Consultation Paper

Passenger Safety Levies for Australian Operators with Australia-New Zealand Aviation (ANZA) Privileges

Deadline for comments: Thursday 30 July 2009

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Summary

The increase in operations in New Zealand by Australian operators with ANZA privileges (Australian ANZA operators) has lead to a significant reduction in the CAA's main revenue source. It has also highlighted an inequality – under the current law these operators are not contributing to the general cost of safety oversight of the New Zealand aviation system.

The CAA is forecasting a reduction of approximately 10% in its revenue in the financial year 2009/2010 as a result of the cessation of domestic services by one certificated domestic operator and the commencement of services by an Australian ANZA operator. In addition to this, the CAA is also projecting a further 10% reduction in revenue due to the economic downturn and the associated general reduction in passenger numbers.

This consultation paper sets out a case for the introduction of new passenger safety levies for Australian ANZA operators. The paper proposes the introduction of ANZA passenger safety levies set at 83% of the full passenger safety levies from 1 November 2009. This will result in two new levies in the Civil Aviation (Safety) Levies Order 2002 as follows:

1. A domestic passenger safety levy on Australian ANZA operators of $1.66 per passenger (including GST)

2. An international passenger safety levy on Australian ANZA operators of $0.83 per passenger (including GST)

Background

Legal

Under section 42A of the Civil Aviation Act 1990 (the Act) levies may be imposed on the holders of aviation documents, or on persons who are exempted from holding an aviation document. These levies are payable to the CAA and shall be applied by the CAA in performing its functions under the Act (see s42D(1)). Under section 42A(3) the Minister shall not make a recommendation for the imposition of a levy unless:

- the CAA has requested the levy, or levy change;
- the Minister is satisfied that the CAA's income from other sources will not be sufficient for it to perform its functions; and
- the CAA has consulted the aviation industry and Government agencies to the satisfaction of the Minister[1].

The CAA is circulating this consultation paper to meet these requirements.

CAA Funding

The Civil Aviation Authority of New Zealand (CAA) is funded by a combination of user charges, levies and crown funding. The most significant of these is levies. Levies are imposed on airline operators, and consist of the domestic passenger safety levy, set at $2.00 per passenger-sector, and the international passenger safety levy set at $1.00 per passenger (both GST inclusive).

The passenger safety levies are imposed upon the holders of New Zealand air operator certificates who carry more than 20,000 passengers per year[2]. Operators of aircraft carrying less than this number pay an annual participation levy per aircraft, based upon the aircraft's maximum takeoff weight.

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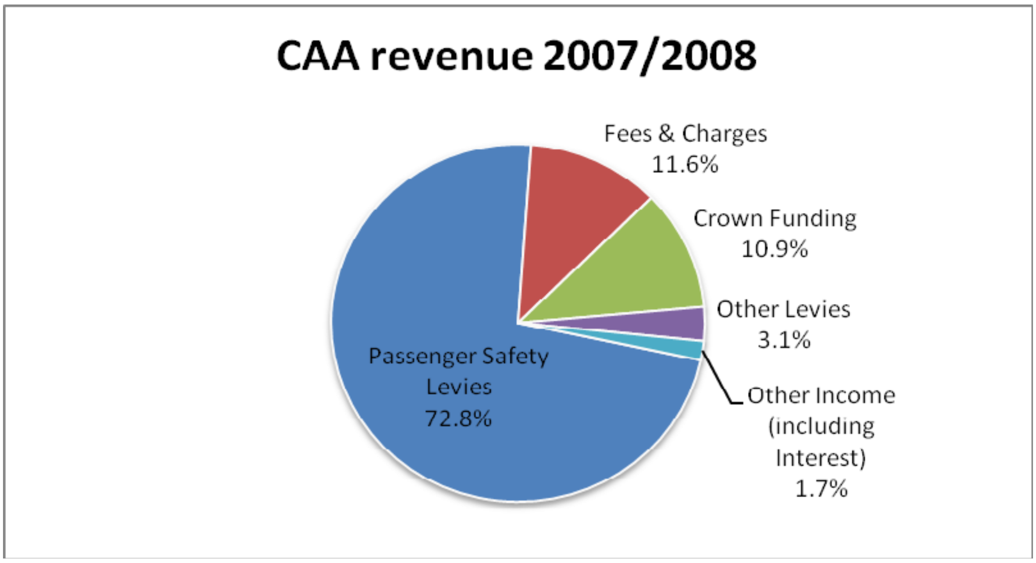
[1] The full text of Part 4, sections 42A-42D ,of the Civil Aviation Act 1990 (http://www.legislation.govt.nz/act/public/1990/0098/latest/link.aspx?)

