promote more appropriate decisions in relation to alliances than the Purpose Statement of the Commerce Act. The Commerce Act has a focus on promoting competition. The Civil Aviation Bill has a broader purpose, including facilitating the development of civil aviation and to preserve the national interest. This is appropriate because airlines need to work together to make some routes viable so alliances improve New Zealand's connectivity, consistent with the Civil Aviation Bill's purpose statement.

47. Also, in our experience, the Commerce Commission has a wide range of competing responsibilities, which now include market studies and a new telecommunications regulatory regime. This means some other issues cannot be addressed as quickly as stakeholders might want, for example the review of airport returns on their regulated lease services (eg hangars and lounge spaces), which is an increasing area of concern for airlines. We believe the national interest would be better served by not adding to the Commerce Commission's workload in this instance.

Airport powers in relation to leases

48. Section 6 of the Airport Authorities Act contains some detailed provisions regarding the granting of leases by airport authorities. The Commentary Paper proposes to remove these from legislation on the grounds that they are obsolete and airports are able to enter into leases anyway.

49. BARNZ agrees the provisions are obsolete and should be repealed. Airports are entirely able to enter into lease contracts, with termination clauses and limitations on the use of the land as required. Airports, as monopolies, are able to (and do) use their monopoly powers to extract favourable terms for them in their leases and they have no need of even more protection from statute.

50. In particular, the power of airports to terminate leases without compensation (section 6(4) of the Airport Authorities Act) could have negative consequences. In June 2019, the Government Inquiry into the resilience of Auckland's fuel supply system heard from BP and Z Energy that this section was a barrier to them investing in jet fuel storage at Auckland Airport because they had no certainty that their investment would not be stranded by the Airport using this section to cancel the lease on the current jet fuel facility.

51. Section 6 also makes airlines less confident to invest in their own leased properties at airports because they cannot be sure that the lease will not be terminated without compensation.

52. Removing this clause is the right thing to do. It will enable standard commercial relationships to apply in relation to leases, which will give parties the confidence they need to invest in lease arrangements where they are commercially valuable.

Airline responsibilities for lost and damaged baggage

53. BARNZ is comfortable with the Disputes Tribunal having authority to hear disputes regarding lost and damaged baggage, noting that the liability limits set out in the Montreal Convention will still apply. In practice, we expect very little will change as disputes are almost always resolved directly between carriers and the passenger concerned.
54. Any regulation-making powers that would create obligations to provide information to passengers about their rights in relation to lost and damaged baggage will need to be designed carefully to make sure they are not unduly onerous. Airlines that operate to New Zealand also operate to many other jurisdictions and it will be important to ensure that requirements here are consistent with those overseas, so the information can be provided in a relatively low-cost way.

Aviation safety

Drones

55. We support the proposed updates to the requirements regarding pilot-in-command, definition of accidents and seizure powers to make sure these are effective for unmanned aerial vehicles. These are necessary steps towards managing drones to ensure they are operated safely.
56. We consider that the power to seize or detain non-passenger carrying drones should sit with the Director of Civil Aviation or a delegate (ie we support option 2 on page 28 of the Commentary Paper).
57. BARNZ and our airline members strongly support giving Ministers the power to apply levies to drone operators. Drone operators are causing costs within the aviation system that are being paid for by other parties – mostly airlines – because no reliable means of directing the costs to drone users is available. For example, Airways is going to charge airlines $7.5 million over the next 3 years for its drone management and enforcement programme, rather than charging drone operators who are causing the cost. This is unacceptable and unsustainable – airlines must not be charged the cost of drone management across the country simply because they are easier to invoice.
58. We also recommend that Ministers have the power to regulate to require drones to be equipped with position fencing and geo-fencing capability (and future technologies that are not currently known). This power may be needed to manage drones in certain areas of airspace in future.

Drug and alcohol management

59. BARNZ supports the intent behind the requirements for a stronger drug and alcohol management framework. We think this is necessary and valuable for domestic aviation participants. However, international airlines operate across a multitude of jurisdictions. If each jurisdiction introduces its own drug and alcohol requirements for airlines, it could become unmanageable for airlines to practically comply with all of them given the potential for variety across the world.

