

Uncorrected transcript

# Civil Aviation Charges Regulations (no 2) 1991 Amendment Regulations 2012 Complaint

Regulations Review Committee

Thursday, 5 December 2013

## Members

Hon Maryan Street (Chairperson)  
Andrew Little  
Ian McKelvie  
Mike Sabin  
Katrina Shanks

## Witnesses

Irene King, Chief Executive, Aviation New Zealand  
Dale Webb, President, Aviation New Zealand, Aviation New Zealand  
Pat Lyford, Aviation Federation, Aviation New Zealand  
Ian Andrews, Aviation Federation, Aviation New Zealand  
Graeme Harris, Director of Civil Aviation, Civil Aviation Authority  
John Sneyd, Chief Legal Counsel, Civil Aviation Authority  
Gareth Chaplin, General Manager Sector Performance, Ministry of Transport  
John Macilree, Principal Adviser, Ministry of Transport  
Lisa Nickson, Principal Solicitor, Ministry of Transport  
Jon Butler, Senior Analyst, Treasury

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## FTR 08.34.59

- Street All right, first of all, I'd like to welcome you to the Regulations Review Committee. Everyone's clear about this being the Regulations Review Committee? Excellent. Right. Thank you. I'd just like to introduce our committee to you and then have you introduce yourselves to us, and then we will proceed with the complaint. *[Introductions]* So welcome to you all. We usually have Andrew Little here as well, but he is overseas at the moment. So please begin. We are here to hear your complaint. This will be recorded and transcribed so that you will have access to the transcript later on, should you require that. So, please. Oh, you may sit. Please stay seated. That's fine.
- Webb Good morning, Madam Chair and members of the committee, ladies and gentlemen. My name is Dale Webb and I'm the President of Aviation New Zealand. That is the senior elected position of the organisation, and we represent the majority of commercial aviation in New Zealand. *[Introductions]* The federation represents the great majority of recreational aviation. Commercial aviation provides Government and this economy with many

billions of dollars. It was measured in 2009 at \$9.7 billion and we're now confident it is between a \$12 billion and a \$13-billion industry. Recreational aviation, of course, is a very much smaller organisation in terms of the financial side, but it has a lot more active pilots—something like 6,000 pilots as opposed to over 2,000 in commercial aviation, so of course the medical charge that the CAA have introduced impacts them a great deal more. Everyone, of course, votes.

My role today is very simple. I have just two duties. The first one is to introduce Irene who has been responsible for the submission you have received and is going to speak to it today, and, secondly, just to confirm that she truly represents and speaks for both those organisations. Thank you for that.

Street Thank you very much indeed, Mr Webb.

King Madam Chair, we do have a supplementary submission. It's very short. I've got some copies here. Essentially we come to this select committee with an absolute grievance and concern about the impact of these charges on the whole sector. It's significant that we sit here today to speak on behalf of the whole sector, and that's because everyone has been adversely impacted. We now have a measure of that impact, and that's contained in our submissions, but we've also done some supplementary research since we wrote the submission, and that's really what I wanted to talk to today.

We now have the benefit of the statement of corporate intent of the Civil Aviation Authority looking forward to the 2013, 2014, 2015, and 2016 financial years and that's indicating to us that there is a wealth transfer from this industry to the regulator of around \$12 million.

Now, our objection is not in terms of the regulatory system or the investment that the regulator is making in modernising his systems. That's not our objection. Our objection is quite simply that there are elements of the charge which are an unlawful tax, and that is our submission.

We've also reflected on the authorities that the executive naturally has to make these charges, to impose these charges on the sector. We just compare and contrast the way the aviation sector has been treated relative to maritime. We're very aware that this honourable committee intervened in 2008-2009 over the maritime charges, and the consequence of that intervention was that the executive, the Minister of Transport, sent some very clear instructions to the officials, and that's what is contained in our submission, is those instructions.

Those instructions were encapsulated in a consultative document around about October 2012, and those instructions, they were important in terms of the way the officials dealt with the charging regime in the Ministry of Transport. We can compare and contrast the way Civil Aviation has been treated. There were no such instructions. There was no tempering of the way the sector should be treated.

We're looking at a review that has taken place some 20 years after the prices were first set, and I happen to be fortunate, or unfortunate, depending on

how you look at it—I was around at the time and was involved in the way those charges were set. We have precisely the same behaviours from the executive today as we did 20 years ago. Twenty years ago there were charges imposed on the sector. The context of the Government's books was very similar. The Government essentially was telling us that it was broke and they couldn't afford to pay, so the industry had to pay.

We objected before this honourable committee. The committee disallowed the charges. We went back then into a series of what essentially were negotiations, and we reached a compromise which all parties felt comfortable with. That compromise or that negotiation—the balance has been altered, and the balance is altered quite simply by the Government not picking up its fair share of the cost.

