

# **Civil Aviation Amendment Bill**

20 June 2003

Attorney-General

Legal Advice

Civil Aviation Amendment Bill:

Consistency With The New Zealand Bill Of Rights Act 1990

## **Introduction**

1. We have considered whether the Civil Aviation Amendment Bill (the Bill) (PCO 5160/10) is consistent with the New Zealand Bill of Rights Act 1990 ("Bill of Rights Act"). We understand that this Bill will be considered by the Cabinet Legislation Committee at its meeting on Thursday 26 June 2003.

## **Conclusion on consistency of the Bill with the Bill of Rights Act**

2. We have concluded that the Bill does not appear to be inconsistent with the rights and freedoms affirmed by the Bill of Rights Act. However, the Bill does raises certain issues that we wish to draw to your attention.

## **Overview of the Bill**

3. This Bill seeks to make a number of unrelated amendments to the Civil Aviation Act 1990. The first part of the Bill puts in place an agreement between the New Zealand and Australian Governments to allow Australian airlines to operate in New Zealand under Australia's domestic aviation certification and safety oversight arrangements. The Australian Government will enact legislation to enable New Zealand airlines to operate in Australia on a similar basis. The agreement is intended to reduce regulatory barriers to participation in aviation activity. The safety regulatory regimes in both countries are similar. The second part of the Bill inserts a new range of offence provisions designed to address the problem of unruly passengers on domestic and international flights. The Bill also re-enacts provisions of the Carriage by Air Act 1967 relating to liability for delay in a domestic air service.

## **ISSUES OF CONSISTENCY WITH THE BILL OF RIGHTS ACT**

### **Section 27(1) Observance of the principles of natural justice**

4. Clause 7 of the Bill inserts a new Part into the Civil Aviation Act relating to the mutual recognition agreement. New section 11C of the Act would enable the New Zealand Director of Civil Aviation to issue a temporary stop notice to an Australian air operator operating in New Zealand if the Director considers that that operator poses a serious risk to civil aviation safety in New Zealand. The operator must immediately cease operations for the period specified in that notice, otherwise the operator commits an offence (new section 46E)

punishable by a fine. The Director must also advise the Australian aviation authority of the fact that it has imposed the notice (section 11E).

5. We consider that section 11C appears to give rise to issues under section 27(1) of the Bill of Rights Act. Section 27(1) provides that every person whose interests are affected by a decision by a public authority has the right to the observance of the principles of natural justice. One of the fundamental principles of natural justice is the right to be heard. As the Director of Civil Aviation may temporarily stop an air operator from working in this country without prior notification, we consider that section 11C raises issues of consistency with section 27(1) of the Bill of Rights Act.
6. The Court of Appeal has stated that observance of the principles of natural justice is a flexible concept and is very much fact specific.<sup>[1]</sup> We have therefore taken note of the fact that the notice can only be imposed for a limited specific reason, and even then for a limited period (7 days). We understand that the purpose of the notice is to enable the New Zealand Director of Civil Aviation to alert the Australian Civil Aviation Safety Authority to a safety issue while taking interim steps to address an immediate safety concerns. The Director must provide the operator with reasons for his or her decision - although a failure to do so will not invalidate the decision (new section 11D). And while the Australian Director for Civil Aviation may decide to take further steps under the powers of the Australian regulatory framework as a result of the notice, we understand that this framework does provide the operator with an opportunity to be heard.
7. We have concluded that new section 11C does not appear to be prima facie inconsistent with section 27(1). Despite this, we have gone on to consider whether section 11C places reasonable limits on section 27(1) in Bill of Rights terms. We are of the opinion that it does for the reasons set out above.
8. We therefore consider that new section 11C appears to be consistent with section 27(1) of the Bill of Rights Act.

## CONCLUSION

9. On balance, we have concluded that the Bill does not appear to be inconsistent with the Bill of Rights Act. In accordance with your instructions, we attach a copy of this opinion for referral to the Minister of Justice. A copy is also attached for referral to the Associate Minister of Transport, if you agree.

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Legal Adviser	Chief Legal Counsel
Bill of Rights/Human Rights Team Office of Legal Counsel	

cc Minister of Justice  
Associate Minister of Transport

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#### Footnotes

1. *Drew v Attorney-General* [2002] 1 NZLR 58