60. The International Civil Aviation Organisation (ICAO) is leading global work to develop uniform standards in this area. We consider that ICAO is the best forum to resolve the issue for international airlines.
61. The Bill specifies that the operators which need to have a Drug and Alcohol Management Plan will be specified in the Rules. BARNZ suggests that international airlines are excused from this requirement through the Rule where the airlines are following, or are about to follow, the equivalent ICAO standard. Alternatively, the Rules could align to the international standard.

Aviation security

NZDF acting as Aviation Security Officers at Ohakea

62. BARNZ would like to ensure that NZ Defence Force personnel are able to act as aviation security officers at Ohakea in the rare circumstances that a commercial aircraft lands there and passengers need to disembark for comfort or safety reasons.
63. Section 9 of the Defence Act 1990 permits the armed forces to provide public services in New Zealand, with certain safeguards and caveats. Clause 157 of the Bill states that when the armed forces are providing aviation security services, those officers will be able to exercise the powers of aviation security officers.
64. We support this as a useful step to support the aviation security service in unusual circumstances (examples given in the Commentary Paper are "a significant security incident" or where "additional screening is necessary at very short notice").[9]
65. One area where enabling defence force personnel to act as aviation security officers would add real value is at Ohakea air base in the very rare occasions when a commercial aircraft needs to temporarily offload passengers at the base. We believe this falls in the category of "additional screening is necessary at very short notice".
66. Our reading of the Bill and the Defence Act is that Defence Force personnel could provide aviation security services at Ohakea under the legislation. However, from discussions with the Ministry of Transport we understand this was not considered when the Bill was drafted so we would like to make sure that this is possible. A process for implementing this will also need to be developed.
67. In the remainder of this section of the submission, we explain why NZDF personnel having aviation security powers at Ohakea on rare occasions when a commercial aircraft needs to temporarily offload passengers will be good for air travellers and for New Zealand.

Why NZDF personnel should have aviation security officer powers when commercial flights remain at Ohakea for some time

68. Ohakea has the third longest runway in New Zealand, so is a useful emergency airfield for wide-body aircraft if Auckland or Christchurch becomes unavailable.

[9] Commentary Paper, paragraph 188.

69. There is an existing scheme whereby several commercial airlines can nominate Ohakea as an alternate airfield and thus save fuel because they do not need to carry enough fuel to reach a more distant airport. This scheme has been an amazing win for airlines, New Zealand and the environment, saving airlines around $6m per year and reducing carbon emissions from aviation by around 300,000 tonnes since 2011.

70. Only about 2 or 3 commercial aircraft a year actually land at Ohakea. When they do, they normally refuel and leave quickly and passengers remain on the aircraft ('gas and go'). However, it is conceivable that an aircraft could need to remain at Ohakea for several hours – for example, there might be an engineering problem, or weather may prevent departure. If these very unlikely events were to occur, the passengers could be stuck on board the aircraft for several hours, quite possibly after an already lengthy flight. This could have negative safety and comfort implications for the passengers and could also affect New Zealand's reputation as an international destination. We want to avoid these outcomes by facilitating a process for passengers to disembark.

71. Ohakea air base has a good quality terminal that could accommodate 600-700 passengers in reasonable comfort. We believe that in the rare occasions where a passenger aircraft is stuck at Ohakea for an extended period of time, it would be beneficial for the passengers, for the airline, for the Ohakea air base and for New Zealand's reputation if the passengers can disembark into the terminal building, where conditions may be more comfortable than on the plane, and then re-board when the aircraft is ready to leave.

72. The NZDF personnel are well placed to take on the aviation security role in screening the passengers as they re-board the aircraft and/or in sterilising the terminal area before passengers disembark. We request either that the government confirms NZ Defence Force personnel are able to operate at Ohakea under the Defence Act and the provisions in the Bill, or amends the legislation to make it clear this is permitted. A process may need to be developed between NZDF and the Ministry of Transport or the Civil Aviation Authority to determine when NZDF personnel can take on these powers.

Broader implications

73. There is no question that passengers would enter New Zealand at the Ohakea air base by going through Customs and biosecurity controls. They would only access the terminal for a time for safety and comfort benefits and then re-board the plane to fly to Auckland or Christchurch for normal processing.

