

**JAMES MACEY**

**NAVIGATING TOWARDS AN AIRWORTHY  
PROTECTION REGIME FOR NEW ZEALAND'S  
AIRLINE PASSENGERS**

Submitted for the LLB(Hons) Degree

Faculty of Law

Victoria University of Wellington

2023

**Abstract**

*Delays and cancellations are a frequent occurrence in air travel, but passenger protections in New Zealand lag behind those in other jurisdictions such as the European Union and Canada. Concerns arounds airlines' treatment of passengers were brought to the fore during the Covid-19 pandemic, but protections were not strengthened in the recent repeal of the Civil Aviation Act 1990 and enactment of the Civil Aviation Act 2023. The new Act provides insufficient protection to passengers, and New Zealand's other consumer law is also inadequate and difficult to apply to an airline context. Neither set of law has a dispute resolution scheme that is fit for purpose. Public enforcement of relevant laws by regulators is limited to breaches of the Fair Trading Act 1986, largely for misleading or deceptive trading practices, and not specific obligations to passengers.*

*This paper examines the deficiencies in New Zealand's airline passenger protection law and compares that law with the corresponding law in Australia, the European Union and Canada. It advocates for the making of regulations which provide for fixed amounts of compensation when a flight is delayed for controllable reasons, rather than laws which require a passenger to prove damages. That is consistent with the European and Canadian approaches. It also advocates for refunds to be made available to passengers where flights are cancelled or significantly delayed. To ensure that the new regulations are effective, this paper also advocates for an adjudicative dispute resolution scheme, funded by airlines according to their market share and the number of complaints received, with capacity for public enforcement (monetary fines) by the Commerce Commission.*

**Word length**

*The text of this paper excluding abstract, table of contents, footnotes and bibliography) comprises approximately 8,000 words.*

**Subjects and topics**

*Consumer law — airline passenger protection — cancellation and delay — Civil Aviation Act 2023 — Consumer Guarantees Act 1993 — Fair Trading Act 1986*

## *Table of Contents*

<b><i>I</i></b>	<b><i>Introduction</i></b> .....	<b>5</b>
<b><i>II</i></b>	<b><i>Current law</i></b> .....	<b>5</b>
<b>A</b>	<b>Civil Aviation Act 2023</b> .....	<b>6</b>
1	International carriage.....	6
2	Domestic carriage.....	6
3	Remedies and enforcement.....	7
4	Passenger information and reporting obligations .....	9
<b>B</b>	<b>Consumer Guarantees Act 1993</b> .....	<b>10</b>
1	Guarantees.....	10
2	Remedies .....	11
3	Fault exception .....	12
4	Contracting out.....	12
5	International application.....	13
<b>C</b>	<b>Fair Trading Act 1986</b> .....	<b>14</b>
<b><i>III</i></b>	<b><i>Overseas regimes</i></b> .....	<b>15</b>
<b>A</b>	<b>Australia</b> .....	<b>15</b>
<b>B</b>	<b>European Union</b> .....	<b>17</b>
<b>C</b>	<b>Canada</b> .....	<b>19</b>
1	Compensation, alternative arrangements and refunds .....	20
2	Dispute resolution.....	22
<b><i>IV</i></b>	<b><i>Improvements</i></b> .....	<b>23</b>
<b>A</b>	<b>Airline liability and compensation</b> .....	<b>23</b>
1	Remedies .....	23
2	Domestic baggage .....	24
3	Exceptions to liability.....	25
<b>B</b>	<b>Dispute resolution</b> .....	<b>26</b>
<b>C</b>	<b>Public enforcement</b> .....	<b>27</b>
<b><i>V</i></b>	<b><i>Conclusion</i></b> .....	<b>28</b>
<b><i>VI</i></b>	<b><i>Bibliography</i></b> .....	<b>29</b>
<b>A</b>	<b>Cases</b> .....	<b>29</b>
1	New Zealand.....	29
2	Canada.....	29
3	European Union.....	29
4	United Kingdom.....	29

<b>B</b>	<b>Legislation .....</b>	<b>29</b>
1	New Zealand.....	29
2	Australia .....	30
3	European Union.....	30
4	Canada.....	30
5	United Kingdom.....	30
<b>C</b>	<b>Books and Chapters in Books.....</b>	<b>31</b>
<b>D</b>	<b>Journal Articles .....</b>	<b>31</b>
<b>E</b>	<b>Parliamentary and government materials .....</b>	<b>32</b>
1	New Zealand.....	32
2	Australia .....	33
<b>F</b>	<b>Reports .....</b>	<b>33</b>
<b>G</b>	<b>Internet resources.....</b>	<b>34</b>
<b>H</b>	<b>Other resources.....</b>	<b>35</b>

## *I Introduction*

In March 2023, Parliament passed the Civil Aviation Bill (now the Civil Aviation Act 2023), which repealed and overhauled law previously contained in the Civil Aviation Act 1990 and the Airport Authorities Act 1966.<sup>1</sup> The then Associate Minister of Transport, Hon Kiritapu Allan, heralded the Bill as a “significant modernisation of civil aviation legislation”.<sup>2</sup> In many respects, it is: it has overhauled several aspects of the law in both the safety and regulatory fields. Yet the new Act, which comes into force no later than 5 April 2025,<sup>3</sup> makes no changes to passengers’ rights and protections when their travel is disrupted. Consumer rights advocates, including Consumer NZ, have criticised the lack of reform in this area, which has attracted greater interest following the widespread travel disruption caused by Covid-19.<sup>4</sup>

This paper will examine the rights passengers have when they or their baggage are delayed, and demonstrate how the current law is inadequate and difficult to enforce. This includes their rights when flights are cancelled, because a cancelled flight represents a delay in the fulfilment of a contract for carriage. Schemes in Australia, the European Union (EU) and Canada all provide useful insights into how the law might be improved, and the challenges in doing so. Considering these insights, this paper advocates for detailed regulations to strengthen and more clearly prescribe passenger protections, a new dispute resolution scheme with adjudicative powers, and the power for the Commerce Commission to impose financial penalties on airlines who fall short of their obligations.

## *II Current law*

New Zealand’s laws governing airlines’ liability for passenger and baggage delay are fragmented and, at times, uncertain. Sources of liability include the Civil Aviation Acts (1990 and 2023), the Consumer Guarantees Act 1993 (the CGA), and the Fair Trading Act 1986 (the FTA). The law in the Civil Aviation Act 1990 has been carried over into the 2023 Act substantively unchanged, and this section will refer primarily to the 2023 Act even though it is not yet in force.

---

<sup>1</sup> Civil Aviation Bill 2021 (61-2).

<sup>2</sup> (28 March 2023) 766 NZPD (Civil Aviation Bill and Civil Aviation Amendment Bill — Third Readings, Kiritapu Allan).

<sup>3</sup> Civil Aviation Act 2023, s 2.

<sup>4</sup> Federico Magrin “Aviation bill fails to protect passengers’ rights when ‘shirked’ around by airlines” (24 February 2023) Stuff <[www.stuff.co.nz](http://www.stuff.co.nz)>.

## *A Civil Aviation Act 2023*

Part 8, with schs 4–6, of the Civil Aviation Act 2023 provides the airline passenger protections in New Zealand’s law, including by serving as the ratification instrument for the Montreal Convention.<sup>5</sup> It provides two parallel regimes, in sub-pts 2 and 3, that are applied depending on whether the carriage is international or domestic. The domestic law, in sub-pt 3, applies to carriage where, according to the contract for carriage, the origin and destination are both in New Zealand and there is no agreed stopping place outside New Zealand.<sup>6</sup> The domestic sector of a connecting international itinerary is still considered “international carriage” for the purposes of the Act; an aircraft can be undertaking both international and domestic carriage at the same time.<sup>7</sup>

### *1 International carriage*

Article 19 of the Montreal Convention—incorporated through pt 8 sub-pt 2 and sch 6 of the Act—provides:<sup>8</sup>

#### **Article 19 — Delay**

The carrier is liable for damage occasioned by delay in the carriage by air of *passengers, baggage or cargo*. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Liability is limited in terms of Special Drawing Rights (SDRs). The value of one SDR is calculated daily by the International Monetary Fund using a basket of five major currencies. Liability for passenger delay is limited to SDR 5,346 and for baggage delay to SDR 1,288 per passenger,<sup>9</sup> roughly NZD 11,800 and NZD 2,800, respectively.<sup>10</sup>

### *2 Domestic carriage*

Domestic provisions for airline liability—set out at pt 8 sub-pt 3 of the Civil Aviation Act 2023—descend from those originally set out in the Carriage by Air Act 1967. That Act

---

<sup>5</sup> Compare Civil Aviation Act 1990, pts 9A and 9B, and schs 4–6.

<sup>6</sup> Civil Aviation Act 2023, s 270(1); and compare Civil Aviation Act 1990, s 91V(1).

<sup>7</sup> Civil Aviation Act 2023, s 270(2); and compare Civil Aviation Act 1990, s 91V(2)(a).

<sup>8</sup> Civil Aviation Act 2023, sch 6 art 19 (emphasis added); and compare Civil Aviation Act 1990, pt 9A and sch 6.

<sup>9</sup> Civil Aviation Act 2023, sch 6 art 22.