[2] Civil Aviation (Safety) Levies Order 2002 (http://www.legislation.govt.nz/regulation/public/2002/0084/latest/DLM117482.html)

Passenger safety levies provide 72.8% of the CAA's total revenue. A breakdown of the CAA's revenue by sources is set out below.

Revenue Source 2007/2008	$ million
Passenger Safety Levies	21.4
Fees & Charges	3.4
Crown Funding	3.2
Other Levies	0.9
Other Income (including Interest)	0.5
TOTAL	**$29.4**



User fees and charges fund CAA activities that have the nature of a *private good*. A private good exists where it is possible to identify a single client who gives rise to a cost, is the beneficiary of the service provided, and where their use of the service cannot be used by another. Examples include the issue of a licence or the cost of an audit.

Crown funding covers the costs of *public goods*. Public goods are those which are not exclusive to an individual and whose use does not impact on the use by other individuals. The cost of developing rules and administering New Zealand's international aviation commitments are examples of public goods.

Passenger safety levies are collected for the purpose of running the CAA. The CAA's levies are used to fund activities that are neither private nor public in nature. In essence they fund activities that support the entire aviation system, which only aviation participants can use.

Under the *2002 Treasury Guidelines for Setting Charges in the Public Sector*[3] these are termed *club goods*. Treasury Guidelines state that the cost of providing club goods should be recovered through broad activity based recovery mechanisms, such as levies. The types of activities the CAA provides as club goods include safety promotion, the collection and analysis of safety information, undertaking regulatory investigations, and the oversight of aviation infrastructure and services.

Cross Subsidization

The CAA earns approximately 11.6% of its fees and charges income from hourly charges. The current rate of $133.00 per hour, including GST, has not been altered since 1995. The CAA estimates that this rate covers only 50% of its the actual costs of this work. As a result, a portion of the levies collected by the CAA is used to subsidise the real costs of private goods. This issue is not addressed in this proposal for ANZA passenger safety levies.

Currently all airlines (and passengers) that pay the passenger safety levies contribute toward this cross-subsidisation. Under this proposal, Australian ANZA operators will also contribute toward the subsidisation of non airline-related user fees and charges, as well as system costs that have the nature of a club good. As noted below the CAA is undertaking a full review of all its fees and charges to examine ways in which this cross subsidisation can be eliminated, or at least reduced.

ANZA Mutual Recognition

In March 2007, New Zealand and Australia brought into effect a mutual recognition arrangement for airline safety oversight. Under the Australia-New Zealand Aviation (ANZA) mutual recognition principle, an airline that is authorised in its home country, to carry out an aviation activity, may carry out the same activity in the other country (the host country), without the issue of separate approval by the host regulator. These privileges are only available for airlines qualifying as Single Aviation Market (SAM) airlines, which among other things, requires airlines to be substantially owned by New Zealanders and/or Australians[4]. The ANZA mutual recognition principle is akin to that in the Trans-Tasman Mutual Recognition Act and is similarly implemented by complementary legislation in each country.

To take advantage of this principle an operator needs to have its air operator’s certificate (AOC) amended to include ANZA privileges. The regulator in the home country is responsible for safety oversight of the ANZA operator in the host country. The regulator in the host country is kept informed of the regulatory oversight activities undertaken by the home regulator on ANZA operations within its territory. To support the ANZA arrangement, the Civil Aviation Safety Authority of Australia (CASA) and the CAA cooperate and exchange information regularly. The scope of this cooperation and liaison is set out in the ANZA Operational Arrangement[5].

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[3] 2002 Treasury Guidelines (http://www.treasury.govt.nz/publications/guidance/finmgmt-reporting/charges)

[4] See Article 2 of the “Open Skies” agreement between Australia and New Zealand (http://www.mfat.govt.nz/Foreign-Relations/Australia/1-CER/0--Reference/0-air-services-agreement.php).

[5] Operational Arrangement between the Civil Aviation Authority of Australia and the Civil Aviation Authority of New Zealand in relation to Mutual Recognition of Air Operator Certificates.

