

File Number: CE.001.04

8 November 2013

Hon Maryan Street
Chairperson
Regulations Review Committee
Bowen House
Parliament Buildings
Wellington

Dear Ms Street

Civil Aviation Charges Regulations (No 2) 1991 Amendment Regulations 2012 (SR 2012/305)

- 1 Thank you for the opportunity to submit on the complaint made by the Aviation Industry Association (the Association, also known as Aviation New Zealand) about amendments to the Civil Aviation Charges Regulations (No 2) 1991 (the Regulations).
- 2 While we have largely addressed the points raised by the Association in previous correspondence, we would like to take the opportunity to respond to its key areas of concern. We have endeavoured to link these to the alleged breaches of the Standing Orders.

Standing Order 315(2)(a) – the regulation is not in accordance with the general objects and intentions of the statute under which it is made

- 3 The Association believes the Regulations breach Standing Order 315(2)(a) because:
 - 3.1 the increased rates of fees and charges prescribed by the Regulations undermine the sustainability and the international competitiveness of the civil aviation industry, and
 - 3.2 the Regulations do not prescribe different application fees for different types of pilot licence, or different hourly charges for oversight of air operators according to the size and type of operation.

- 4 We reiterate our previous submission that the Act is primarily concerned with the promotion of civil aviation safety and security. Further, the sustainability and competitiveness of the civil aviation industry are matters for the government to consider in setting the policy framework.
- 5 Having said that, we do acknowledge that the increases in fees and charges have been significant and will pose challenges for some participants in the civil aviation system. These were canvassed in the Regulatory Impact Statement prepared for the Regulations. (A copy of the Regulatory Impact Statement is **attached**). However, this does not make the Regulations inappropriate, nor is it without precedent. Many licences to carry on discretionary activities incur costs that cannot be passed on.
- 6 The Association compares the fees and charges with those applying in Australia and in the maritime sector. These comparisons do not recognise:
- 6.1 that different policy settings apply in Australia and have an impact on how costs are distributed to its industry¹,
- 6.2 that the maritime sector has a different industry with different regulatory challenges operating in a markedly different environment.
- 7 The Association argues that fees and charges should be based on hourly rates that differentiate between work performed by administrative staff and work performed by technical staff, and according to ability to pay.
- 8 As we have previously advised, the resources involved in considering applications for different types of pilot licence are largely the same. Further, while the involvement of skilled staff and administrative staff may vary to some degree in the performance of the Authority's functions, adopting a flat rate has minimised administrative costs, which would otherwise have been passed on to industry.
- 9 It should be noted that administrative staff play a greater role in the medical certification process than in the performance of the Authority's other functions. This was recognised by basing the medical certificate application fee on a lower hourly rate than that used to determine the fees and charges for the performance of the Authority's other functions.

Standing Order 315(2)(b) - the regulation trespasses unduly on personal rights and liberties

- 10 The Association's arguments under this heading are predicated on the industry's 'right to continue in business' (see paragraph 5.12 of the Association's letter). We

¹ For instance, in Australia, a fuel excise imposed on the domestic consumption of aviation fuel funds civil aviation surveillance, enforcement and safety promotion functions.

acknowledge that the Regulations may be seen as inhibiting freedom of action to some degree. However, the policy underlying the Act is that participation in the New Zealand civil aviation system is a privilege, not a right, and that participants should fund the associated regulatory activity.

Standing Order 315(2)(c) - the regulation appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made

- 11 The Association argues that the government's decision not to increase its share of the funding of the civil aviation system to a level anticipated by industry constitutes a breach of Standing Order 315(2)(c).
- 12 We acknowledge the Association's dissatisfaction with the apportionment of costs between the government, the industry, and the travelling public. However, the distribution of costs is a matter for the Executive to determine within the framework of the empowering legislation.
- 13 We note that the Association particularly refers to the Authority's relocation from Petone to Wellington and says that this has been the 'primary determinant of the increased charges'. That is not the case. Accommodation costs, being part of the Authority's overheads, were a factor but the key driver for the Regulations was the need for significant investment in the Authority's capability and systems to enable it to address issues raised by the Office of the Auditor General² and others (including industry). As we have previously advised, this need was identified in an independent Value for Money review carried out by the consulting firm Martin-Jenkins.
- 14 The Association appears to believe that fees and charges pay for policy work associated with making civil aviation rules³. That is not the case. The government pays for this service under a contract between the Ministry of Transport and the Authority.

Standing Order 315(2)(f) - the regulation contains matter more appropriate for parliamentary enactment

- 15 We reiterate our submission that Parliament has considered the appropriate funding framework and this is set out in the Act. The balance to be struck between fees, charges, and levies is a matter left to be decided by Cabinet within that framework upon the recommendations of the Minister of Transport. This is done in accordance with the policy guidelines of the government (as articulated by the

² See *Report on the Civil Aviation Authority's progress in improving certification and surveillance* (June 2010).

³ Civil aviation rules are a form of delegated legislation made by the Minister of Transport under the Civil Aviation Act 1990.

Treasury) and Parliament's adviser (the Office of the Auditor General), as is standard practice.

Yours sincerely

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