<sup>10</sup> Conversion rate as at 8 August 2023 using SDR 1 = NZD 2.20. Both conversions rounded to the nearest NZD 100.

ratified the Warsaw Convention and Hague Protocol<sup>11</sup>—the predecessors of the Montreal Convention—and made provision for domestic carriage, with its domestic provisions broadly modelled on the international provisions. Section 274 of the 2023 Act provides that an airline is liable for damage caused by delay in the carriage of passengers.<sup>12</sup> As under the international regime, s 276 exempts an airline from liability where it can prove that it, and its agents and servants, took all measures necessary to avoid the damage, or that it was not possible to take those measures.<sup>13</sup> Section 274(2) also exempts an airline from liability for delay where the delay arose by meteorological conditions, compliance with air traffic control, obedience of orders given by a lawful authority, *force majeure*, or the delay was for the purpose of saving—or attempting to save—a life.<sup>14</sup> Finally, s 277 limits liability for delay to the lesser of the actual damage sustained or 10 times the fare paid.<sup>15</sup>

Unlike under the international regime, airlines are not liable for damage caused by the delay of domestic passengers' baggage. This was not the original position Carriage by Air Act 1967, which provided for such liability until it was amended by the Carriage of Goods Act 1979.<sup>16</sup> Under the later Act, the laws governing the carriage of goods—which hitherto had varied depending on the mode of carriage—were rationalised. Baggage- and cargo-related provisions in the Carriage by Air Act were removed, and carriage by air of baggage and cargo became subject to the mode-agnostic provisions of the Carriage of Goods Act. With that, statutory liability was limited to loss or damage,<sup>17</sup> a position that was maintained in the reform of contract and commercial law in 2017.<sup>18</sup>

### 3 Remedies and enforcement

For claims under both the international and domestic Civil Aviation Act schemes, the remedy is damages. Unlike in other jurisdictions such as Canada and the EU, where the law provides for fixed amounts of compensation, New Zealand's law requires a passenger to prove the damage they have incurred. In practical terms, making a claim will necessitate the collation of receipts for expenses caused by delays, such as meals, accommodation, and ground transport. Still, both schemes lend some favour to passengers by presuming an

---

<sup>11</sup> Carriage by Air Act 1967, sch 1.

<sup>12</sup> Compare Civil Aviation Act 1990, s 91Z.

<sup>13</sup> Compare Civil Aviation Act 1990, s 91ZA.

<sup>14</sup> Compare Civil Aviation Act 1990, s 91Z(2).

<sup>15</sup> Compare Civil Aviation Act 1990, s 91ZC.

<sup>16</sup> See Carriage by Air Act 1967, s 25(1).

<sup>17</sup> Carriage of Goods Act 1979, s 9.

<sup>18</sup> Contract and Commercial Law Act 2017, s 256.

airline to liable where a delay has caused damage. It is the airline’s responsibility to prove that it is not liable by dint of one of the relevant exceptions in the Act or Convention.

To enforce a claim for damages under the Act, passengers may take a claim to either the Disputes Tribunal or to the court.<sup>19</sup> The Disputes Tribunal can hear claims up to \$30,000—sufficient for most foreseeable claims under the Act—but, in the case of larger claims, a claim would need to be filed in the District Court. The Disputes Tribunal is private by default, and only selected, anonymised decisions are published.<sup>20</sup> Just three decisions of the Tribunal made according to the 1990 Act are publicly available.<sup>21</sup> It was not until 2016 that the Tribunal’s jurisdiction with respect to the 1990 Act was confirmed by the High Court in *Air New Zealand Ltd v Disputes Tribunal*, with this jurisdiction being clarified in the 2023 Act.<sup>22</sup>

By having its enforcement powers vested in the Tribunal, the efficacy of the Act’s passenger protections is significantly undermined. With limited public reporting of decisions and private-by-default hearings, it is impossible to determine the number or nature of airline disputes being considered by the Tribunal. In addition, airlines’ public accountability for non-compliance with the law is diminished and passengers may be discouraged from making a claim if there is only limited public documentation of previous passengers doing the same.<sup>23</sup> In its general review of courts and tribunals in 2004, the Law Commission concluded that there was no “compelling reason for such a major compromise of the principle of openness” in the Disputes Tribunal.<sup>24</sup> This opacity, combined with the Tribunal’s onerous requirement to attend a hearing and its filing fee of \$45 (which is not refunded, even for successful claimants) make it a wholly unsuitable venue for disputes under an airline passenger protection regime.<sup>25</sup>

---

<sup>19</sup> See Civil Aviation Act 2023, s 269 definition of “court”.

<sup>20</sup> Disputes Tribunal Act 1988, s 39.

<sup>21</sup> See *DU v VF* [2016] NZDT 956; *NW v B Ltd* [2022] NZDT 145; and *NX v Airline X* [2022] NZDT 181.

<sup>22</sup> *Air New Zealand Ltd v Disputes Tribunal* [2016] NZHC 393, [2016] 2 NZLR 713; and Civil Aviation Act 2023, s 269 definition of “court”.

<sup>23</sup> See Ethan Griffiths “Secret court cases kept from public” *Herald on Sunday* (New Zealand, 7 May 2023) at 26.

<sup>24</sup> Law Commission *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals* (NZLC R85, 2004) at 321–322.

<sup>25</sup> Disputes Tribunal Rules 1989, r 5.

No public enforcement is provided for under the Act, which simply provides for airlines' liability under their contracts with their passengers. Airlines cannot be fined for repeated non-compliance.

#### *4 Passenger information and reporting obligations*

When the 2023 Act commences, s 410 will provide a new regulatory power to require that airlines provide passengers with information about their rights and entitlements, as well as publish statistics about their operations. In its 2014 consultation document for its review of the Civil Aviation Act 1990, the Ministry of Transport expressed the view that strengthening the passenger protection provisions in the Act was unnecessary, and that better education around the existing law would suffice.<sup>26</sup> Should information provision regulations be made under the new Act, the efficacy of New Zealand's passenger protection regime is likely to improve, even if no substantive changes are made to the law itself.

In its submissions to the Ministry on the Civil Aviation Bill's exposure draft and to the Transport and Infrastructure Committee, Consumer NZ noted that passenger awareness of the law was low, and airlines did not always inform passengers of their rights adequately.<sup>27</sup> It suggested that the regulations made under the new power should be made similar to those in the EU, which require written notices to be given to passengers at various times; for example, when their flight is delayed.<sup>28</sup> Airlines, however, were less enthusiastic about the potential for new obligations. Air New Zealand believed disclosure provisions were not required,<sup>29</sup> while Qantas and the Board of Airline Representatives stressed the need to ensure that disclosure requirements did not overload passengers and were not unduly onerous on airlines.<sup>30</sup>

---

<sup>26</sup> Ministry of Transport *Civil Aviation Act 1990 and Airport Authorities Act 1966 Consultation Document* (2014) at [C.41].

<sup>27</sup> See Consumer NZ "Submission to the Transport and Infrastructure Committee on the Civil Aviation Bill 2021" at 4; and Consumer NZ "Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft" (1 July 2019) at 4.

<sup>28</sup> Consumer NZ "Submission to the Transport and Infrastructure Committee on the Civil Aviation Bill 2021" at 4.

<sup>29</sup> Air New Zealand "Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft" (2019) at [78].

<sup>30</sup> Qantas "Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft" (22 July 2019) at 5; and Board of Airline Representatives New Zealand "Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft" (22 July 2019) at [54].

The power to require an airline to disclose operational statistics will also enable greater accountability for airlines and ensure that any future reforms to passenger protections, or regulation of the airline industry more broadly, can be developed with the benefit of greater information. The Australian Competition and Consumer Commission (ACCC) is required to publish quarterly reports on the Australian airline industry,<sup>31</sup> including on service reliability, and making regulations to enable the Ministry of Transport to do the same would be a positive step.<sup>32</sup>

At the time of writing, neither the Ministry nor Minister of Transport has indicated whether they intend to make regulations under s 410 or what such regulations may require.

### ***B Consumer Guarantees Act 1993***

New Zealand's principal consumer protection law, the CGA, is relevant to the provision of passenger air transport services. While the guarantees and remedies are relatively clear, the usefulness of the CGA for airline passengers is severely hamstrung by the wide exception to liability (s 33), the ability of airlines to contract out for business passengers (s 43), and the unclear applicability of the CGA to international air travel. Passengers are consumers—and therefore protected by the CGA—because air travel is a service which is, as a regular practice or occurrence, and in the ordinary course of events, acquired for personal use.<sup>33</sup> Like the Civil Aviation Act 2023, the CGA is enforced in either the Disputes Tribunal or the court, and is therefore vulnerable to the same issues that come with such venues.

While the Civil Aviation Act 2023 presumes liability unless the carrier can prove the delay was the result of something outside its control, whereas the CGA requires the passenger to prove that a guarantee in the Act was breached. This burden, combined with the difficulties faced when applying the CGA to air travel, make it a generally unhelpful protection for passengers and means that it does not achieve its consumer protection objectives in the airline industry.

#### *I Guarantees*

Three guarantees, in ss 28–30, are relevant in the case of delay or cancellation. First, s 28 provides that services must be carried out with reasonable care and skill. Where delay or cancellation is caused by a failure to exercise reasonable care and skill, this will be a breach

---

<sup>31</sup> Consumer (Price Monitoring—Domestic Air Passenger Transport) Direction 2020 (Cth).

<sup>32</sup> See for example Australian Competition and Consumer Commission *Airline competition in Australia* (June 2023) at 9.

<sup>33</sup> See *Nesbit v Porter* [2000] 2 NZLR 465 (CA) at [29].

of the s 28 guarantee. Airlines are unlikely to be forthcoming with information explaining the delay, especially if it reveals fault on their part, so s 28 is of limited use to passengers.<sup>34</sup> However, unlike the guarantees in ss 29 and 30, the s 28 guarantee applies even to suppliers who contract out all or part of the services to a sub-contractor. This means that where a delay is caused by a sub-contractor who fails to exercise reasonable care and skill—for example, the late delivery of fuel to the aircraft by a refuelling company—the airline will still be liable. There is no need, unlike for ss 29 and 30, to find that the sub-contractor was a “servant or agent” for the purposes of s 33. That issue will be discussed below.