Since the arrangement entered into force, a number of airlines have sought certification as ANZA operators. CAA has certificated Airwork, Pacific Blue and Air New Zealand as New Zealand operators with ANZA privileges. CASA has certificated Qantas Airways, Jetstar and Pionair as Australian operators with ANZA privileges. The CAA has received commercial-in-confidence information from several other operators indicating their interest in operating in New Zealand under the ANZA mutual recognition arrangements.

Fees and Charges for ANZA Operators

As a consequence of the general principle, ANZA operators continue to pay the direct costs of their regulation to their home authority. The arrangement between the Australian and New Zealand governments on Mutual Recognition of Aviation-Related Certification (ANZA Mutual Recognition Arrangement) states in clause 15(b):

> "For the avoidance of double-charging:
>
> a) ...(operators must pay charges)...and
>
> b) Governments acknowledge that persons benefiting from the ANZA Mutual Recognition Principle should not be subject to levies, taxes, charges or other such fees **directly associated with safety regulation of the same activity ordinarily imposed within the jurisdiction** of the host regulator. To this end, the host Government will use its best endeavours to avoid imposing such levies, taxes, charges and fees." (emphasis added)

Australian ANZA operators do not hold a certificate issued by the New Zealand Director of Civil Aviation. While they are foreign operators, Australian ANZA operators do not need to hold a certificate issued under Part 129 of the Civil Aviation Rules. Therefore they do not pay a levy under the Civil Aviation (Safety) Levies Order 2002, as currently they do not meet the criteria under the Order's definitions of a domestic air passenger operator or international operator[6].

Australian ANZA operators benefit from the CAA's safety oversight of the whole New Zealand safety system. This includes the regulation of other aircraft, aerodromes, air navigation aids, obstructions to airspace and the air traffic control system. The CAA also coordinates and regulates the provision of aeronautical information and aviation meteorology.

Further information on the operation of ANZA mutual recognition arrangement is available from the Ministry of Transport and the CAA web sites. (http://www.transport.govt.nz/about/moreabout/MutualRecognitionofAviation-RelatedCertificationwithAustralia/ and http://www.caa.govt.nz/International/International_Agreements.htm)

[6] The definitions of "domestic air passenger operator" or "international operator" in the Civil Aviation (Safety) Levies Order 2002 both refer to the operator being "approved by the Director". Under the ANZA mutual recognition arrangements ANZA operators do not require approval from the Director. (Although before issuing ANZA privileges to an operator CASA does have to consult with the CAA and must notify the CAA upon issuing the certificate.)

Impact on CAA Finances

The CAA is forecasting a reduction of 20% in its revenue in the financial year 2009/2010. The projected reduction in the CAA's revenue arises for two main reasons – a reduction in the number of passengers and the cessation of domestic services by Jetconnect.

Approximately half of this reduction in passenger numbers can be attributed to the economic downturn. The remainder is due to the termination of domestic services by the New Zealand certificated operator, Jetconnect (which operated Qantas's domestic services in New Zealand). In its place an Australian ANZA operator, Jetstar, has commenced services. As explained above, Australian ANZA operators do not currently pay passenger safety levies.

To address this downturn in revenue the CAA has reduced its planned expenditures by 7% over the year. Even with reduced revenue the CAA has sought to maintain and step up safety oversight activities, as it recognises the economic downturn can lead to pressure on safety resources. The CAA's reallocation of resources to this priority, within a constrained budget, means it has deferred or delayed a number of projects to maintain or enhance its safety oversight capabilities. These include the programme to implement the internationally recognised safety management systems approach, and a number of investments to improve its management information systems. The CAA's Statement of Intent for 2009/2012 sets out this information in more detail[7].

The CAA has projected its cash reserves based upon its forecast revenues for the year. Without an increase in revenue, the CAA's reserves will be depleted to a point where it may have difficulty meeting its regular payments in the second quarter of 2010. While the CAA's cash reserve policy would allow it to cope with an economic downturn, or a market change arising from a change in carriers, this contingency was not designed to cope with both events occurring simultaneously.

The CAA has projected that the introduction of this levy will increase its revenue by approximately $0.200-0.225 million per month.[8] Based on the proposed introduction date, this will raise an additional $1.4 - $1.575 million in revenue over the financial year 2009/2010. This will ensure that the CAA has adequate funds to continue its operations over this financial year.

