The Senate

Rural and Regional Affairs and Transport Legislation Committee

Provisions of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003

June 2004

ISBN 0 642 71406 1

This document was prepared by the Senate Rural and Regional Affairs and Transport Legislation Committee, and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

Membership of the Committee

Members

Senator the Hon. Bill Heffernan	LP, New South Wales	Chair
Senator Geoffrey Buckland	ALP, South Australia	Deputy Chair
Senator John Cherry	AD, Queensland	
Senator Richard Colbeck	LP, Tasmania	
Senator Jeannie Ferris	LP, South Australia	
Senator Kerry O'Brien	ALP, Tasmania	

Participating Members

Senator Abetz	Senator Ferguson	Senator McLucas
Senator Bishop	Senator Harradine	Senator Murphy
Senator Boswell	Senator Harris	Senator Payne
Senator Brown	Senator Hutchins	Senator Ray
Senator Carr	Senator Knowles	Senator Santoro
Senator Chapman	Senator Lightfoot	Senator Stephens
Senator Coonan	Senator Mason	Senator Tchen
Senator Eggleston	Senator S MacDonald	Senator Tierney
Senator Evans	Senator Mackay	Senator Watson
Senator Faulkner	Senator McGauran	

Senator Allison for matters relating to the Transport portfolio
Senator Greig for matters relating to the Fisheries portfolio
Senator Lees for matters relating to air safety

Committee Secretariat

Ms Maureen Weeks, Secretary
Mr Andrew Bomm, Research Officer
Ms Rosalind McMahon, Executive Assistant

Parliament House, Canberra
Telephone: (02) 6277 3511
Facsimile (02) 6277 5811

Internet: www.aph.gov.au/senate
Email: rrat.sen@aph.gov.au

TABLE OF CONTENTS

Chapter 1

Conduct of the inquiry

1.1 The Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003 (the bill) was introduced into the House of Representatives on 25 June 2003. The bill has not yet been introduced to the Senate. On 10 March 2004 the bill was referred for inquiry to the Rural and Regional Affairs and Transport Committee on the recommendation of the Senate Selection of Bills Committee.

1.2 The Committee advertised the inquiry in *The Australian* on 24 March 2004.

1.3 The Committee also held a public hearing in Canberra on 12 May 2004.

1.4 The Committee received 9 submissions and heard evidence from 5 organisations and an individual. All the Committee's evidence is available on the parliament's homepage at http://www.aph.gov.au

Purpose of the bill

1.5 The bill amends the *Civil Aviation Act 1988* (the Act) to permit the mutual recognition of certain aviation-related safety certification between Australia and New Zealand. This would negate existing legislative requirements whereby aircraft operators operating in both Australia and New Zealand must comply with both countries' regulatory frameworks for aviation safety. The bill will allow Australia's Civil Aviation and Safety Authority (CASA) to recognise New Zealand safety certification issued by their regulator, the Civil Aviation Authority of New Zealand (CAANZ).

1.6 On 18 March 2004, the New Zealand parliament passed equivalent legislation to allow CAANZ to recognise CASA safety certification.[1]

1.7 This bill reflects one aspect of a broader process towards developing a single Australia-New Zealand aviation market. It follows the Australian and New Zealand governments' signing of Single Aviation Market (SAM) Arrangements in 1996 and an 'open skies' Air Services Agreement (ASA) in August 2002, which came into effect in August 2003.[2]

1.8 Mutual recognition of safety certification is one element of both agreements. Under current legislation, however, aircraft operators operating in both countries need

---

1 Department of Transport and Regional Services, Submission 1, p. 1

2 Department of the Parliamentary Library, Bills Digest No. 61 2003-04, p. 2

to hold and comply with two AOCs, issued by CASA and CAANZ. According to the Explanatory Memorandum:

> This results in duplication, complexity, and added administrative and financial burdens on operators which may in turn deter operators from establishing air services in the other country. This is inconsistent with the intention of the 'open skies' Air Services Agreement to promote competition among Australian and New Zealand operators, including on domestic routes.[3]

1.9 The first of the safety certifications to be mutually recognised will be Air Operator Certificates (AOCs) for the operation of aircraft of more than 30 seats or 15,000 kilograms. Under the provisions of the Act, CASA issues AOCs to airlines and aviation companies as certification that they are able to safely and competently provide flight services.[4]

1.10 Under the new legislative arrangements, CASA will be able to approve what will be termed an AOC with Australia and New Zealand aviation (ANZA) privileges.[5] From an Australian regulatory perspective, this will allow CASA to approve AOCs for Australian operators that will authorise operations in both countries and be accepted for use by CAANZ.