Secondly, s 29 provides that services must be reasonably fit for a particular purpose that “the consumer makes known to the supplier ... as the particular purpose for which the service is required or the result that the consumer desires to achieve”. Although there is some level of ambiguity as to whether “makes known” includes making known by way of implication, it is consistent with the objectives of consumer protection to assume that it does.<sup>35</sup> A passenger purchasing a ticket on a flight which has been represented by the airline as arriving at a certain time should be enough to “make known” that purpose.

Finally, s 30 provides that services must be completed within a reasonable time. Although it is not applicable in cases where that time is fixed by the contract, left to be fixed in a manner agreed by the contract, or left to be determined by the course of dealing between the parties, most airline contracts for carriage specifically state that flight timings are not guaranteed and do not form part of the contract.<sup>36</sup> As such, the s 30 guarantee is arguably still applicable to air travel.

## 2 Remedies

Section 32 of the CGA provides the remedies for a breach of the guarantees in ss 28–30. The passenger can require the airline to remedy the breach within a reasonable time (i.e. provide alternative transport to complete the contract for carriage); or, if the airline does

---

<sup>34</sup> See Kate Tokeley “Late Departures: Consumers’ Rights Under the Consumer Guarantees Act 1993” (2003) 10 Otago LR 411 at 413–414.

<sup>35</sup> See Kate Tokeley “Consumer Guarantees Act 1993: The Guarantees” in Kate Tokeley and Victoria Stace (eds) *Consumer Law in New Zealand* (3rd ed, LexisNexis NZ, Wellington, 2023) at 137; Kate Tokeley “Late Departures: Consumers’ Rights Under the Consumer Guarantees Act 1993”, above n 34, at 414; and Annie Fraser “The Liability of Service Providers under the Consumer Guarantees Act 1993” (1994) 16 NZULR 23 at 36.

<sup>36</sup> See for example Air New Zealand “Our Conditions of Carriage” (7 December 2022) <[www.airnewzealand.co.nz](http://www.airnewzealand.co.nz)>, cl 8.4; and Jetstar “Conditions of Carriage” (April 2022) <[www.jetstar.com/nz](http://www.jetstar.com/nz)>, cl 9.1(a).

not, the passenger can cancel the contract (obtaining a refund) or claim reimbursement from the airline for remedying the breach themselves (arranging carriage with another carrier). And, if the breach is a “substantial breach” or cannot be remedied (for example, there are no alternative flights), the passenger can cancel the contract and claim damages for the reasonably foreseeable loss from the breach.

### 3 *Fault exception*

Section 33 balances the guarantees by providing an exception to liability similar to that found in the Civil Aviation Act 2023 when a breach of the s 29 or 30 guarantee occurs only because of:<sup>37</sup>

- (a) an act or default or omission of, or any representation made by, any person other than the supplier or a servant or agent of the supplier; or
- (b) a cause independent of human control.

The exception from liability provided by s 33 raises problems for consumers in the context of how airlines typically operate: with several necessary prerequisites of flight contracted to third parties such as ground handling, refuelling and catering. Whether a sub-contractor is considered a “servant or agent” is unclear, and it has been argued that to properly achieve the consumer protection purposes of the Act, “servant or agent” should be given a broad, non-technical meaning.<sup>38</sup> If it were not, then there would be an inconsistency with the law of contract, under which a principal is liable for its sub-contractor’s actions. Without sub-contractors being considered servants or agents for the purposes of the CGA, a delay caused by—for example—a late refuelling truck or catering company would absolve the airline of its obligation to provide redress. Because those sub-contractors are not directly supplying the passenger with any service, there is also no right of redress under the CGA against them directly. The Montreal Convention and Civil Aviation Act 2023 also use “servants or agents” terminology and are arguably subject to the same flaw.<sup>39</sup>

### 4 *Contracting out*

Section 43(2) of the CGA allows parties to contract out of the Act where the agreement to do so is in writing, the services are supplied and acquired in trade, both parties are in trade, and it is fair and reasonable that the parties are bound by the agreement to contract out. Air

---

<sup>37</sup> Consumer Guarantees Act, ss 33(a) and 33(b).

<sup>38</sup> Annie Fraser “The Liability of Service Providers under the Consumer Guarantees Act 1993”, above n 35, at 39–40; and Kate Tokeley “Consumer Guarantees Act 1993: Remedies” in Kate Tokeley and Victoria Stace (eds) *Consumer Law in New Zealand* (3rd ed, LexisNexis NZ, Wellington, 2023) at 166.

<sup>39</sup> Civil Aviation Act 2023, sch 6 art 19 and s 276.

New Zealand, Qantas, and Jetstar—but not most international carriers—all include a contracting out provision in their conditions of carriage where flights are acquired for “business purposes”.<sup>40</sup> Section 43(2A) provides a non-exhaustive list of factors a court must consider when determining what is fair and reasonable. Notably, para (c) includes the respective bargaining power of the parties—including the ability for negotiation and whether one party had to “accept or reject the agreement on the terms and conditions presented by another party”. Given that airline conditions of carriage are offered on a “take it or leave it” basis, with no facility for negotiation, it is likely that the “fair and reasonable” requirement in s 43(2)(d) may not be met, at least in some circumstances. Some routes—largely domestic and trans-Tasman routes—are exclusively served by the three contracting-out carriers, so business travellers have no choice but to contract out of the CGA. This may increase the likelihood of such a clause being found not to be fair and reasonable on such routes.

Attempting to contract out of the CGA otherwise than in accordance with the s 43(2) requirements, including the fair and reasonable requirement, is an offence under s 13(i) of the Fair Trading Act 1986,<sup>41</sup> which prohibits the making of a false or misleading representation concerning the applicability of a right under the CGA. It renders a body corporate liable to a fine of up to \$600,000.<sup>42</sup>

### 5 *International application*

The applicability of the CGA to the airline industry is also made complex by the lack of clear law on its territorial reach.<sup>43</sup> Not only are international flights an issue, but there are also questions raised when domestic flights in other countries are sold as part of a single itinerary which includes flights departing or arriving in New Zealand. Traditional choice-of-law issue resolution favours the law with the closest and most real connection with the transaction. Relevant factors in the airline industry may include the method of booking (for

---

<sup>40</sup> See Air New Zealand “Our Conditions of Carriage”, above n 36, cl 1.6; Qantas “Conditions of Carriage” (25 May 2022) <[www.qantas.com/nz](http://www.qantas.com/nz)>, cl 2.4; Jetstar “Conditions of Carriage”, above n 36, cl 2.7; Air Canada “International Tariff” (3 August 2023) <[www.aircanada.com](http://www.aircanada.com)>; Fiji Airways “International and domestic tariff” (20 April 2023) <[www.fijiairways.com](http://www.fijiairways.com)>; Singapore Airlines “Conditions of Carriage” (1 September 2021) <[www.singaporeair.com](http://www.singaporeair.com)>; United Airlines “Contract of Carriage Document” (16 June 2023) <[www.united.com](http://www.united.com)>; and Emirates “Conditions of Carriage for Passengers and Baggage” (28 December 2019) <[www.emirates.com](http://www.emirates.com)>.

<sup>41</sup> Consumer Guarantees Act, s 43(4).

<sup>42</sup> Fair Trading Act, s 40(1).

<sup>43</sup> See Kate Tokeley “Consumer Guarantees Act 1993: Overview and Coverage” in Kate Tokeley and Victoria Stace (eds) *Consumer Law in New Zealand* (3rd ed, LexisNexis NZ, Wellington, 2023) 65 at 102–108.

instance, an airline’s New Zealand website or its international website, or an overseas online travel agency), the direction of travel, the currency of payment, or whether a return journey was to or from New Zealand.

### ***C Fair Trading Act 1986***

Section 9 of the FTA prohibits anyone in trade from engaging in conduct which is misleading or deceptive, or which is likely to deceive. While this provision does not provide any specific protections for airline passengers by way of additional remedies, it does impose certain responsibilities on airlines to not mislead passengers as to their existing rights. It does not create a positive obligation to proactively inform customers of their rights but could prohibit omissions in some circumstances.<sup>44</sup> Half-truths—such as referring the passenger to the contract for carriage when other rights also apply—might be unlawful in some circumstances.<sup>45</sup> The consequence of this is that the conduct of airlines in handling passenger complaints and disputes is a constant balancing act between not misleading or deceiving passengers, but, for the protection of the airline, not doing more than is strictly necessary.

New Zealand has recently seen instances of airlines appearing to fall short—or just toe the line—of their obligations under s 9 of the FTA. For example, in 2022, the Commerce Commission also warned Jetstar over its communications to customers about flights it cancelled in response to Covid-19. Jetstar had advised passengers that they were entitled to flight credits, and only briefly mentioned their ability to “enquire” about a refund; something which the Commission felt risked misleading customers.<sup>46</sup> Consumer NZ has also raised concerns about the information provided to consumers by both Air New Zealand and Jetstar surrounding entitlement to refunds and compensation. In the early stages of the pandemic, for example, Air New Zealand advised customers transiting through the United States that they were not entitled to a refund for their cancelled flights.<sup>47</sup> This was contrary to an Enforcement Notice issued by the U.S. Department of Transportation, reiterating the obligation of airlines to refund their customers regardless of the reason for, or cause of,

---

<sup>44</sup> Section 2 of the Act defines “conduct” as including “omitting to do an act”.

<sup>45</sup> See Debra Wilson “General Rules on Misleading and Deceptive Conduct and Misrepresentations” in Kate Tokeley and Victoria Stace (eds) *Consumer Law in New Zealand* (3rd ed, LexisNexis NZ, Wellington, 2023) 181 at 195.