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[7] Statement of Intent for 2009/2012 (http://www.caa.govt.nz/publicinfo/annualrepandprof.htm)

[8] These figures are based upon the published capacity of Jetstar's domestic operations of 29,000 domestic passenger-sectors per week. They take into account the international passengers carried by Jetstar when it held a foreign air operator's certificate under Part 129. There is also an allowance for changes in market share.

Options

The CAA has identified four options to address the unanticipated reduction in its main revenue source and redress the inequality between Australian ANZA operators and New Zealand Certificated operators.

1. **Do nothing**. Under this option Australian ANZA operators would not pay the New Zealand passenger safety levies.

2. **Full levy**. This would require Australian ANZA operators to pay the same passenger safety levies as operators that hold certificates issued by the CAA.

3. **Increase the current levies**. This would involve increasing the rate of the current passenger safety levies paid by New Zealand operators.

4. **A new partial levy**. Under this option new ANZA passenger safety levies would be imposed on Australian ANZA operators. These levies would be collected at a reduced rate to take account of the fact that the CAA is not responsible for direct regulatory oversight of these operators. Instead these operators pay CASA for the costs of their oversight.

Options 2, 3 and 4 require an amendment to the Civil Aviation (Safety) Levies Order 2002

Analysis

Option 1 – Do nothing

If a passenger safety levy is not collected from Australian ANZA operators there will be continuing concerns on the grounds of competitive fairness. Australian ANZA operators should not be exempted from making a proportional contribution to the CAA's costs of regulating the New Zealand aviation system, when other international and domestic operators do. A portion of the CAA's costs can be attributed to safety regulation of services and infrastructure that New Zealand is required to provide to overseas operators under Article 28 of the Chicago Convention, and various ICAO Annexes.

Option 2 – Full levy

Option 2 would result in Australian ANZA operators being charged for the levy component of the cost of regulating airlines in New Zealand as well as the general systems safety oversight services. As these operators already pay CASA for their airline regulatory costs, this would result in them being double charged for some of the costs of airline regulatory oversight, which is not permitted under the ANZA Mutual Recognition Arrangement. Australian ANZA operators do not receive any direct regulatory oversight from the CAA and thus do not pay user charges. They should not contribute to the full costs of airline oversight through the payment of a general levy.

Option 3 – Increase the current levies

Option 3 would increase the cost to one set of users and beneficiaries of the CAA's regulatory services – New Zealand certificated operators – without collecting anything from another set of users and beneficiaries – Australian ANZA operators. It would accentuate the equity issue discussed under the analysis of Option 1. The CAA does not support this option.

Option 4 – A new partial levy

This option would ensure Australian ANZA operators make a contribution to the costs of overseeing the system they operate within. It ensures that the user-pays principle is applied to help fund the CAA's non-airline regulatory costs, while ensuring that Australian ANZA operators are not double charged for costs directly associated with airline regulation. Thus this option is the best fit with the Treasury Guidelines while at the same time ensuring New Zealand meets its international commitments under the ANZA Mutual Recognition Arrangement.

The CAA has elected to implement Option 4.

Proposed ANZA Safety Levies

The rate of the proposed ANZA passenger safety levies has been calculated as a percentage of the full levy rates. The same percentage applies to both the domestic passenger levy (currently $2.00 including GST) and the international passenger safety levy (currently $1.00 including GST). The percentage has been determined by identifying the full cost of regulating airlines in New Zealand, then removing the component of this cost that is funded by the levy – the remainder being funded by user charges, paid by New Zealand certificated airlines[9]. The costs have been determined on the basis of the financial expenditure of the Airline Group within the CAA, with an allowance for the work undertaken to support the other parts of the system[10].

The steps taken to determine this rate were: [11]

A. Identify the final annual financial expenses for the Airline Group in the CAA.

B. Remove the proportion of costs that are associated with the support of general aviation and other parts of the aviation system (this is the cost associated with the certification and monitoring of airline clients).

C. Identify the annual fees and charges collected by the Airlines Group.

D. Remove the proportion of fees and charges that were collected to cover the costs of general aviation regulation (this is the fees and charges revenue associated with the certification and monitoring of airline clients).

E. Calculate the amount of passenger safety levy that was required to fund the cost of airline regulation by deducting D from B.

