

**SUBMISSION TO THE MINISTRY OF TRANSPORT CONCERNING PROPOSED REVIEW  
OF THE CIVIL AVIATION ACT WITH PARTICULAR REFERENCE TO PART 9 OF THE  
ACT AND IN PARTICULAR SECTION 89 CONCERNING COMMISSION REGIMES**

**SUBMISSION IN SUPPORT OF RETENTION OF A REVISED CIVIL AVIATION (PASSENGER  
AGENTS' COMMISSION REGIME) NOTICE**

**SUBMISSION MADE BY THE TRAVEL AGENTS' ASSOCIATION OF NEW ZEALAND  
INCORPORATED ("TAANZ")**

**BACKGROUND**

1. TAANZ is the national representative body for travel agents in New Zealand. Membership is not compulsory but TAANZ represents over 95% of IATA accredited agents in New Zealand. TAANZ has approximately 300 full members. These members also operate an additional 90 branches and together contract an additional 550 TAANZ Approved Travel Brokers.
2. TAANZ members are responsible for approximately 75% of international airline sales to New Zealand customers, amounting to NZ\$3.75 billion annually.
3. TAANZ is a member of the World Travel Agents Association Alliance (WTAAA) being the world body of a large number of international travel associations.
4. One of TAANZ's functions is to make submissions on behalf of its members on issues which are of concern and relevance to the travel industry in New Zealand and of relevance to consumers of travel in New Zealand.
5. To become and remain a member of TAANZ applicants must meet and continue to comply with:
  - (a) requirements for bonding: all TAANZ members must provide a bond for the protection of their customers and the protection of airline principals;
  - (b) requirements for premises;
  - (c) requirements for qualifications for management and staff.

6. TAANZ is the only organisation in New Zealand that has these requirements and that positively promotes professionalism, education, ethical standards and recognises the need to protect the interests of travel agents' customers.

## **SALE OF INTERNATIONAL AIR TRANSPORTATION IN NEW ZEALAND**

7. International air travel is sold by airlines directly through online marketing and through street front locations and by agents appointed by those airlines. The International Air Transport Association ("IATA") has estimated that 15% to 20% of international ticketing across the world is made directly by airlines, and not through agents. Agents are responsible for 80% to 85% of such sales annually.
8. Agents compete not only with the airlines for the sale of airline product but also compete with each other. It is generally acknowledged that the market for sale of international air transportation in New Zealand is very competitive as is evidenced by TAANZ membership and the increasing number of TAANZ approved travel brokers. There is also competition from non TAANZ IATA approved agents, the largest of which is Flight Centre.
9. There is no specifically dedicated legislation that governs the activities of those that sell international air travel in New Zealand. The only piece of legislation which proscribes requirements for those that sell travel is the Civil Aviation (Passenger Agents Commission Regime) Notice 1983 ("the Commission Regime Notice"). The Commission Regime Notice does so indirectly by providing that in order for an airline principal to pay a commission to an agent the agent must meet certain requirements. In essence those requirements are:
  - (i) the agent must provide a bond for the protection of the airline principal and the agent's customers against the financial default of the agent;
  - (ii) a requirement for minimum levels of qualified persons to be employed or engaged by the agent;
  - (iii) the agent is required to operate from suitable locations open to the general public, the address of which is to appear on the list of the carrier/airline principals list of approved passenger agents; and
  - (iv) a requirement that the agent maintain a dedicated travel funds account and that moneys received by the agent in respect of travel arranged by the agent be paid into that bank account and remain the property of the carrier and be held in trust for the carrier until it has been properly accounted for to the carrier.

The Commission Regime Notice requires that these conditions be met before an airline principal may pay a commission to its agent.

TAANZ is very strongly of the view that these requirements/conditions must be retained.

10. The Commission Regime Notice provides the only legislative basis upon which the sale of international air passenger transportation is or can be regulated or controlled in New Zealand. The Ministry of Transport does not take steps to ensure the provisions of the Commission Regime Notice are being complied with. It seems to have been content for TAANZ to fulfil this role and accordingly the industry is effectively a self-regulated industry. TAANZ through its rules and its Bonding Scheme providing the only real regulation of those engaged in the sale of travel. TAANZ has been successful in this self-regulation role. It strictly enforces the requirements referred to above, that are specified in the Commission Regime Notice, on its members.
11. Retention of a limited form of Commission Regime Notice is essential if TAANZ is able to continue this role.