<sup>46</sup> Tom Pullar-Strecker “Jetstar was warned last year by Commerce Commission of possible law breach” (14 October 2022) Stuff <[www.stuff.co.nz](http://www.stuff.co.nz)>.

<sup>47</sup> Matthew Theunissen “Consumer NZ to lodge complaint over Air NZ’s refusal to refund all cancelled US flights” (18 May 2020) Radio New Zealand <[www.rnz.co.nz](http://www.rnz.co.nz)>.

cancellation,<sup>48</sup> which applies even to transiting passengers. The airline later reversed its position.<sup>49</sup> Jetstar was recently criticised for advising passengers that there were fixed limits to its liability for accommodation and meals under the Civil Aviation Act 1990—of \$150 per night and \$30 per meal—even though the Act provides no such limit.<sup>50</sup>

### *III Overseas regimes*

#### *A Australia*

Australia is a party to the Montreal Convention, and the Convention has legal effect in Australia.<sup>51</sup> New Zealand and Australia are therefore alike with respect to international flights. However, unlike in New Zealand, there is no dedicated law governing passenger rights. Instead, through the Competition and Consumer Act 2010 (Cth), the Australian Consumer Law (ACL) provides consumer guarantees which are broadly similar to those found in New Zealand’s CGA. These include the guarantees to render services with due care and skill, which are fit for purpose, and within a reasonable time.<sup>52</sup> However, unlike the CGA, the ACL does not permit airlines to contract out of the guarantees for business travellers.<sup>53</sup> The ACL also contains a nearly identical exception to liability for breaches of the guarantees of fitness for purpose and reasonable time of provision.<sup>54</sup> However, a cause independent of human control will only absolve an airline of liability where that cause occurred *after* the services were supplied.<sup>55</sup> This is narrower than s 33(b) of the CGA—where the cause can occur at any time—and arguably eliminates an airline’s ability to rely on causes “independent of human control” in cases of cancellation or delay; the services will not yet have been supplied.

---

<sup>48</sup> Blane A Workie “Enforcement Notice regarding refunds by carriers given the unprecedented impact of the Covid-19 public health emergency on air travel” (3 April 2020) United States Department of Transportation <[www.transportation.gov](http://www.transportation.gov)>.

<sup>49</sup> Radio New Zealand News “Air NZ to refund customers transiting through US” (18 May 2020) <[www.rnz.co.nz](http://www.rnz.co.nz)>.

<sup>50</sup> Consumer NZ “Jetstar misleading passengers about their rights under the Civil Aviation Act” (12 October 2022) <[www.consumer.org.nz](http://www.consumer.org.nz)>.

<sup>51</sup> Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008 (Cth).

<sup>52</sup> Competition and Consumer Act 2010 (Cth), sch 2, ss 60–62; and compare Consumer Guarantees Act, ss 28–30.

<sup>53</sup> Competition and Consumer Act (Cth), sch 2, s 64.

<sup>54</sup> Competition and Consumer Act (Cth), sch 2, s 267(1)(c).

<sup>55</sup> Competition and Consumer Act (Cth), sch 2, s 267(1)(c)(ii).

Otherwise, protections are left to the passenger's contract with their airline, and vary carrier-to-carrier. For example, Qantas and Jetstar (a low-cost subsidiary of Qantas) have nearly identical conditions of carriage, but Qantas' provide stronger rights to passengers. For significant delays outside its control, Qantas offers a refund if it cannot rebook the passenger onto an acceptable service; Jetstar merely offers a credit.<sup>56</sup> And, while Qantas uses the term "Significant Change" to refer to a change that materially impacts the passenger and their travel plans, Jetstar quantifies the term as a change of three hours of more to the scheduled departure time.<sup>57</sup> Virgin Australia—which, with Qantas and Jetstar, carries 95 per cent of all passengers in Australia<sup>58</sup>—also provides a refund if it cannot make suitable alternative arrangements.<sup>59</sup>

The ACCC released a White Paper in March 2023 on the aviation industry which was critical of the consumer protections currently available to Australian passengers. Poor customer service and communication, uncertainty of rights and a lack of accountability were all identified as pain points for the consumer experience more broadly.<sup>60</sup> It found that there were "little to no incentives" to comply with ACL guarantees and it was difficult for consumers to enforce their rights, especially against a well-resourced airline.<sup>61</sup> While there is currently the Airline Consumer Advocate (ACA)—a scheme funded by airlines and overseen by a committee of airline representatives—the ACCC argued that this scheme is inadequate and that a wholly new dispute resolution system is required.<sup>62</sup>

The ACCC considered that the Australian Telecommunications Industry Ombudsman (TIO) could serve as a useful template for an airline dispute resolution scheme.<sup>63</sup> That scheme is funded by telecommunications service providers, but is unlike the ACA model in that its governance board consists of equal numbers of industry, consumer and independent directors. And, unlike the ACA, the TIO's decisions are binding unless the consumer does not accept the decision. The scheme is therefore geared towards protecting consumers' rights and accepts that to do so necessitates providing consumers with further

---

<sup>56</sup> Qantas "Conditions of Carriage", above n 40, at [9.1]–[9.2].

<sup>57</sup> Qantas "Conditions of Carriage", above n 40, at [1]; and Jetstar "Conditions of Carriage", above n 36, at [1].

<sup>58</sup> Australian Competition and Consumer Commission *Airline competition in Australia*, above n 32, at 19.

<sup>59</sup> Virgin Australia "Guest Compensation Policy" <[www.virginaustralia.com](http://www.virginaustralia.com)>.

<sup>60</sup> Australian Competition and Consumer Commission *Aviation White Paper* (15 March 2023), at 22.

<sup>61</sup> At 27.

<sup>62</sup> At 28.

<sup>63</sup> At 29.

avenues for dispute resolution, while restricting the ways a large, powerful telecommunications service provider can appeal a decision.

### ***B European Union***

The Montreal Convention also covers the EU. In addition, EU Regulation 261/2004 (the Regulation) provides graduated levels of compensation for passengers when their carriage is delayed or cancelled.<sup>64</sup> The Regulation applies to passengers on flights within the EU and flights leaving the EU on any airline, and flights to the EU flown by EU airlines.<sup>65</sup>

Rather than adopt an approach which compensates passengers for damages caused or costs incurred, compensation is based on the distance of the flight, as follows:<sup>66</sup>

- (a) €250 (NZD 450) for all flights 1,500 km or less;
- (b) €400 (NZD 700) for all intra-Community flights longer than 1,500 km, or all other flights longer than 1,500 km but 3,500 km or less; and
- (c) €600 (NZD 1,050) for all other flights.

After a delay of three hours,<sup>67</sup> passengers are entitled to the level of compensation which corresponds to the distance of their flight.<sup>68</sup> If a passenger is re-routed, and their original flight was a non-intra-Community flight of 3,500 km or more, and the effective delay is less than four hours, then their compensation may be reduced by 50 per cent.<sup>69</sup> These compensation figures also apply where a passenger's flight is cancelled.<sup>70</sup> Passengers are not entitled to compensation if the airline can prove the delay was caused by extraordinary circumstances,<sup>71</sup> but other assistance obligations still apply.<sup>72</sup> For example, after five hours

---

<sup>64</sup> Regulation 261/2004 Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights [2002] OJ L46/1 [Air Passengers Rights Regulation (EU)].

<sup>65</sup> The Regulation also applies in Switzerland, Norway and Iceland, and in the United Kingdom also by virtue of the European Union (Withdrawal) Act 2018 (UK).

<sup>66</sup> Conversion rate as at 1 August 2023 using €1 = NZD 1.78. All conversions rounded to the nearest NZD 50.

<sup>67</sup> The Regulation does not explicitly make provision for compensation for delay, but the 4th Chamber of the European Court of Justice has held that compensation is available: see Cases C-402/07 and C-432/07 *Sturgeon v Condor* [2009] ECR I-10923.

<sup>68</sup> Air Passengers Rights Regulation (EU), above n 64, art 7(4).

<sup>69</sup> *Sturgeon v Condor*, above n 67, at [63].

<sup>70</sup> Air Passengers Rights Regulation (EU), above n 64, art 5.

<sup>71</sup> *Sturgeon v Condor*, above n 67, at [69].

<sup>72</sup> See Sophia Tang "Air Carriers' Obligation in 'Extraordinary Circumstances'" (2013) 4 EJRR 275.

a passenger has a right to abandon their travel and obtain a refund, and, in some cases, repatriation to their point of origin.<sup>73</sup> Accommodation and airport transfers must also be provided for overnight delays, regardless of the cause.<sup>74</sup>

The extraordinary circumstances exception to compensation applies where the airline can prove the cancellation or delay was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.<sup>75</sup> These may include “political instability, meteorological conditions . . . , security risks, unexpected flight safety shortcomings and strikes”.<sup>76</sup> Technical or maintenance issues will generally not be an exceptional circumstance unless they are “not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control”.<sup>77</sup> And, although strikes are included in recital 14 of the Regulation as an example of an extraordinary circumstance, lawfully held strikes by airline staff will not absolve an airline of liability, but strikes by air traffic control or airport staff may.<sup>78</sup>

Each state which is party to the Regulation also has a National Enforcement Body (NEB), or sometimes multiple bodies. In most cases, a state’s NEB is its consumer protection agency or its civil aviation regulator. The Regulation requires that, in addition to designating an NEB, each Member State also imposes sanctions for infringements of the Regulation which are “effective, proportionate and dissuasive”.<sup>79</sup> However, the actual effectiveness of each NEB varies. Some do not have the power to make individual orders that are binding on airlines. In many cases, the sanctions that NEBs can impose are too weak to be effective.<sup>80</sup> Overall, reports into the Regulation’s effectiveness suggest that, despite it being ostensibly highly favourable to consumers, it is not well adhered to.

