

## **Proposal for CTA Air Travel Complaints Fee**

**To:** **Canadian Transport Agency (CTA)**

**Name of submitter:** **Air New Zealand Limited**

### **Introduction**

- 1 This submission relates to the Canadian Transport Agency's (CTA) proposal to impose a fee on carriers in respect of processing air passenger complaints (Proposal) submitted pursuant to the Air Passenger Protection Regulations 2019 (APPR).
- 2 Air New Zealand (Air NZ) is an affected party with respect to the Proposal, for the reasons set out below.

### **Background**

- 3 Air NZ is New Zealand's largest domestic and international airline, providing both passenger and cargo transport services domestically and overseas. For over 17 years Air NZ has provided a daily direct service between Auckland and Vancouver and prior to this, a connecting service.
- 4 Air NZ joins other carriers which operate to, from and within Canada in expressing its concerns over the CTA's plan to impose a fee of CAD790 in respect of any customer complaint escalated through its complaints process.
- 5 Air NZ strongly urges the CTA to consider the proportionality of any fee it levies against carriers relating to the processing of customer complaints as it is unclear whether the fee will have any appreciable impact on bringing down the processing time of the complaints it receives.

### **Submission**

- 6 Air New Zealand generally opposes the Proposal for the following reasons:
  - (a) **Excessive burden on carriers:**
    - (i) The proposed fee of CAD790 (the Proposed Fee) per complaint places an excessive and onerous burden on carriers that is out of step with any other fee imposed by authorities overseeing an airline customer complaints process in other jurisdictions including the EU and USA (under the EU 261 or US DoT regimes).
    - (ii) It is notable that the Proposed Fee is higher than the compensation payable by a large carrier for a delay of more than six hours (being CAD700) and almost double what is payable should the carrier refund the customer in the event of a delay

(being CAD400). In Air NZ's view, the administrative cost of processing a complaint should not exceed the average amount of compensation payable to a customer, nor should it constitute the majority of the cost payable by the carrier in respect of a complaint. The goal of the APPR regime is to fairly address customer complaints and ensure the customer is made whole. If the cost of operating the APPR regime exceeds the cost of the problem it was created to address, it indicates process inefficiencies that the CTA should seek to remedy. It is not clear that an increase in costs recovered from carriers will address these issues.

- (iii) The CTA's initial impact assessment when it proposed implementing the APPR was that administrative costs to carriers would be minimal,<sup>1</sup> despite the industry raising concerns at the time about the substantial cost of running the regime. It is clear that the imposition of the Proposed Fee is far more than a minimal cost for carriers to bear on top of the other costs already payable in respect of a complaint which could include (i) strict liability for delay compensation; (ii) flight refunds and (iii) recovery of costs such as accommodation, transportation, food and other expenses.
- (iv) The Budget Implementation Act 2023 provides the CTA with discretion to set the appropriate quantum for recovering the costs for processing eligible air travel complaints. While the CTA has currently set the fee at what it considers 60% of total costs incurred when processing a complaint, Air NZ believes this is too onerous and strongly urges the CTA to consider a fee structure that is more nuanced, reflecting the complexity of the complaint and the time spent on it. Given the CTA has suggested the average cost of processing is \$1300, there may be opportunities to streamline operations and reduce costs.

(b) **Procedural fairness:**

- (i) The Proposal could lead to situations where airlines are penalised even if they have acted in good faith. It is unreasonable to expect carriers to bear the significant cost of the Proposed Fee, even where the CTA affirms the carrier's decision, while there are no cost implications for customers taking cases to the CTA. This construct is contrary to principles of procedural fairness and natural justice. Procedural fairness requires that both parties in a dispute are treated equally and have an equal opportunity to present their case. Air NZ would expect that if the outcome of a review of a customer complaint found in favour of Air NZ, then as is the case in other dispute forums the unsuccessful party would bear the costs (if any) i.e. the customer.

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<sup>1</sup> <https://otc-cta.gc.ca/eng/air-passenger-protection-regulations-regulatory-impact-analysis-statement>

- (ii) As previously acknowledged by the CTA, carriers are just one part of a complex aviation system that also includes airports, security, customs, air navigation services, and other factors. When disruptions occur, it's often due to a combination of these elements and as such any fee regime should acknowledge this complexity and avoid solely penalising airlines.
- (iii) There are many areas of complexity in consider when assessing claims which in turn presents a challenge for carriers to navigate and much of this is a result of a lack of definitive guidance under the APPR framework (e.g. delay arising from crew unavailability in a remote location vs. a home location). As a result, it is a common occurrence that despite the carrier acting in good faith, complaints can take more than 30 days to resolve. Complaints may require investigation or the provision of information/evidence from the customer. It is also understandable that for complex complaints the carrier and the customer may hold different views as to the appropriate outcome. As there is a low eligibility threshold for customers to escalate a claim to the CTA review process, and no definition of "unresolved claim" provided, it is likely there will be many instances where a carrier will be penalised with a processing fee even though it is taking steps to resolve the claim or it made the correct decision on a claim but the customer disagrees with the outcome.

(c) **Unintended outcomes:**

- (i) The Proposal creates a situation where the airline bears the burden of proof to justify non-payment, rather than the passenger needing to demonstrate entitlement. The nature of the proposed fee structure may inadvertently encourage a surge in erroneous or frivolous claims. Customers, aware of the potential for a substantial payout, could leverage the threat of a CAD 790 fee to coerce airlines into more favourable resolutions. Given the existing backlog of complaints and the design of the proposed scheme, this could exacerbate the problem rather than alleviating it.
- (ii) The current proposal increases the financial burden on carriers, which are already facing rapidly rising operating costs and overheads. As a result, carriers will likely have to increase airfares on Canadian routes, ultimately passing the cost on to passengers. The proposal could also force some carriers to leave the Canadian market, reducing competition and limiting customer options.

7 Air NZ proposes potential alternatives for the CTA to consider:

- (a) CTA to provide clearer guidelines for resolving complaints under the APPR. This would assist with carriers with handling complaints more efficiently and would likely result in the reduction of the number of complaints that would be escalated to the CTA for review. We suggest that this would be more effective than the imposition of the fee

and that the CTA should taking this action *before* the implementation of the Proposed Fee in order to assess the effect this has on the number of claims received.

- (b) A tiered fee system based on the complexity of the complaint is a more nuanced approach to take, versus a blanket fee of CAD790 which applies no matter how much time is required by the CTA to review the complaint. Carriers would be charged a reasonable, proportionate cost recovery fee, but only where the CTA finds in favour of the customer.
- (c) Customers charged a small deposit to lodge a claim with the CTA which shall be refunded in the event of a legitimate claim but retained in case the claim is deemed ineligible or the airline successfully defends the claim. Where the CTA finds in favour of the Customer, then a reasonable fee may be levied against the Carrier.
- (d) CTA to consider applying the Proposed Fee to other parties in the aviation ecosystem that contribute to customer disruption and complaints, rather than solely levying it on carriers. Recognising the multiple factors affecting the customer journey and promoting accountability across the ecosystem would ultimately benefit the customer.

**DATED** this 4 November 2024



Leanne Geraghty – Chief Customer and Sales Officer  
for Air New Zealand Limited