1.11 The regulator able to issue a particular AOC with ANZA privileges will be the one most effectively able to regulate the operator's activities, almost always the operator's home regulator. However, holders of an Australian AOC with ANZA privileges will be monitored by CASA even when operating in New Zealand. Conversely, New Zealand AOC holders with ANZA privileges will be monitored by CAANZ when flying in Australia. This potentially includes the operations of Air New Zealand and the Qantas subsidiary Jet Connect currently operating in New Zealand.

Provisions of the bill

Schedule 1

Scope of the bill

1.12 Item 2 defines ANZA activities in Australian territory essentially as flights in and out of Australia authorised by a CAANZ issued AOC. Item 3 provides for the reverse of Item 2.[6]

---

3 Explanatory Memorandum, p. 7

4 The Hon Wilson Tuckey, House of Representatives *Debates* 25 June 2003 p. 17422

5 The Hon Wilson Tuckey, House of Representatives *Debates* 25 June 2003 p. 17422

6 Department of the Parliamentary Library, Bills Digest No. 61 2003-04, p. 6

1.13 Items 2 and 3 leave open the opportunity for other forms of safety certification to be recognised. Introducing the bill to the parliament, the Minister for Regional Services, Territories and Local Government stated that:

> … other safety features not already covered by other mutual recognition arrangements may be brought under the umbrella of mutual recognition in the future. For example, it may be possible in the future for there to be mutual recognition of aircraft maintenance organisation certificates.[7]

1.14 Due to the regulation-making power inserted by item 35, mutual recognition may be extended to other safety certificates without further legislative amendment.[8]

Applicable regulator

1.15 Item 24 inserts new subsections 27(2AA)-(2AC). Subsection 27(2AA) stipulates that CASA may only issue an AOC with ANZA privileges if the AOC also authorises flights in and out of Australia. This effectively prevents an airline's mutual recognition arrangements being regulated by a body operating in a country where airline activities are not being conducted.[9]

Stop notices

1.16 Item 31 inserts new sections 28C-28F. 28D pertains to the issuing of stop notices to the holder of a New Zealand AOC with ANZA privileges, with the effect of requiring the cessation of any or all ANZA activities in Australia covered by the AOC. This power may only be used if the CASA director deems that the activity or activities in question 'constitutes a serious risk to aviation safety in Australian Territory'.[10]

Schedule 2

1.17 This contains amendments to the Act, generally correcting errors and standardising references to foreign registered aircraft, as well as bringing into the Act the condition that CASA must continue to be satisfied of certain matters (provided for in section 28) before issuing an AOC.[11]

---

7 The Hon Wilson Tuckey, House of Representatives *Debates* 25 June 2003 p. 17422

8 Department of the Parliamentary Library, Bills Digest No. 61 2003-04, p. 4

9 Department of the Parliamentary Library, Bills Digest No. 61 2003-04, p. 8

10 Department of the Parliamentary Library, Bills Digest No. 61 2003-04, p. 11

11 Explanatory Memorandum, pp. 34-35

Acknowledgments

1.18 The Committee appreciates the time and work of all those who provided oral and written submissions to the inquiry. Their work has assisted the Committee considerably in its inquiry.

Chapter 2

Issues

Efficiency benefits of mutual recognition

2.1 Both the government and Qantas have place on record their belief the primary benefit of mutual recognition is the improved efficiency derived from allowing airlines operating in both Australia and New Zealand to operate under one AOC rather than two. The Department Transport and Regional Services (DOTARS) submitted that:

> This results in duplication, complexity and added administrative and financial burdens on operators.[1]

2.2 Qantas, which operates in excess of 200 trans-Tasman flights each week and a domestic service in NZ through its subsidiary Jet Connect,[2] strongly supported the bill on the basis of administrative efficiency. In evidence to the Committee they outlined the administrative burden associated with the current arrangement of separate AOCs:

> We are required to maintain an Australian AOC and a New Zealand AOC. ... when it is due for renewal it requires a considerable amount of work in the office. Not only that, whenever we have a change to any of our fleets, organisational structure or anything substantial within the airline, we are required to submit amendments and changes to the AOC ... .[3]

2.3 They further provided an example of the impact on the efficiency of Qantas' operations in Australia and New Zealand under two AOCs. With regard to Jet Connect, Captain Murray Warfield stated that:

> One of the options that was explored was being able to transfer aircraft from New Zealand back to Australia for maintenance, thereby having a turnover and being able to keep the sector length averaged out, or whatever the engineers desired in their maintenance program. One of the major issues was that, each time we would have to do that, the aircraft would need to be removed from the Australian register and put onto the New Zealand register, and a number of minor engineering changes would need to be made. One of these was as ridiculous as repainting the registration number on the aircraft. We looked at it; it would have grounded the aircraft for a week. However, with mutual recognition we could operate the aircraft to, say, Melbourne or Sydney—wherever the maintenance facility is—swap another aircraft over, continue the operation and maintain our efficiency.[4]

---

1 Department of Transport and Regional Services, Submission 1, p. 1

2 Qantas, Submission 3, p. 1

3 Transcript of Evidence, May 12 2004, p. 9

4 Transcript of Evidence, May 12 2004, p. 10

2.4 Virgin Blue also advocated the efficiency benefits associated with mutual recognition. They included the prospect of swapping long and short haul aircraft to "achieve maintenance efficiencies". In their submission to this inquiry they also stated that:

> ... fleet flexibility where aircraft may be introduced from different regions to cope with changing demand also presents commercial advantages on both sides of the Tasman.[5]

2.5 However, Virgin's submission also outlined three regulatory differences between the two systems that offset "the ultimate aim of reducing complexity and removing administrative and operational burdens on operators in Australia and New Zealand".[6] These are:

- Different warnings for a low oxygen situation;
- Different approval regimes for Low Visibility Operations and ETOPS (Extended Twin Engine Operations) and;
- The management of flight and duty times.[7]

These concerns relate to the potential for the future harmonisation of Australia and New Zealand's aviation regulations, as discussed below.

Harmonisation

2.6 The Committee notes that this bill does not seek to harmonise the regulatory framework within which Australian and New Zealand airlines operate. The premise of the bill is essentially that Australia and New Zealand oversee comparably safe aviation operations, and the specific differences between their respective regulatory systems will not detract from the benefits of mutual recognition. Against the potential for harmonising safety standards, it was determined that mutual recognition was a more effective and safe means by which to give effect to the bilateral agreements referred to in Chapter 1.[8]

2.7 In this context, DOTARS outlined the conclusions from the regulatory review process preceding the proposed adoption of mutual recognition:

> … CASA and CAANZ determined that the safest outcome would be achieved by maintaining each country's operating systems intact and not attempting to mix the two. The reason for this is that the intricacies and complexities of any given regulation or rule are interdependent on other regulations or rules, legislation of the home country, established protocols

5 Virgin Blue Airlines Pty Limited, Submission 9, p. 1

6 Virgin Blue Airlines Pty Limited, Submission 9, p. 2

7 Virgin Blue Airlines Pty Limited, Submission 9, p. 2

8 Department of Transport and Regional Services, Submission 1, p. 3

> etc. The safety outcome would thus be enhanced by leaving intact the whole suite of operating regulations/rules on each side.[9]

2.8 However, in evidence to the Committee, CAANZ indicated that harmonisation might be a likely consequence of mutual recognition:

> … once mutual recognition is in place—or even as a result of the process of going through it, with each country therefore having the opportunity to examine the other country's requirements—inevitably there will be opportunities for harmonisation of detailed standards in certain areas. That is beneficial. What we are really saying about the scheme is that we did not set out with the object of harmonising the requirements, but it is likely to be an ultimate benefit that would flow from it in the longer term.[10]

2.9 However, the DOTARS refuted this notion; indicating to the Committee that reform in this area involved a distinct choice between the options of mutual recognition *or* harmonisation. The Department stressed that in no way was the former intended as a precursor to the latter:

> From the outset, we were asked to look at mutual recognition of licences, not the regulations. We never set out to harmonise the regulations.[11]

2.10 The Committee is concerned by the inconsistency in the positions articulated by the Australian and New Zealand regulators. It notes the comments made in evidence by independent specialist Mr Guy McLean, that "harmonisation has proved very problematic throughout Europe."[12]

2.11 Virgin Blue supported the harmonisation of regulations insofar as "key variances identified by CASA and CAA[NZ], be addressed and agreed by the two regulators so that the one standard applies".[13]

Impact on regulatory workload

2.12 Despite the potential administrative relief for Qantas and other airlines operating in both countries, evidence concerning the impact on the workload of each regulatory body was less clear. Whether significant changes in this regard eventuate largely depends on the airlines' decisions as to where AOCs are held, within the legislative limits set by the two countries.