74. BARNZ and the NZDF are starting work to develop a process for handling passengers in the terminal at Ohakea that complies with New Zealand's customs, immigration, security and biosecurity requirements. These issues do not all need to be resolved through the Civil Aviation Bill. But the Civil Aviation Bill can help by ensuring NZDF personnel are able to take on the role of aviation security officers is at Ohakea where a commercial passenger aircraft needs to offload its passengers.

AvSec's landside powers

75. The Commentary Paper says that the Bill clarifies AvSec's search powers in the landside part of security designated aerodromes – ie authority to search vehicles and unattended items, conduct landside searches and use explosive detector dogs in landside areas.

76. We recognise that threats to aviation security do not just start at the landside/airside boundary, so in principle we agree with AvSec having these powers in landside areas. However, BARNZ is concerned at the potential for scope creep from this change. Airlines are levied for aviation security charges on a per passenger basis and much of the time, but not always these levies are passed through to passengers. So airlines and their passengers will pay for AvSec's costs in carrying out landside activities.

77. This means that there needs to be careful management to make sure these powers are used appropriately and AvSec does not end up carrying out functions that should be done by airport security.

Definition of dangerous goods

78. The exposure draft uses the same definition of 'dangerous goods' that is found in the current Civil Aviation Act. This definition captures articles or substances listed in ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air.

79. This definition is not ideal because most other jurisdictions around the world, and most airlines, define dangerous goods in accordance with the International Air Transport Association (IATA)'s Dangerous Goods regulations. The IATA regulations are tougher and apply a better and higher standard of safety than the ICAO Technical Instructions.

80. For New Zealand to apply a lesser standard of dangerous goods than other countries, which is one interpretation of the definition in the Bill, is not a good outcome. It would:

    a. Mean that some high-risk items are permitted onto New Zealand-departing flights that are not permitted on departing flights in other jurisdictions

    b. Create a divergence in requirements between New Zealand and overseas jurisdictions, without any safety-based rationale that we are aware of

    c. Create a disconnect between the dangerous goods policies of airlines (who follow the IATA regulations) and the application of the standards applied in New Zealand.

81. We recommend changing the definition of dangerous goods to include reference to IATA's Dangerous Goods regulations. We suggest the following wording (amendments underlined):

> ***dangerous goods*** *means articles or substances that are capable of posing risk to health, safety, property, or the environment and—*
>
> *(a) are listed in, or classified in accordance with, <u>either or both of</u> the ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air <u>and IATA's Dangerous Goods Regulations</u>; or*

(b) have properties that would result in the articles or substances being classified as dangerous goods under either or both of the ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air and IATA's Dangerous Goods Regulations

Airlines permitted to provide aviation security services

82. BARNZ agrees it is sensible to add airlines to the list of potential providers of aviation security services. For regional aerodromes in particular, this could be an efficient solution.

Alternative airport configurations

83. The Bill proposes to facilitate the future development of alternative airport configurations by giving the Director of Civil Aviation the power to authorise airport plans to allow other specified groups of persons, or the public, to enter a security area.
84. BARNZ is opposed to this proposal. From an operational perspective we see substantial risks from permitting non-passengers to enter security-controlled areas of aerodromes. It is likely to cause delays and missed flights if passengers are stuck behind non-passengers at screening gates. Having families of travellers (for example) in the departures area can cause further delays if passengers are distracted from making their flight on time by farewells with family members. Also, airlines and passengers currently pay for all screening (passenger and non-passenger) that occurs of people and goods that enter security designated areas. If airports want to invite other parties into a security area, airlines will absolutely not agree to fund the costs of screening these people.
85. We recommend that section 115(c) is removed from the Bill. If it remains, it should be expanded to require the Director to consult with all interested parties before agreeing to permit other groups of persons or the public to enter a security area at an airport and should specify that passengers will not have to pay for non-passenger screening in these circumstances.
86. This is a good example of an area where adding the words "cost-effective" to the Purpose Statement (discussed in the next section) would help the Director balance the advantages and disadvantages of a proposal that he/she considers.

Jurisdiction to address unruly passenger offences

87. The Bill largely replicates existing provisions for unruly passenger offences (eg clause 307). These clauses seem reasonable and should ensure offences can be dealt with appropriately in many cases. To ensure a more global coverage of unruly passenger offences (eg ensuring that disruption on flights from New Zealand to foreign jurisdictions can be dealt in the country where the aircraft lands) we support New Zealand ratifying the Montreal Protocol 2014.