Compliance with the Regulation also imposes significant costs on airlines. A September 2019 study by the European Regions Airlines Association (ERA), an airline advocacy group, found that compensation for delays and cancellations regularly exceeded twice the

---

<sup>73</sup> Air Passengers Rights Regulation (EU), above n 64, arts 6 and 9.

<sup>74</sup> Articles 6(1) and 9(1)(b).

<sup>75</sup> Article 5(3).

<sup>76</sup> Recital 14.

<sup>77</sup> Case C-549/07 *Wallentin-Hermann v Alitalia* [2008] ECR I-11068 at [34].

<sup>78</sup> Case C-28/20 *Airhelp v Scandanavian Airlines System* ECLI:EU:C:2021:226 at [42] and [52].

<sup>79</sup> Article 16(3).

<sup>80</sup> Sara Drake *Case analysis: the transposition and implementation of Regulation 261/2004 on air passenger rights* (European Parliament, PE 608.843, November 2018) at 7.

revenue for any given flight.<sup>81</sup> Some airlines have baulked at the Regulation. For example, low-cost carrier Ryanair implemented a €2 “levy” in 2011, ostensibly to cover the increased costs it was facing from the Regulation.<sup>82</sup> There is a case to be made that with lower fares comes the acceptance of higher degrees of risk, and that is the approach taken in Australia, where Jetstar provides weaker protections than its full-fare parent airline, Qantas. However, given the lack of competition and choice in the New Zealand aviation market—where many routes are served exclusively by one or two airlines—leaving the level of protection to be determined by contract could result in airlines offering minimal protection without having any incentive to introduce correspondingly low fares.

In its report, the ERA also argued that the scheme is unfair to small and regional airlines, and that small airlines with fewer than 2.5 million passengers per year should only be subject to a compensation liability reduced by 50 per cent.<sup>83</sup> The impact on regional carriers may be particularly relevant in the New Zealand domestic context, where most airports are in the regions. In recent decades, several regional airlines have been started but subsequently collapsed. Even the big two airlines—Air New Zealand and Jetstar—have struggled in the regional market. In 2016, Air New Zealand withdrew service from several regional airports and in 2019, Jetstar terminated its consistently loss-making regional operations after four years.<sup>84</sup> A lack of rail-based public transport means that regional air routes serve an even more essential purpose here than they do in Europe. If passenger protections in New Zealand are strengthened, care must be taken to ensure that such protections do not serve as an unjust burden of participation in, and barrier to entry into, the regional market.

### **C Canada**

Canada a party to the Montreal Convention and has additional passenger regulations which are similar to those of the EU. The Air Passenger Protection Regulations (the APPR) were introduced in 2019 and provide a suite of measures relating to airline passenger rights, including how airlines must handle disruptions.<sup>85</sup> They apply to all flights within, to, or

---

<sup>81</sup> European Regions Airline Association *An ERA study into Regulation EU261: passenger compensation for delayed or cancelled flights* (September 2019) at 13.

<sup>82</sup> Dan Milmo “Ryanair adds €2 levy to cover EU rules on compensation” *The Guardian* (online ed, 31 March 2011).

<sup>83</sup> European Regions Airline Association, above n 81, at 6.

<sup>84</sup> Jetstar “Jetstar proposes withdrawal from regional flying in New Zealand” (25 September 2019) Jetstar Newsroom <newsroom.jetstar.com>; and Stuff “Air NZ announces regional network cuts” (11 November 2014) <www.stuff.co.nz>.

<sup>85</sup> Air Passenger Protection Regulations (SOR/2019-15) (Canada).

from Canada, as well as any connecting domestic flights in other countries. Like the European scheme, the APPR provide for similar fixed amounts of compensation in certain situations. Notably, Canada has experienced issues with both the applicability and enforcement of the APPR which have necessitated reform just four years after their introduction.

### *1 Compensation, alternative arrangements and refunds*

The APPR currently provide for compensation for cancellation, delay, or denial of boarding within the airline’s control and not required for safety purposes.<sup>86</sup> Compensation is graduated both according to the size of the carrier and the length of the delay between the arrival time on the passenger’s ticket and the passenger’s actual arrival time, and is as follows.<sup>87</sup>

<b>Summary of compensation under the Air Passenger Protection Regulations (SOR/2019-15) (Canada) for delay, cancellation, and denial of boarding within the airline’s control and not required for safety purposes</b>						
<b>Delay length</b> (Arrival-based)	<b>Small carriers</b>		<b>Large carriers</b>		<b>All carriers</b>	
	Delay or cancellation <sup>88</sup>		Delay or cancellation <sup>89</sup>		Denial of boarding <sup>90</sup>	
< 3 hrs	None.		None.		CAD 900	NZD 1,100
3 – <6 hrs	CAD 125	NZD 150	CAD 400	NZD 500	CAD 900	NZD 1,100
6 – <9 hrs	CAD 250	NZD 300	CAD 700	NZD 850	CAD 1,800	NZD 2,200
9 hrs or more	CAD 500	NZD 600	CAD 1,000	NZD 1,200	CAD 2,400	NZD 2,900
Right to refund exercised	CAD 125	NZD 150	CAD 400	NZD 500	No compensation if right to refund exercised following denial of boarding.	

A unique feature of the APPR is that its requirements vary depending on the size of the airline. The APPR deem a “large carrier” to be one which has transported two million or more passengers in each of the two preceding calendar years, with the residual category being “small carriers”.<sup>91</sup> A small carrier (for example, a contracted regional airline or a subsidiary) which carries a passenger on behalf of a large carrier owes the same obligations

<sup>86</sup> Air Passenger Protection Regulations (SOR/2019-15) (Canada), s 12(1).

<sup>87</sup> Conversion rate as at 1 August 2023 using CAD 1 = NZD 1.22. All conversions rounded to the nearest NZD 50.

<sup>88</sup> Section 19(1)(a).

<sup>89</sup> Section 19(1)(b).

<sup>90</sup> Section 20(1).

<sup>91</sup> Section 1(2).

to that passenger as a large carrier.<sup>92</sup> Large carriers have shorter timeframes in which to make alternative arrangements when flights are cancelled, and in some cases are obliged to arrange transport on another airline if that is the only option.<sup>93</sup>

The challenges faced by the APPR in practice also demonstrate the inherent dichotomy of safety, which may necessitate disruption; and passenger protection, which incentivises flying as scheduled. Rather than have two categories of cancellations, delays or denials of boarding—those inside or outside the carrier’s control—the Canada Transportation Act initially provided a third: those within the carrier’s control but required for safety purposes.<sup>94</sup> The obligations imposed by the APPR in such cases were somewhat of a middle-ground: compensation was not required as it would be for incidents wholly within the airline’s control, but the airline still had arrange alternate transport or offer a refund under the same rules as apply in those cases.<sup>95</sup> This three-tiered approach helped to temper the perceived risk to a comprehensive safety culture posed by the increased financial costs to airlines when flights do not operate as scheduled.<sup>96</sup>

But, just four years after the APPR’s implementation, the three categories of control are now being replaced.<sup>97</sup> The Canadian Transport Agency (CTA) has noted that the categories are unclear, contributing to a lack of passenger certainty of rights and difficulties enforcing the APPR.<sup>98</sup> In particular, the proper categorisation of delays which are matters of safety but still clearly caused by the airline—such as a crew shortage—can be difficult to determine.<sup>99</sup> The APPR also do not operate on a presumption that an event is within an airline’s control and not required for safety purposes, which makes proving breaches difficult for passengers. The nub of the problems with the APPR was summarised by the Nova Scotia Small Claims Court in *Geddes v Air Canada*:<sup>100</sup>

---

<sup>92</sup> Section 1(4).

<sup>93</sup> See s 17.

<sup>94</sup> Canada Transportation Act SC 1996 c 10, s 86.11(1)(b).

<sup>95</sup> Air Passenger Protection Regulations (SOR/2019-15) (Canada), s 11.

<sup>96</sup> See George Petsikas “Reconciling Airline Passenger Rights and Flight Safety: Will Canada Pick Up the Ball Dropped by the EU?” (11 November 2022) Institute of Air and Space Law, McGill University <[www.mcgill.ca](http://www.mcgill.ca)>.

<sup>97</sup> Canadian Transport Agency *Consultation Paper: Proposed changes to clarify, simplify and strengthen the Air Passenger Protection Regulations* (July 2023).

<sup>98</sup> Canadian Transport Agency *Consultation Paper*, above n 97, at 4.

<sup>99</sup> See for example Sophia Harris “WestJet launches legal battle to overturn order to compensate passenger \$1,000” (23 August 2022) CBC/Radio-Canada <[www.cbc.ca](http://www.cbc.ca)>.

<sup>100</sup> *Geddes v Air Canada* [2021] NSSM 27, [2021] NSJ 327 at [2].

The language is complex and legalistic; one needs detailed or specific knowledge ...; and the process to seek compensation, once invoked, does not lend itself to quick resolution. This case illustrates that complexity, as lengthy pre-hearing processes involved the issuance of subpoenas to obtain detailed records [from Air Canada about fleet and maintenance records].

Not yet in force amendments to the Canada Transportation Act require that the CTA amend the APPR so that airline control—and therefore the obligation to provide compensation—is assumed, except where it can prove that the delay, cancellation, or denial of boarding was caused by exceptional circumstances.<sup>101</sup> This is largely analogous to the European presumption of liability, except that the CTA intends to define exceptional circumstances in significantly more detail than the European Regulation.<sup>102</sup>

## 2 *Dispute resolution*

The CTA is the quasi-judicial disputes resolution body for complaints under the APPR. It reviews complaints where the passenger is unsatisfied by the airline’s response to a complaint or where the airline does not respond within 30 days.<sup>103</sup> The efficacy of the CTA as the adjudicative agency has been questioned, however, largely due to the immense backlog of complaints which emerged immediately following the APPR’s implementation in 2019, compounded by mass flight disruption as a result of the Covid-19 pandemic; a “23-fold leap in demand”.<sup>104</sup> That backlog has persisted throughout the pandemic, and, at the time of writing, wait times for the CTA to review a complaint can be over 18 months.<sup>105</sup> Some passengers have resorted to using Small Claims Courts to resolve disputes instead.