2.13 Under mutual recognition, CASA will be responsible for the regulatory oversight of Australian AOC holders, regardless of whether they are operating in Australia or New Zealand. Conversely, CAANZ will be responsible for overseeing

---

9 Department of Transport and Regional Services, Submission 1, p. 3

10 Transcript of Evidence, 12 May 2004, p. 6

11 Transcript of Evidence, 12 May 2004, p. 24

12 Transcript of Evidence, 12 May 2004, p 33

13 Virgin Blue Airlines Pty Limited, Submission 9, p. 2

NZ AOC holders operating in both countries. The logical upshot of this arrangement is that any net shift of AOCs to either Australia or New Zealand would place an increased workload on CASA or CAANZ respectively.

2.14 The question of where airlines choose to hold an AOC and the possibility for a net shift from one AOC to another is discussed in further detail below.

2.15 In evidence to the Committee, DOTARS indicated that while mutual recognition would necessitate both CASA and CAANZ conducting surveillance in the other country, CASA already monitored Australian operators in New Zealand. Accordingly, "it would not be a huge impost"[14].

Relative safety standards

2.16 Given the acceptance of each country's different regulatory standards through mutual recognition, the impact on the safety of Australia's aviation environment was canvassed during the inquiry. The two countries have the capacity to meet international safety standard benchmarks – is there therefore a comparable level of aviation safety?

2.17 The government rejected the prospect of Australian safety standards being diminished. Introducing the bill in the House of Representatives, the Minister stated:

> With regard to safety, careful consideration has been given to the issue of whether safety would be compromised by the adoption of mutual recognition. It has been concluded that it will not, because it has been recognised and accepted that Australia and New Zealand have safety standards that are each consistent with international best practice for airline operations using large capacity aircraft.[15]

2.18 In their submission to this inquiry, DOTARS also emphasised the equivalent safety outcomes between Australia and New Zealand, rather than homogeneity of regulatory standards:

> Mutual recognition is based on an acceptance by both countries that the aviation safety systems of Australia and New Zealand provide equivalent safety outcomes even though specific standards are sometimes different. This position is fundamental to the acceptance by both CASA and CAANZ that aviation safety will not in any way be diminished under mutual recognition.[16]

2.19 As evidence for the assertion that safety standards would not be diminished under mutual recognition, the DOTARS noted in their submission that both countries

---

14 Transcript of Evidence, 12 May 2004, p 28.

15 The Hon Wilson Tuckey, House of Representatives *Debates* 25 June 2003 p. 17422

16 Department of Transport and Regional Services, Submission 1, p.2

had consistently met International Civil Aviation Organisation (ICAO) safety standards through the ICAO's audit process.[17]

2.20 In contrast, other aviation organisations highlighted a distinction between the two countries' ability to meet ICAO minimum standards, and the direct comparability of their safety standards. For example, the Australian and International Pilots Association (AIPA) argued that:

> New Zealand's aviation safety system may well comply with the standards required by ICAO and still offer a lesser standard of aviation safety that Australia's system. … compliance with ICAO standards represents the minimum level of aviation safety, not the desirable level.[18]

2.21 Similarly, Guy MacLean stated that:

> … compliance with ICAO benchmark standards does not comparatively rank the Australian and New Zealand aviation systems against each other. Rather, such audit findings only indicate that both systems meet or exceed a minimum required ICAO standard.[19]

2.22 AIPA further contended that an equivalent safety standards could only be asserted with empirical evidence:

> AIPA believes that a detailed analysis of each jurisdiction's aviation safety record is essential if any proper comparison of those systems is to take place. AIPA does not understand how it can be asserted that the two systems offer equivalent safety standards without a detailed examination.[20]

Potential safety concerns arising from different regulatory standards

2.23 While the Committee generally accepts the notion that Australia and New Zealand presently generate "comparable safety outcomes",[21] there are nonetheless differences between the two countries' regulatory systems. Noted by the Selection of Bills Committee in referring the bill to this Committee, these relate to:

- the existing situation whereby New Zealand AOCs do not permit sky marshals on aeroplanes and,
- the required ratios of flight attendants to passengers; 36:1 in Australia and 50:1 (stipulated as passengers to seats) in New Zealand.[22]

---

17 Department of Transport and Regional Services, Submission 1, p. 2

18 Australian and International Pilots Association, Submission 7, p. 3

19 Mr Guy McLean, Submission 8, p. 3

20 Australian and International Pilots Association, Submission 7, p. 3

21 Department of Transport and Regional Services, Submission 1, p. 1

22 The Committee notes that the cabin crew to passenger ratio in New Zealand is in fact 1:50 *seats*, not *passengers*.

2.24 In highlighting the consequences of recognising CAANZ issued AOCs, a press release from the Shadow Minister for Transport and Infrastructure argued that:

> The Bill is based on the flawed assumption that Australia and New Zealand have the same level of safety and risk in aviation operations. …
>
> The Bill would allow New Zealand registered operations to compete directly in Australia with lower New Zealand standards, such as fewer cabin crew on each flight and no armed security officers on board.[23]

These two issues were prominent in submissions and evidence to the Committee and merit further analysis.