Now, you could say well the Government doesn't have to pick up its fair share of the cost. But I think the executive needs to think very solidly about what powers it has in imposing charges, and this committee has a very important role in tempering the behaviours of the executive. The executive doesn't have unbridled powers to impose an unlawful tax, and that's our fundamental proposition.

As we've gone through and researched, you can appreciate that we've been pretty challenged by the financial disclosures, or the lack of financial disclosures. I'm not blaming the officials for that. We've got a system here that hasn't been looked at for 20 years. So the financial information that we got is certainly not optimum. It's certainly far less than what was disclosed in the maritime environment.

The point that I'm trying to make here is that not only can Ministers not impose unfettered taxes, they also have an obligation to treat sectors fairly and equitably. In our view, aviation has not had that fair equitable treatment for quite some time. For example, my colleagues in the recreational sector will say that recreational aviators pay for weather; recreational boaties don't pay for weather. Is that fair?

All of those sorts of issues were washed through 20 years ago, and we came up with this regime of charges. We don't object to those charges being updated. We're quite willing to pay our fair share. But we're not prepared to pay the Government's share, and we don't think that the travelling public should also. They shouldn't be saddled with paying the Government's share.

At the conclusion of our supplementary submission we point out that even the CAA, in its most recent statement of corporate intent, discloses what the level of cross-subsidisation is from the industry to the Government, and they put it at just over \$1 million. That, in our view, is the essence of the tax, and that is our submission. Thank you.

Street Thank you. We understand that. Mr Lyford, do you wish to add anything?

Lyford Ah, no. I represent the Aircraft Owners and Pilots Association part of the Aviation Federation and we presented a paper to the committee at the earlier hearing and fully support this morning's paper presented by Irene.

Street Thank you very much. We are taking this as one submission, effectively, so thank you very much for that. Do members have any questions?

Shanks Thank you for your submission. My question is that it appears like you've changed the reason why you've come in, to a certain extent. We're not a committee about policy; we're a committee about Standing Orders, and so we've got a very narrow focus in this committee. So you've talked today about changing from it being a fee—whether you agree or disagree with the amount of the fee—to it now being a tax, which is totally different. Can you just talk to me a bit more about why you think it's changed from being a fee to being a tax?

King Sure. You have to understand that we have been pretty challenged by financial disclosures here, and so we never understood, or we didn't have access to, the information that is the basis of this submission until very recently. So, it's still a fee. There's still a fee paid—an hourly rate, fee, charge, paid, but what we are saying is part of that hourly rate/fee now has an essence of cross-subsidisation. I think that was always our original submission. We always pointed out to the committee that we felt there was an element of cross-subsidisation. We now can quantify that element of cross-subsidisation.

Shanks I thought part of the argument was that the fee before was being cross-subsidised by other business activities, and now they're not doing that. So the fee is now purely focused on the cost of that activity.

King No, no. Look, we have found there are lots of elements of cross-subsidisation. If I go back to the officials' original submission, they said one of the drivers for the review of the charges was to eliminate the cross-subsidisation between largely what we would call the common good, like the levy and the hourly rate charges. That was the rationale for increasing the hourly rate charges from \$133 to—I think at the end it's going to be—about \$255 an hour. That was the original rationale. That only eliminated 75 percent of the cross-subsidisation between the hourly rate charge and other charges. So there's still an element of cross-subsidisation from the fee to other charges.

What we are now saying is that there is more cross-subsidisation than was previously disclosed. One of the fundamental cross-subsidisations now is of the industry and the fare-paying passenger of the Government charge—of the Government component of funding. It's a very complex cross-subsidisation. If you know anything about aviation, we live on cross-subsidisation anyway. We live in a competitive world and that's how you make your profits.

McKelvie I've got some sympathy for you because I understand the charge part of it and how it theoretically could be worked out, because there's a whole series of public good and all that sort of stuff in this as well, which really complicates it. It is not our role, unfortunately, as a committee, in my view, to judge that. Our role is to judge whether those charges have been set in a manner that the regulations allow. That's how I understand it. It's very complicated for me to get to grips with your submission, and how that

relates to the regulation and how it might be—you see, if you think about history, in local government particularly, and you look at what we've called cross-subsidisations, the simple fact was that the previous generation never paid their way. You could argue that in this case as well, around the fees, in my view. So it's a very complex for us to talk about the fee. We've got to talk about the regulation.