The CTA may also impose financial penalties on airlines who breach the APPR. The maximum penalty which can be fixed under the APPR is CAD 250,000 (NZD 305,000)—

---

<sup>101</sup> Budget Implementation Act SC 2023 c 26, s 465.

<sup>102</sup> See Canadian Transport Agency *Consultation Paper*, above n 97, at 7.

<sup>103</sup> Canadian Transportation Agency “Processes for Air Travel Complaints” <[www.otc-cta.gc.ca](http://www.otc-cta.gc.ca)>.

<sup>104</sup> Raisa Patel and Ashley Burke “Canadian Transportation Agency overwhelmed by 2-year backlog of air passenger complaints” (31 May 2020) CBC/Radio-Canada <[www.cbc.ca](http://www.cbc.ca)>.

<sup>105</sup> See for example Darren Major “Air passengers losing patience with enforcement agency as backlog of complaints balloons” (13 August 2022) CBC/Radio-Canada <[www.cbc.ca](http://www.cbc.ca)>; and Canadian Transport Agency “Air travel complaints” Air Passenger Protection <[www.rppa-appr.ca](http://www.rppa-appr.ca)>.

a tenfold increase on the original limit of CAD 25,000 (NZD 250,000)— but the APPR have not yet been updated to reflect this.<sup>106</sup>

#### *IV Improvements*

New Zealand's passenger protection laws need reform. The current system has been shown to provide inadequate protection to consumers, be difficult to apply to the airline industry, and, in many cases, be confusing. Stronger laws are needed, and the European and Canadian schemes serve as useful starting points for this intervention.

##### *A Airline liability and compensation*

In the author's opinion, the Civil Aviation Act 2023 should be amended to enable the making of regulations relating to airline passenger protections. The Ministry of Transport would develop the relevant regulations through consultation with consumers, airlines and other affected stakeholders. Using regulations rather than statute to establish a new scheme allows for rules which are sufficiently technical and specific to the practical realities of air travel to be drafted: a key requirement to ensuring certainty and ease-of-comprehension in a consumer law regime. A regulation-based approach also enables the rules to be recalibrated or rebalanced as necessary. Canada's experience with the APPR, which have required amendment since their original propagation, shows the importance of such a capability.

##### *1 Remedies*

Approaches to compensation in the EU and Canada have demonstrated the benefit of a scheme which provides easily determinable fixed sums of compensation, rather than simple liability for damages. The current law in New Zealand, which requires damages to be proven, is administratively burdensome for both passengers and airlines and fails to recognise the non-monetary harm incurred from delays and cancellations. It requires the conscious collection of expense receipts at a time when passengers may be scrambling to rearrange their plans. Where flights are delayed or cancelled, the new regulations should provide for specific amounts of compensation according to the length of the delay and the distance of the flight. To protect the regional airline industry, the Canadian approach where these amounts are reduced for airlines who carry fewer than 2 million passengers annual

---

<sup>106</sup> Conversion rate as at 1 August 2023 using CAD 1 = NZD 1.22; Canada Transportation Act SC 1996 c 10, s 177(1)(b)(ii), as amended by Budget Implementation Act SC 2023 c 26, s 466; and Air Passenger Protection Regulations (SOR/2019-15) (Canada), s 32.

should be strongly considered. Such regulations should also apply to all international flights—regardless of airline size—to and from New Zealand.<sup>107</sup>

Where delays are the significant, passengers should be entitled to abandon their travel and obtain a refund in the same medium as their fare payment. Although some variability in timing is accepted when booking a flight, passengers travelling for specific purposes have no use for flights which have been delayed to such an extent that they lose the value of their travel. The provision of expiring credits to passengers in such a situation is inappropriate because it forces passengers to purchase tickets at future prices, and travel even if they no longer have any need to, to avoid losing the benefit of their credit. Overnight delays—regardless of the cause—should also require the airline to provide accommodation, as in the EU and Canada.

## 2 *Domestic baggage*

Liability for delayed domestic baggage should be restored to provide the same liability as for international baggage. As is already recognised by the law,<sup>108</sup> carriage of passenger baggage is unlike the carriage of other goods because it is incidental to the carriage of its owner. Passengers expect that their baggage will arrive with them at their destination. In most cases, baggage contains personal effects essential to comfortable life and a delay in its arrival can cause significant distress and expense.

Consistency with the international regime would also streamline liability rules for both airlines and passengers. When the inclusion of the law governing the carriage of goods and baggage by air was consolidated into the Carriage of Goods Act 1979, both Air New Zealand and the National Airways Corporation opposed the change. Both airlines preferred domestic rules for carriage of goods by air that modelled the “proven”<sup>109</sup> and “well-tested” Warsaw regime, which provided “certainty and uniformity on a universal scale”.<sup>110</sup> Had

---

<sup>107</sup> Although art 29 of the Convention asserts the exclusivity of its conditions and limits in a claim for damages, the Canadian Court of Final Appeal took a view that fixed compensation is different from individualised damages and therefore not inconsistent with the Convention, suggesting that such regulations would be permissible; see *International Air Transport Association v Canadian Transportation Agency* [2022] FCA 211 at [132].

<sup>108</sup> See Contract and Commercial Law Act, s 246 definition of “checked baggage”.

<sup>109</sup> National Airways Corporation “Submission to the Statutes Revision Committee on the Carriage of Goods Bill 1977” at 4.

<sup>110</sup> Air New Zealand “Submission to the Statutes Revision Committee on the Carriage of Goods Bill 1977” at 2.

the airlines' submissions been adopted, they would likely still be liable for delayed domestic baggage today.

### 3 *Exceptions to liability*

The current exceptions to liability set out in s 274 of the Civil Aviation Act 2023, and the burden of proving them being on airlines, are mostly justified. Still, to provide certainty, new regulations should set out the exceptions with greater specificity. Difficulties determining what is within an airline's control have been seen in both the EU and Canadian regimes. The response that this has elicited in Canada—a change in the categories of control and greater enumeration of circumstances which qualify as “exceptional”<sup>111</sup>—suggests that similar drafting is required. In particular, where a delay is made necessary for safety reasons, care must be taken to ensure that airlines are liable for circumstances of their own creation (such as reasonably foreseeable technical failures, or crew shortages) whilst also maintaining a positive safety culture.

The apparent gap in liability where a delay is caused by sub-contractors should also be closed. It is the author's view that passengers should not have to bear the risks that exist in an industry where the services of several service providers, usually unknown to and unselected by the passenger, must be performed at precisely the right time to ensure a flight leaves on time. Airlines should be left to apportion risk and ensure that their contractual relationships with suppliers provide for indemnity. If the cause of a sub-contractor's failure would not have allowed an airline to escape liability had it undertaken to perform the work itself, then the airline should not escape liability simply because its sub-contractor was neither an agent nor servant.

Under the current law, airlines do not have to provide a refund if a flight is cancelled for reasons outside their control. During the pandemic, this law enabled airlines—including Air New Zealand—to withhold fares as expiring credits, rather than issue refunds, for most passengers whose flights were cancelled.<sup>112</sup> While extraordinary circumstances justify an exception to liability for compensation, they should not enable an airline to retain moneys for services which are never provided, nor should they allow it to stipulate the terms under which the benefit of those moneys can be realised. Requiring airlines to refund passengers

---

<sup>111</sup> See Canadian Transport Agency *Consultation Paper*, above n 97, at 7–8.

<sup>112</sup> See Esther Taunton “Air NZ 'confident' about flight credit process as Qantas faces legal action” (23 August 2023) Stuff <[www.stuff.co.nz](http://www.stuff.co.nz)>.

on cancelled flights regardless of the cause is consistent with airlines' obligations in Canada, the EU, and the United States.<sup>113</sup>

### ***B Dispute resolution***

Stricter laws and obligations for airlines must also be accompanied by a fit-for-purpose disputes resolution scheme to be of any value. The Disputes Tribunal is not a suitable venue for New Zealand's airline-passenger disputes, and the EU and Canadian examples demonstrate how strong substantive protections can be undermined by difficulties in enforcement. A disputes resolution body with adjudicative and enforcement abilities, modelled on successful disputes resolution schemes for other industries in both Australia and New Zealand is suggested.

Both Australia's TIO and New Zealand's Utilities Disputes Limited serve as useful templates. In its submissions on the 2021 Civil Aviation Bill and on the 2019 Exposure Draft, the Utilities Disputes Board suggested that an alternative dispute resolution scheme for the airline industry could resolve some of the issues presented by the current reliance on the Disputes Tribunal.<sup>114</sup> These include accessibility (by removing the filing fee and the need to attend a hearing), the benefit of consistency and expertise to be gained from a centralised and knowledgeable decision maker, and the ability to undertake regular reporting on both the number and nature of disputes. For instance, Utilities Disputes publishes regular reports on how many complaints and enquiries are received, how they are resolved, and on any trends apparent in complaints.

Following investigation or attempts at conciliation, both the TIO's and Utilities Disputes' processes ultimately enable each to make a determination that is binding on the service provider but can be rejected by the consumer in favour of taking the matter to a judicial body. However, adopting the same model for airline dispute resolution would eliminate an airline's right to appeal decisions under what is likely to be a technical and complex regulation. This concern could be balanced by offering both parties a right of appeal in the District Court. The prospect of having to participate in an appeal may discourage passengers from continuing with a claim, and so the adjudicative body—not the other

---

<sup>113</sup> Air Passengers Rights Regulation (EU), arts 5(1)(a) and (8)(1)(a); Air Passenger Protection Regulations (SOR/2019-15) (Canada), s 10(3)(b); and Workie, above n 48.