Legislative framework

88. We support the proposal to amalgamate the current Civil Aviation Act 1990 and Airport Authorities Act 1966 into a single piece of legislation. This will consolidate and simplify the aviation legislation as a whole.

Purpose statement

89. We support the inclusion of a Purpose Statement in the Bill and mostly agree with the proposed drafting. However, we believe one key term is missing from the Purpose Statement. There is no reference to "efficiency" or "cost-effectiveness" in the additional purpose. This is a major and material gap.

90. Given our geographic position, New Zealand relies on air connections more than most countries in the world to support its economy. At the same time, airlines are highly cost sensitive with very mobile assets and if New Zealand is too expensive to operate in, we will lose flight connections and our tourism and other related industries will suffer. It is essential that our air transport system is cost-effective as this underpins our national prosperity and competitiveness. As such, we are surprised at its omission from the purpose statement.

91. Other objectives within the purpose statement, such as accessible, safe, sustainable and resilient could all be very thoroughly achieved if there is no regard given to cost, but we do not believe such an expensive outcome would be in the best interest of the aviation system or the country as a whole.

92. We understand one perspective is that the notion of cost-effectiveness is captured in the term "productive". We have a different view. Cost-effectiveness may be one interpretation of the term 'productive', but it is certainly not the only option. To compare:

    Productive is defined as *producing or able to produce large amounts of goods, crops, or other commodities*

    Cost-effective is defined as *effective or productive in relation to its cost*

93. We consider that the term "cost-effective" must be added to clause 4(a) of the Bill, or industry participants can have no confidence that the legislation will promote a cost-effective air transport system. The term could be added as an additional term in clause 4(a) or replace the term 'productive' in that clause.

Rule-making, innovation and technology changes

94. As in many other sectors, the speed of technology change is something the aviation system will need to manage effectively and efficiently. We want an aviation system and aviation regulator that is nimble enough to capture the benefits of new technology while also delivering a safe aviation system.

95. It seems to us that a series of worthwhile enhancements are being proposed through the bill to bring the legislation up to date, but the new legislation will need to be sufficiently future-proofed to deal with future developments. As an example, by the time the relatively minor changes around unmanned aerial vehicles in this bill come into force, drones will have been operating for years in New Zealand. We want to avoid similarly protracted amendments in future.

96. It may be sensible to find ways to facilitate innovations (eg temporary exemptions from some Rules in certain circumstances to enable new technologies or ways of working to be tested).

97. There may also be scope to streamline the rule-making process. We understand that there can be delays in the process for developing new rules as well as in other reporting and decision-making by the CAA. We have not identified any road-blocks in the Bill to timely decision-making, so we are not suggesting that this be resolved through the Bill. However, the modern, updated legislation will need to come with a Ministry and regulator (CAA) that has the right skills and expertise to respond to future challenges and opportunities in a timely way – this will be an important part of the implementation process for the Bill.

Removal of Airways' statutory monopoly

98. The Commentary Paper proposes to remove the power for Ministers to end Airways' statutory monopoly position as the provider of air traffic control services. The grounds for this are that the power has not been used to date. We disagree with the proposal.

99. Airlines believe Ministers should retain the ability to end the statutory monopoly for two reasons: (a) technology and service changes may create conditions where a competitive entry by a new party is feasible; and (b) enshrining the monopoly may weaken incentives for Airways to find efficiencies, improve service quality and set reasonable prices. This is particularly relevant at the moment because Airways has recently published a decision to increase its prices by 21.4% on average over the next three years, which is a substantial cost to airlines and passengers.

Appendix – List of BARNZ Members

Airline Members	
Air Calin	Air China
Air New Zealand	Air Tahiti Nui
Air Vanuatu	Airwork
American Airlines	Cathay Pacific Airways
China Airlines	China Eastern Airlines
China Southern Airlines	Emirates
Fiji Airways	Jetstar
Korean Air	LATAM Airlines
Malaysia Airlines	Philippine Airlines
Qantas Airways	Qatar Airways
Sichuan Airlines	Singapore Airlines
Tasman Cargo Airlines	Thai Airways International
Tianjin Airlines	United Airlines
Virgin Australia Airlines	

Non-Airline Members	
Menzies Aviation (NZ)	OCS Group NZ
Swissport	Glidepath