## THE MINISTRY OF TRANSPORT PROPOSALS

12. The Civil Aviation Act 1990 Review Consultation documentation in relation to Commission Regimes advocates, as the Ministry of Transport preferred option, the repeal of the existing Commission Regime Notice and the repeal of section 89 of the Act. The Ministry states that this is its preferred option *"because the Commission Regime Notice is archaic and confusing and does not robustly achieve any purpose we are aware of."*
13. In TAANZ's view the Ministry's preferred option fails to take into account the significant impact the Commission Regime Notice has on the sale and marketing of international air passenger transportation in New Zealand.
14. In saying this TAANZ is not in favour of retaining in the Commission Regime Notice provisions that purport to fix the level at which commissions can be paid. TAANZ agrees with the Ministry's position that the provisions in the Commission Regime Notice to this effect are no longer appropriate and are a product of a bygone era.
15. Although the Ministry's consultation document makes reference to the TAANZ Constitution, it fails to fully understand the significance of the Commission Regime Notice and the very real and positive effects that it provides in forming the basis for the TAANZ Rules which enable

self-regulation of travel agents in New Zealand, and for a degree of order, financial responsibility and accountability to be brought to the market for the sale of international passenger transportation in New Zealand.

16. The current Commission Regime Notice has the status of delegated legislation and currently provides for certain minimum requirements for those participating in the sale of international air services to passengers in New Zealand. (See paragraph 9 of this Submission.) The fact of the inclusion of those requirements in the Commission Regime Notice can and has been used by TAANZ to attribute validity to those requirements in another context, namely in TAANZ Rules and its Code of Ethics, which require its members to comply with the provisions summarised at paragraph 9 above.
17. The significant effect of the Commission Regime Notice as far as TAANZ is concerned is to constitute a statutory exception to Part II of the Commerce Act 1986 relating to restrictive trade practices. TAANZ has tailored its rules and Code of Ethics so that they do no more than obligate members to adhere to the specifically identified restrictions on an agent's entitlement to receive or be paid a commission set out in the Commission Regime Notice. As such, the particular conditions comprise a requirement that has been specifically authorised by delegated legislation.
18. If the Commission Regime Notice is repealed TAANZ will be unable to continue with provisions in its Rules which enable it to prohibit its members from trading with persons who hold themselves out as travel agents who do not provide members of the public with protection by way of a bond based on turnover or some other legitimate form of consumer protection or who are not approved passenger agents of the carriers with whom they are attempting to arrange travel on behalf of customers.
19. The implications of this will be very significant in terms of TAANZ's ability to self-regulate the market for the sale of international air transportation in New Zealand. There will be a vast proliferation of consumer claims in which the consumer will have no recourse to a bond and hence will suffer financial loss.
20. TAANZ has been very successful in self-regulation of the market for the sale of international air transportation in New Zealand. The vast bulk of business is handled through TAANZ members and since the Bonding Scheme was first established in the 1960s there has not been a single consumer of a TAANZ member that has not received the services for which the consumer has paid the member, or where a member has failed financially, where the consumer has not received a full refund of the amount paid to the member that failed from the TAANZ Bonding Fund.

TAANZ has also been very effective in keeping to a very very small minimum the number of transactions handled by agents who do not provide a bond for the protection of the consumer and the carrier. In the last ten years \$1,661,918 has been paid out of the fund for 797 claims made by consumers.

If the Commission Regime is repealed that will no longer be possible.

21. It is proposed that Commission Regimes be repealed and that the functions that they regulate be subject to the general regulatory regime of the Commerce Act. The Commerce Act is concerned solely with competition issues. It is not concerned with issues relating to consumer protection, the qualifications of, or the educational opportunities of those working in the industry, the standard of premises or with regulating the proper handling of moneys by those involved in the sale of travel.

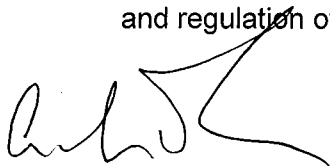
In our view the legislative basis for these very significant non-competition related regulatory functions should not be abandoned without good reason. TAANZ is entirely comfortable with the terms of the Commission Regime Notice being amended and modified and for it to make no reference at all to the level at which commission may be paid by an airline principal to its agent.