<sup>114</sup> Utilities Disputes Board "Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft" (22 July 2019).

party—should be responsible for responding to such appeals and defending its decision before the Court.

The cost of administering a scheme should be met by airlines for three reasons. First, an airline-funded model encourages compliance with the law and prompt in-house resolution of complaints. Second, the model enables larger airlines and those which are relatively worse at resolving complaints to cover a higher proportion of the scheme’s cost. This is consistent with Utilities Disputes’ current funding model, whereby providers are levied based on market share and the number of deadlocked complaints the provider had in the previous year.<sup>115</sup> Finally, funding that is directly linked to the scheme’s workload would ensure the scheme is sufficiently resourced to deal with complaints expeditiously. Long complaint processing times such as those seen in Canada, where the CTA handles complaints, must be avoided if the system is to be effective.

Regular reporting by such a scheme also enables interplay with a public enforcement agency, discussed below, to ensure proactive enforcement. Systemic issues are routinely investigated by the TIO, largely identified from complaint trends, and can result in the TIO issuing a formal recommendation to service providers or referring the issue to a regulator such as the ACCC.<sup>116</sup> This approach should also be adopted in New Zealand to streamline public enforcement and avoid the need for duplicate complaints and investigations.

### ***C Public enforcement***

In most cases, the amount of an individual passenger’s claim will be a relatively small amount of money. Even in jurisdictions with strong protections and individual dispute resolution processes, some airlines have consistently fallen short of their obligations.<sup>117</sup> Without proper public enforcement—that is, the ability to fine airlines—there is a risk that airlines will assess the cost of repeated non-compliance and occasional participation in dispute resolution as less than the cost of simply complying with the law in all cases in the first place.

---

<sup>115</sup> See Utilities Disputes Limited “The General and Scheme rules for the Energy Complaints Scheme operated by Utilities Disputes Limited” (1 April 2019) <[www.udl.co.nz](http://www.udl.co.nz)>.

<sup>116</sup> Australian Competition and Consumer Commission, above n 32, at 30; and Telecommunications Industry Ombudsman “Systemic Issues at the TIO Fact sheet” (March 2022) <[www.tio.com.au](http://www.tio.com.au)>.

<sup>117</sup> See for example Sara Drake “Delays, cancellations and compensation: Why are air passengers still finding it difficult to enforce their EU rights under Regulation 261/2004?” (2020) 27 MJ 230 at 232.

The Civil Aviation Authority (CAA), Commerce Commission, and the body that would be established under the above recommendation are all candidates for the role of public enforcement agency. In the author's opinion, the most appropriate body to hold these powers is the Commerce Commission. While many European countries designate their CAA-equivalent as their NEB, in New Zealand the CAA's role is largely as a safety regulator and public enforcement of a passenger protection scheme would be a significant departure from that role. The Commerce Commission is already responsible for the public enforcement of airlines' FTA obligations, and so giving public enforcement powers under the new regulations to the Commission would avoid having various powers siloed in different bodies. As public enforcement is designed to respond to systemic issues, having all relevant powers vested in the same body enables more effective action.

As under the FTA, breaches of the new regulations should be an offence, with the potential penalty for breaching the new regulations being sufficiently large to deter airline non-compliance. The maximum fine for a body corporate who contravenes pts 1–4A of the FTA is \$600,000, with the ability for the Commerce Commission to issue infringement notices (without criminal proceedings) of up to \$2,000.<sup>118</sup> Similarly, the strengthened Canadian APPR will enable fines of up to CAD 250,000 (NZD 305,000) to be imposed on airlines. For consistency with the FTA, a maximum fine and infringement fee of \$600,000 and \$2,000 respectively are suggested.

## *V Conclusion*

Air travel can be a perilous exercise fraught with disruption. Sometimes that disruption is the fault of airlines, and sometimes it is genuinely uncontrollable. When plans are foiled, passengers rightly expect that they will be looked after in a way that is fair and properly accounts for the responsibility of their airline for the inconvenience. This paper has shown that from end-to-end, the law in New Zealand does not properly protect passengers' interests. The little protection that does exist is unclear and insufficient, is not easily enforceable, and provides no way of dealing with systemic non-compliance. While other jurisdictions' interventions have not been without their difficulties, those difficulties provide useful guidance for the development of new scheme. This paper's proposals outline the essential waypoints on the route to a scheme that addresses the current approach's flaws and should be adopted if passenger trust and confidence is to be maintained.

---

<sup>118</sup> Fair Trading Act, ss 40 and 40B.

## *VI Bibliography*

### **A Cases**

#### *1 New Zealand*

*Air New Zealand Ltd v Disputes Tribunal* [2016] NZHC 393, [2016] 2 NZLR 713.

*DU v VF* [2016] NZDT 956.

*Nesbit v Porter* [2000] 2 NZLR 465 (CA).

*NW v B Ltd* [2022] NZDT 145.

*NX v Airline X* [2022] NZDT 181.

#### *2 Canada*

*International Air Transport Association v Canadian Transportation Agency* [2022] FCA 211.

*Geddes v Air Canada* [2021] NSSM 27, [2021] NSJ 327.

#### *3 European Union*

Cases C-402/07 and C-432/07 *Sturgeon v Condor* [2009] ECR I-10923.

Case C-28/20 *Airhelp v Scandanavian Airlines System* ECLI:EU:C:2021:226.

Case C-22/11 *Finnair v Lassooy* ECLI:EU:C:2012:604.

Case C-549/07 *Wallentin-Hermann v Alitalia* [2008] ECR I-11068.

#### *4 United Kingdom*

*Bott & Co Solicitors v Ryanair DAC* [2022] UKSC 8.

### **B Legislation**

#### *1 New Zealand*

Accident Compensation Act 1972.

Carriage by Air Act 1967.

Carriage by Air Bill 1967.

Carriage by Air (New Zealand Currency Equivalents) Notice (No 2) 1998.

Carriage of Goods Act 1979.

Carriage of Goods Bill 1977 (54-1).

Carriage of Goods Bill 1977 (54-2).

Carriers Act 1948.

Civil Aviation Act 1990.

Civil Aviation Act 2023.

Civil Aviation Amendment Act 2002.

Civil Aviation Bill 2021 (61-1).

Civil Aviation Bill 2021 (61-2).

Consumer Guarantees Act 1993.

Contract and Commercial Law Act 2017.

Disputes Tribunal Act 1988.

Disputes Tribunal Rules 1989.

Fair Trading Act 1986.

## *2 Australia*

Civil Aviation Legislation Amendment (1999 Montreal Convention and Other Measures) Act 2008 (Cth).

Competition and Consumer Act 2010 (Cth).

Competition and Consumer (Price Monitoring—Domestic Air Passenger Transport) Direction 2020 (Cth).

## *3 European Union*

Regulation 261/2004 Regulation establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights [2002] OJ L46/1.

## *4 Canada*

Air Passenger Protection Regulations (SOR/2019-150).

Canada Transportation Act SC 1996 c 10.

## *5 United Kingdom*

European Union (Withdrawal) Act 2018.

**C Books and Chapters in Books**

Air New Zealand *Annual Data Book* (2022 ed, Auckland, 2022) at 24.

Adrian Coorey *Australian Consumer Law* (LexisNexis Butterworths, Sydney, 2015).

SG Corones *The Australian Consumer Law* (3rd ed, Lawbook Co, Sydney, 2016).

Claudia Hipp “The Enforcement of Air Passenger Rights: An Analysis and Comparison of Claims Management Companies and Recently Established Conciliation Bodies” in Mehmet Huseyin Bilgin and others (eds) *Eurasian Business Perspectives Proceedings of the 22nd Eurasia Business and Economics Society Conference* (Springer, Switzerland, 2019) 341.

Kate Tokeley “Consumer Guarantees Act 1993: Overview and Coverage” in Kate Tokeley and Victoria Stace (eds) *Consumer Law in New Zealand* (3rd ed, LexisNexis NZ, Wellington, 2023) 65.

Kate Tokeley “Consumer Guarantees Act 1993: The Guarantees” in Kate Tokeley and Victoria Stace (eds) *Consumer Law in New Zealand* (3rd ed, LexisNexis NZ, Wellington, 2023) 109.

Kate Tokeley “Consumer Guarantees Act 1993: Remedies” in Kate Tokeley and Victoria Stace (eds) *Consumer Law in New Zealand* (3rd ed, LexisNexis NZ, Wellington, 2023) 139.

Stephen Todd “Vicarious Liability” in Stephen Todd (ed) *Todd on Torts* (8th ed, Thomson Reuters New Zealand, Wellington, 2019) 1213.

Stephen Todd “Privity and Agency” in Stephen Todd and Matthew Barber *Burrows, Finn and Todd on the Law of Contract in New Zealand* (7th ed, LexisNexis New Zealand, Wellington, 2022) 619.

Debra Wilson “General Rules on Misleading and Deceptive Conduct and Misrepresentations” in Kate Tokeley and Victoria Stace (eds) *Consumer Law in New Zealand* (3rd ed, LexisNexis NZ, Wellington, 2023) 181.

**D Journal Articles**

Sara Drake “Delays, cancellations and compensation: Why are air passengers still finding it difficult to enforce their EU rights under Regulation 261/2004?” (2020) 27 MJ 230.

Annie Fraser “The Liability of Service Providers under the Consumer Guarantees Act 1993” (1994) 16 NZULR 23.