F. Identify the total annual amount of passenger safety levy collected.

G. Calculate the percentage of the total levy payable to support airline regulation by dividing E by F.

H. Calculate the percentage of the total levy payable for non-airline activities by deducting G from 100.

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9 This approach is based on an interpretation of clause 15(b) of the Mutual Recognition Agreement whereby "the direct cost of regulating the same activity" means that ANZA operators should not pay the cost of airline regulation in New Zealand.

10 The Airlines Group of the CAA includes the Aircraft Certification Unit, which is responsible for all aircraft certification and airworthiness in New Zealand – ie for airlines and general aviation.

11 A.– H. relate directly to the tables in Annex 1

Based on this methodology the CAA has determined the ANZA passenger levies should be 83% of the full levy rates.

The CAA has calculated this rate based upon its annual financial results for the past three financial years. The supporting calculations and financial information are contained in Annex 1 to this paper.

These reduced rate levies for Australian ANZA operators will result in two new levies in the Civil Aviation (Safety) Levies Order 2002 as follows:

1. A domestic passenger safety levy on Australian ANZA operators of $1.66 per passenger (including GST)

2. An international passenger safety levy on Australian ANZA operators of $0.83 per passenger (including GST)

Date of Imposition

The CAA is aiming to introduce these ANZA safety levies by 1 November 2009, although this timing will depend on the comments received in this consultation process and the government’s decision on the CAA’s proposal.

Full review of CAA fees, charges and levies

As set out in the CAA’s Statement of Intents for the periods 2008-2011 and 2009-2012, and discussed above, the CAA is undertaking a review of all its fees, charges and levies against the criteria in the Treasury Guidelines. The CAA expects to circulate its proposals in this review in the fourth quarter of 2009.

The proposed ANZA levies in this consultation paper would apply at least until the results of that review are put in place.

Submissions/Comments

If you would like to make a comment in relation to this proposal, please forward them in writing by **30 July 2009** to.

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We strongly encourage you to make your comments in electronic form to the e-mail address supplied.

Issued on 16 July 2009

Annex 1

	A	B	C	D	E	F	G	H
Financial year ($)	Airlines group costs	Airlines groups costs attributable to sector	Airlines group fees and charges	Airlines group fees and charges attributable to sector	Passenger levy needed to fund airline regulatory work	Passenger levies collected	% of the total levy supporting airline regulation	% of the total levy supporting aviation system
2007/08	6,005,413	4,490,297	1,887,065	1,312,457	3,177,841	21,367,402	15%	85%
2006/07	6,490,491	4,999,955	1,988,269	1,435,965	3,563,990	19,660,883	18%	82%
2005/06	6,173,094	4,661,994	2,213,995	1,484,642	3,177,353	19,242,266	17%	83%
							Mean over 3 years	**83.5%**

FY 2007/08	Management	Maintenance	Operations	Aircraft	Group Total
F&C	59	463,995	604,783	818,228	1,887,065
Cost	1,005,626	1,173,888	1,917,243	1,908,656	6,005,413
% Adjustment	85%	96%	96%	35%	
Adj Cost	854,782	1,126,932	1,840,553	668,030	4,490,297
Ajd F&C	50	445,435	580,592	286,380	1,312,457

FY 2006/07	Management	Maintenance	Operations	Aircraft	Group Total
F&C	0	475,587	737,644	775,038	1,988,269
Cost	1,144,677	1,343,970	2,190,365	1,811,479	6,490,491
% Adjustment	85%	96%	96%	35%	
Adj Cost	972,975	1,290,211	2,102,750	634,018	4,999,955
Ajd F&C		456,563.52	708,138.24	271,263.30	1,435,965

FY 2005/06	Management	Maintenance	Operations	Aircraft	Group Total
F&C	–53	453,380	710,177	1,050,491	2,213,995
Cost	945,763	1,260,784	2,064,675	1,901,872	6,173,094
% Adjustment	85%	96%	96%	35%	
Adj Cost	803,899	1,210,353	1,982,088	665,655	4,661,994
Ajd F&C	–45	435,245	681,770	367,672	1,484,642

F&C = Fees and Charges

FRX Airline Group Levy	FRX Airline Group Levy & Variance	Total Levy
3,028,701	1,021,143	4,049,844
3,260,681	600,247	3,860,928
3,170,405	483,758	3,654,163