22. It should also be noted that the Productivity Commission's recommendation that the Government consider adopting a regime for regulating international air services under the Commerce Act 1986 was specifically made subject to "a review of the passenger specific impact" of such a decision.


In TAANZ's submission the passenger specific implications require that a limited form of Commission Regime Notice be maintained and administered under the provisions of the Civil Aviation Act.

There is no need for the Commission Regime Notice to be complex or complicated or for it to create more confusion than light.

We have prepared a simple form of Commission Regime Notice which no doubt the law draftsman's office could improve upon but which provides the types of protections which TAANZ is very clearly of the view is required in order to preserve some semblance of order and regulation of this very important industry.



ANDREW OLSEN  
CEO TAANZ



TAANZ SOLICITOR.

# THE CIVIL AVIATION (PASSENGER AGENTS' COMMISSION REGIME) NOTICE 2015

Pursuant to section \_\_\_\_\_ of the Civil Aviation Act, the Minister of [ \_\_\_\_\_ ] hereby gives the following notice.

## **NOTICE**

### **1. Title and Commencement**

- (1) This notice may be cited as the Civil Aviation (Passenger Agents' Commission Regime) Notice 2015.
- (2) This notice shall come into force on the \_\_\_\_\_ day after the date of publication in the Gazette.

### **2. Interpretation**

*"Approved Passenger Agent"* means, in relation to a Carrier, a person that has entered into a Passenger Sales Agency Agreement with that Carrier which agreement remains in force.

*"Carrier"* means any person whose business it is to provide international air passenger travel services.

*"A Passenger Sales Agency Agreement"* means a sales agency agreement made between a Carrier as principal and a person as agent relating to the sale by the agent of travel on the services of the Carrier which is current and which contains, amongst other provisions, provisions that require:

- (a) that the agent is at all times to maintain a bond, guarantee, security or other device that, in the opinion of the Carrier, provides a reasonable level of protection to the agent's customers and to the Carrier against the failure by the agent to properly account for moneys received by the agent for the purpose of arranging and paying for travel for the customer on the services of the Carrier;
- (b) that all moneys paid to the agent for services to be rendered by the Carrier must be paid into a separately designated bank account maintained by the agent for the Carrier and the agent's other principals and be kept in that account until it is accounted for to the Carrier. Such moneys shall be and remain the property of the

Carrier and shall be held on trust for the Carrier until the money has been accounted for by the agent to the Carrier; and

(c) that the agent is to operate its business from suitable premises which have been approved by the Carrier and which clearly identify the business operated from those premises as that of a travel agent, the address of which premises is to appear on the Carrier's list of Approved Passenger Sales Agents locations; and

[(d) that the agent is to have at each of its business premises a sufficient number of staff with recognised industry qualifications that will enable the agent, in the opinion of the Carrier, to provide the agent's customers who wish to acquire the services of the Carrier to receive acceptable levels of service.]

*"Person"* includes an individual person, a body of persons, and a body corporate.

3. This Notice applies with respect to all sales of international air travel where the sales take place in New Zealand.
4. Only an Approved Passenger Agent may charge or receive payment of a commission or other remuneration from a Carrier for the sale of the Carrier's services.
5. A Carrier may only pay a commission or other remuneration for the sale of the Carrier's services to an Approved Passenger Agent of the Carrier.
6. An Approved Passenger Agent may share any commission or remuneration received from a Carrier for the sale of the services of that Carrier with:
  - (i) an employee of the Approved Passenger Agent;
  - (ii) an individual who has a contract to provide his or her services in relation to the sale of travel exclusively to that Approved Passenger Agent, the terms of which contract require that moneys to be paid by the customers for the purchase of such travel be paid directly to the Approved Passenger Agent or directly into the bank account of the Approved Passenger Agent;
  - (iii) another Approved Passenger Agent of the Carrier in question.

7. Except as is provided in clause 6 hereof an Approved Passenger Agent shall not share nor pay any part of the commission or remuneration received for the sale of the services of the Carrier to any other person nor in any other way remunerate such other person for services that may have been rendered by that person in relation to the sale of the services of the Carrier.