WK Hastings "Living with an Archaic Treaty: Solving the Problem of the Warsaw Convention's Gold Clause" (1996) 26 VUWLR 143.

Sophia Tang "Air Carriers' Obligation in 'Extraordinary Circumstances'" (2013) 4 EJRR 275.

Kate Tokeley "Late Departures: Consumers' Rights Under the Consumer Guarantees Act 1993" (2003) 10 Otago LR 411.

### ***E Parliamentary and government materials***

#### *1 New Zealand*

(12 May 1967) 354 NZPD.

(24 November 1967) 354 NZPD.

(21 October 1977) 414 NZPD.

(12 September 1979) 425 NZPD.

(23 October 1979) 427 NZPD.

(30 October 1979) 427 NZPD.

(28 March 2023) 766 NZPD.

Air New Zealand "Submission to the Statutes Revision Committee on the Carriage of Goods Bill 1977".

Airways Corporation of New Zealand "Response to request for flight delay information" (14 June 2023) (obtained under Official Information Act 1982 request to the Airways Corporation of New Zealand).<sup>119</sup>

Consumer NZ "Submission to the Transport and Infrastructure Committee on the Civil Aviation Bill 2021".

Kim Murray "Comments of the Special Advisor to the Transport and Infrastructure Committee to assist with the questioning of submitters on the Civil Aviation Bill 2021".

National Airways Corporation "Submission to the Statutes Revision Committee on the Carriage of Goods Bill 1977".

New Zealand Railways "Submission to the Statutes Revision Committee on the Carriage of Goods Bill 1977".

---

<sup>119</sup> The request was refused under ss 18(g) and 18(f) of the Act.

Statutes Revision Committee "Carriage by Air Bill" [1967] AJHR IV 15.

Utilities Disputes Board "Submission to the Transport and Infrastructure Committee on the Civil Aviation Bill 2021".

## 2 *Australia*

### ***F Reports***

Australian Competition and Consumer Commission *Airline competition in Australia* (June 2023).

Australian Competition and Consumer Commission *Aviation White Paper* (15 March 2023).

Canadian Transport Agency *Consultation Paper: Proposed changes to clarify, simplify and strengthen the Air Passenger Protection Regulations* (July 2023).

Commonwealth of Australia *Consumer guarantees – a guide for businesses and legal practitioners* (May 2016).

Commonwealth of Australia *Travel and accommodation – an industry guide to the Australian Consumer Law* (16 August 2013).

*Report of the Contracts and Commercial Law Reform Committee on the Law governing the Carriage of Goods* (1968).

Sara Drake *Case analysis: the transposition and implementation of Regulation 261/2004 on air passenger rights* (European Parliament, PE 608.843, November 2018).

European Regions Airline Association *An ERA study into Regulation EU261: passenger compensation for delayed or cancelled flights* (September 2019).

S Ison, L Budd and A Timmis *International comparisons of EU Regulation 261 enforcement* (Department of Transportation (UK), April 2018).

Law Commission *Delivering Justice for All: A Vision for New Zealand Courts and Tribunals* (NZLC R85, 2004)

Ministry of Transport *Civil Aviation Act 1990 and Airport Authorities Act 1966 Consultation Document* (2014).

Ministry of Transport *Civil Aviation Bill – exposure draft commentary document* (2019).

Ministry of Transport *Exposure Draft: Civil Aviation Bill* (2019).

Ministry of Transport *Summary of submissions: Civil Aviation Bill, 2019 Exposure Draft* (September 2021).

Steer Davies Gleave *Exploratory study on the application and possible revision of Regulation 261/2004* (European Commission, July 2012).

The Treasury (Australia) *Benchmarks for Industry-based Customer Dispute Resolution: Principles and Purpose* (February 2015).

Working Party on Carriage of Goods *Report on the Carriage of Goods Bill 1977* (14 November 1978).

### **G Internet resources**

Air Canada “International Tariff” (3 August 2023) <[www.aircanada.com](http://www.aircanada.com)>.

Air New Zealand “Our Conditions of Carriage” (7 December 2022) <[www.airnewzealand.co.nz](http://www.airnewzealand.co.nz)>.

AirHelp “Price list” (5 June 2023) <[www.airhelp.com](http://www.airhelp.com)>.

Australian Competition and Consumer Commission “Flight delays and cancellations” (1 May 2023) <[www.accc.gov.au](http://www.accc.gov.au)>.

Canadian Transportation Agency “Air Travel Complaints” Air Passenger Protection <[www.rppa-appr.ca](http://www.rppa-appr.ca)>.

Canadian Transportation Agency “Processes for Air Travel Complaints” <[www.otc-cta.gc.ca](http://www.otc-cta.gc.ca)>.

Bastion Shine and Air New Zealand “We Fly For You” (July 2021) <[www.bastionshine.co.nz](http://www.bastionshine.co.nz)>.

Emirates “Conditions of Carriage for Passengers and Baggage” (28 December 2019) <[www.emirates.com](http://www.emirates.com)>.

Fiji Airways “International and domestic tariff” (20 April 2023) <[www.fijiairways.com](http://www.fijiairways.com)>.

Sophia Harris “WestJet launches legal battle to overturn order to compensate passenger \$1,000” (23 August 2022) CBC/Radio-Canada <[www.cbc.ca](http://www.cbc.ca)>.

Jetstar “Conditions of Carriage” (April 2022) <[www.jetstar.com/au](http://www.jetstar.com/au)>.

Federico Magrin “Aviation bill fails to protect passengers’ rights when ‘shirked’ around by airlines” (24 February 2023) Stuff <[www.stuff.co.nz](http://www.stuff.co.nz)>.

Darren Major “Air passengers losing patience with enforcement agency as backlog of complaints balloons” (15 August 2022) CBC/Radio-Canada <[www.cbc.ca](http://www.cbc.ca)>.

Raisa Patel and Ashley Burke “Canadian Transportation Agency overwhelmed by 2-year backlog of air passenger complaints” (31 May 2020) CBC/Radio-Canada <[www.cbc.ca](http://www.cbc.ca)>.

George Petsikas “Reconciling Airline Passenger Rights and Flight Safety: Will Canada Pick Up the Ball Dropped by the EU?” (11 November 2022) Institute of Air and Space Law, McGill University <[www.mcgill.ca](http://www.mcgill.ca)>.

Tom Pullar-Strecker “Jetstar was warned last year by Commerce Commission of possible law breach” (14 October 2022) Stuff <[www.stuff.co.nz](http://www.stuff.co.nz)>.

Qantas “Conditions of Carriage” (25 May 2022) <[www.qantas.com/au](http://www.qantas.com/au)>.

Singapore Airlines “Conditions of Carriage” (1 September 2021) <[www.singaporeair.com](http://www.singaporeair.com)>.

Esther Taunton “Air NZ 'confident' about flight credit process as Qantas faces legal action” (23 August 2023) Stuff <[www.stuff.co.nz](http://www.stuff.co.nz)>.

Drew Tyler “It is time to rewrite Canada’s confusing Air Passenger Protection Regulations” (29 September 2022) Lexology <[www.lexology.com](http://www.lexology.com)>.

Drew Tyler, Greg Landry and Kahina Haroune “When is a delay really ‘required for safety purposes’?: A review of the Canadian Transportation Agency’s Decision No. 20-C-A-2023” (3 March 2023) Lexology <[www.lexology.com](http://www.lexology.com)>.

Utilities Disputes Limited “The General and Scheme rules for the Energy Complaints Scheme operated by Utilities Disputes Limited” (1 April 2019) <[www.udl.co.nz](http://www.udl.co.nz)>.

United Airlines “Contract of Carriage Document” (16 June 2023) <[www.united.com](http://www.united.com)>.

Virgin Australia “Guest Compensation Policy” <[www.virginaustralia.com](http://www.virginaustralia.com)>.

### ***H Other resources***

Air New Zealand “Submission to the Ministry of Transport on the Civil Aviation Act 1990 and Airport Authorities Act 1966 Review” (31 October 2014).

Email from Air New Zealand Public Affairs to the author regarding its treatment of delayed baggage (20 May 2023).

Board of Airline Representatives New Zealand “Submission to the Ministry of Transport on the Civil Aviation Act 1990 and Airport Authorities Act 1966 Review” (29 October 2014).

Board of Airline Representatives New Zealand “Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft” (22 July 2019).

Air New Zealand “Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft” (2019).

Gerry Brownlee “Civil Aviation Act review underway” (press release, 5 July 2013).

Letter from Pete Buttigieg (Secretary of Transportation, United States) to Robert Jordan (Chief Executive Officer, Southwest Airlines) regarding severe disruption to flight schedules over the Christmas holiday and New Year period (29 December 2022).

Consumer NZ “Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft” (1 July 2019).

Ethan Griffiths “Secret court cases kept from public” *Herald on Sunday* (New Zealand, 7 May 2023) at 26.

Dan Milmo “Ryanair adds €2 levy to cover EU rules on compensation” *The Guardian* (online ed, 31 March 2011).

Email from E Ngatai (Deputy Registrar, District Court of New Zealand) to the author regarding access to previous Disputes Tribunal decisions (3 April 2023).

Qantas Group “Submission to the Ministry of Transport on the Civil Aviation Act 1990 and Airport Authorities Act 1966 Review” (2014).

Qantas Group “Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft” (22 July 2019).

Anna Tims “Beware firms trying to take a cut of your flight delay claim... you can do it for free” *The Guardian* (online ed, 28 October 2018).

Utilities Disputes Board “Submission to the Ministry of Transport on the Civil Aviation Bill exposure draft” (22 July 2019).

“39th Parliament - Statutes Revision Committee - Bills - Public Bills - Carriage of Goods [Session 1]” Archives New Zealand, R316848 (box 35).