

# New Rule – Trustees’ special powers during an emergency

Discussion Document

8 September 2020

Confidential to members of the New Zealand Pilots Mutual Benefit Fund

---

Over the last 6 months or so the aviation industry has been in uncharted waters. Every part of our industry has been affected, and the Pilots MBF is no different. The trustees recognised from the earliest days of the pandemic that the rules are not fit for purpose when dealing with such a catastrophic event.

Our rules predominantly date from the early 1970s and while we have changed the rules around entitlements and re introduced concepts like classified condition, we have not addressed the way the Fund can be managed in a crisis simply because there appeared to be no need for this. In any event, reality has caused us to confront how the present rule set impacts the trustees’ ability to manage the Fund in such challenging times.

To that end, we asked our independent trustee, Penelope Ryder Lewis, to open discussions with Hugh Rennie QC, barrister, to establish the outline of what an emergency rule set could look like. From that initial draft the trustees and Mr Rennie have been developing the emergency rule changes that are now provided to members for their consideration and perspective.

---

There are a couple of points that have become clear to the trustees as we worked through those initial stressful days of Level 4.

The trustees have traditionally thought that pressure through a large number of capital benefit pay-outs would be the significant event that would put the Fund under real stress.

However, it has become evident that any event significant enough to cause deaths on a large scale will be dealt with very swiftly by any Government in the

future. New Zealand has a tested strategy now for pandemics, and that is the closing of our borders as quickly as we are able. We think that this plan will protect the majority of pilots, since within a very short period of time flying would cease.

However, that plan has huge consequences for pilots.

What could cause the Fund to consider its future is the collapse of the industry around us as aviation ceases around the world. Would our employers act in the same way now, having seen the effect of this pandemic on our industry? Would they be more likely to move quickly to restructure their business after living through COVID? How would they change their game plan for the next event? Will the government of the day provide the same support for the industry and for Air New Zealand that we have had twice now? Successive Labour governments have seen fit to salvage Air New Zealand from bankruptcy and now from a pandemic, and support our unionised contracts while doing so. Can we expect to be so lucky a third time? Certainly, we must plan for the worst-case events and not just hope for the best.

And so, it has become clear that what has the real potential to undermine the MBF is an industry wide restructure and the associated loss of jobs, income, and a materially weaker Union as wholesale redundancy occurs. Without income the Fund has to confront the issue of remaining a going concern. The trustees must act responsibly and within the rules. We must comply with the law and we must also act in the best interest of the members.

---

That brings us to the proposed emergency rule set. Your trustees see it as a way to give them a fighting chance to manage the next event to catch us all out, whatever that is. The rules around what would be an emergency state and hence when the emergency state rules would come into play are clearly defined. They cover pandemics, financial crisis's, war and the unimaginable events we are living through now.

The special powers that the trustees could exercise during an emergency state are listed in rule X(f). As you will see from rule X(a), those special powers include (but aren't limited to) the power to make changes to disability benefits.

As we are today, these rules could not be used. In the initial few weeks of level 4 the trustees could have used them, had they seen the need.

We think the guidelines around the implementation of the rules are clear and certain pre-conditions must be met. Making sure that the rules can only be used when there is a very clear and real threat and that members have the right to question the use of them is essential.

We are releasing the draft rule set prior to the AGM so that all members can consider them and their implications. We hope and expect that many of you will have an opinion on this potential change and we look forward to hearing your thoughts in writing and in discussion during General Business at the AGM.

After the AGM, the trustees will take time to consider member's thoughts and will then decide whether or not to promote a rule change and, if so, whether any changes are needed to the draft rules set sent to you today.

In these unusual times the trustees fully support this rule change, and believe it will allow future trustees to better manage the Fund when the next unimaginable event becomes reality.