- King Oh, absolutely. Yes, I appreciate that point, but I understood that if there was a source of unauthorised tax, then the committee could—
- McKelvie Unauthorised is the word.
- Shanks Well, a tax as opposed to a fee—that's the determinant, isn't it?
- King But you have to have understand where the cross-subsidies exist, to understand did the executive, in making its decision, unintentionally or intentionally—I don't know which one it is—but our point is, with maritime, the executive was very clear in its instructions to the officials, as to how they were to look at the issue of who should pay and how much should be paid. In this case, compare that to our scenario, where we were told fairly bluntly that any consideration of the Government contributing more money into aviation was off limits. Yet all of our charges were going up. Now, what drove our charges up was in part an inflation adjustment and in part an adjustment to improve the efficiency and performance of the CAA—although many in industry have some concerns about that—but it was also driven by overheads. The overheads of this organisation increased dramatically. Now, you cannot say in any logic that the Government can still purchase the same level of service today as it did 20 years ago, without there being some cross-subsidisation.
- Webb It's probably simplistic, but not totally wrong to say that the CAA has two customers. It provides information and support to the Government, and to the aviation industry. Sure, that's a little simplistic—so it's simply a matter, as a simple pilot, of saying: is the Government paying the percentage of effort that the CAA puts into providing advice to the Government, as it is the charges etc. for what's paid to the industry? Our answer is “No, they have become very skewed.”
- Street Yeah, OK. Thank you very much indeed.
- Sabin Well, I was going to say therein lies the problem, because that's basically outside the scope of this committee. You're talking about a policy matter in that, as distinct from whether or not the regulations are themselves breach their purview in terms of how they have—your last point, unfortunately, unwinds your argument.
- King Except if it is imposed intentionally or unintentionally as a tax, and we are saying it is a tax—it's a \$12 million tax, potentially. That's getting to be quite serious, in our view. We have no other way of redressing this issue. We can't take—
- Street No, that's right. And our job is to assess it against the Standing Orders that we are required to uphold, and they include that it is not in accordance with general objects and intentions of the statute under which it is made, and we

have been wrestling with that point. There are some words in the statute that may be unique to that statute, but maybe what has happened is not in contravention of that. Whether it trespasses unduly on personal rights and liberties—we will take that into account. Whether it makes any unusual or unexpected use of the powers conferred by the statutes—we take all of what you have said into consideration and we weigh it strictly against those criteria in the Standing Orders, so you do understand what's going to be—but I want to thank you very much indeed for your evidence. I wonder if we could have the officials come forward? The gentleman at the back—did you want to say something?

Andrews I wonder if I could just put a word in for—I am the president of AOPA. I actually understand that because this has been taken as co-joined complaint, it should be clear that we are actually objecting. AOPA is objecting specifically to the paradigm shift in funding of this [*Inaudible*] [08:54:55] from public passenger levy to pilot levy.

Street We understand that, from previous evidence. So thank you—yes, that point's made and taken.

Mr Chaplin, have you got anything additional to add, having heard those comments, and given that we have heard your evidence previously? In particular, do you have any comments to make about comparison between the maritime example and the aviation example?

Chaplin Yes, Madam Chair. I preface it by saying that the additional information or additional complaint was obviously new to us as well. So we haven't had a chance to see or respond to that. We have responded to the committee in writing in terms of our view of Standing Orders.

Maritime New Zealand is a regulatory agency in the transport sector as well. It has also been through a series of funding reviews. The application of Government cost recovery guidelines has been applied in that case as well. So I think the guidelines are the guidelines. They are the Government's cost recovery guidelines; they have been applied. There was an element of slightly different business models operating within the sector, but my understanding is that a consistent framework has been used, a consistent model has been applied. There has been some phasing on the maritime side, just as there has been some phasing on the CAA side. So I think the model is consistently applied.

But you can consistently apply a framework and a model and sometimes get a slightly different answer, depending on the historical structure of the sector and the relationship with the regulator. My role is to ensure that we have consistency across the sector. It's certainly what we're aiming for.

Street Thank you. Any additional—?

Harris No, I have nothing to add, Madam Chair—just reiterate the point that we haven't the supplementary information produced by the aviation industry but note the guidelines are applied appropriately from our perspective and, we understand, confirmed by the Treasury in that regard.

Street Thank you. We will resolve to table and release the document that's just been circulated to us today, so you will be able to have a look at it.

Chaplin Would it be acceptable to respond in writing to that?

Street Absolutely. Absolutely. Our process from here then is to consider all of this evidence. We are in the process of writing a report. We decided to take this additional evidence for the sake of completeness and so that people were not excluded from the process, because this is an important process. Our job now is then to write up our report, to consider our recommendations, and report to Parliament accordingly. So thank you very much indeed for your evidence today, and we will clear the room, so that we can consider. Thank you.

[FTR finish time: 8:58:17]

**conclusion of evidence**