Cabin crew ratios

2.25 The issue of cabin crew ratios was discussed widely in submissions and evidence to the Committee. Presently, CASA requires one cabin crew member per 36 passengers, while CAANZ has established a ratio of one per every 50 seats.

2.26 In relation to the lower ratio required to be met by New Zealand operators, the DOTARS stated that:

> The CAANZ has the ability to require an airline to carry more cabin crew if it considers this to be appropriate.[24]

2.27 The Committee also notes CASA's recent determination that part 121A of the civil aviation regulations continue to stipulate the existing 1:36 ratio.[25]

2.28 A number of submissions argued that the lower ratio stipulated in New Zealand has significant implications for flight safety, both in terms of security and in the event of an accident.[26] The premise of this position is the assumption that the greater number of cabin crew present on flights, the greater the prospect of ensuring the safety of passengers, by virtue of having more resources to draw on in an emergency situation.

2.29 The Committee notes, however, the difficulty in reaching empirically sound conclusions as to the different outcomes associated with one regime or the other in the event of an accident or security incident, as these events are by their nature different on every occasion.

2.30 Further to the safety aspect of cabin crew ratios, the Flight Attendants Association of Australia's (FAAA) submission included an observation about the possible dual impact of the New Zealand standard, stating that:

---

23 Martin Ferguson MP, Press Release, 9 September 2003

24 Department of Transport and Regional Services, Submission 1, p. 5

25 Transcript of Evidence, 12 May 2004, p. 26

26 See for example submissions 2 and 8

> … it would provide a competitive advantage to airlines operating with an AOC issued by CAANZ. This in turn would result in the loss of the existing level playing field with respect to minimum crewing levels.
>
> Because of the above competitive pressures it is highly likely that Australian operators will seek to address the issue of imbalance, by vigorously lobbying CASA and the Government to reduce operational safety standards applying to Australian registered aircraft. Further the proposed bill provides an economic incentive to register aircraft in New Zealand as opposed to Australian registration of aircraft.[27]

2.31 In evidence to the Committee, the FAAA also emphasised the salience of low cost carriers on a possible reduction in crew numbers:

> With the low-cost carriers comes a significantly reduced service, so there will be significant commercial pressure to reduce the number of cabin crew on board the aircraft. One of our principal concerns is about the situation if New Zealand carriers were operating in Australia under AOC conditions: there could be capacity to reduce cabin crew numbers on the aircraft to a standard that would be a reduction in the safety standards that are currently enjoyed in the Australian market. We think that low-cost carriers in particular have capacity to influence those outcomes.[28]

2.32 The FAAA also highlighted the different pay and conditions available to Australian and NZ cabin crew:

> We are on an award, while flight attendants in New Zealand who have been hired and who are New Zealand based are on contract, so there is no award for New Zealand flight attendants. Their workload with regard to flying duties is significantly higher than ours and their rest periods are shorter than ours.[29]

2.33 In evidence to the Committee, CAANZ rejected the notion that New Zealand's cabin crew to passenger ratio reflected an inferior safety standard, particularly when judged against the ratio adopted in the US and Europe. New Zealand Ministry of Transport advisor Nigel Mouat stated that:

> We would note that the New Zealand requirement is more commonly adopted by other major states—the United States, for example—and I think it is the Australian requirement to have a higher ratio which is the one that is out of step, you might say.[30]

2.34 Virgin Blue concurred, supporting a change to Australian regulations:

---

27 Flight Attendants Association of Australia (International Division), Submission 2, p. 5

28 Transcript of Evidence, 12 May 2004, p. 18

29 Transcript of Evidence, 12 May 2004, p. 16

30 Transcript of Evidence, 12 May 2004, p. 5

> ... it appears the New Zealand ratio reflects the majority practice around the world and Virgin Blue would certainly be of the view that a move to the New Zealand ratio be considered as long as issues such as minimum crew per exits were considered.[31]

2.35 The Committee notes one important aspect of the varying cabin crew to passenger ratios that has implications for flights where a significant portion of seats are not filled. That is, the Australian regulations stipulate one cabin crew member for every 36 *passengers*, where New Zealand requires one for every 50 *seats*.[32] Whether or not Australian airlines currently reduce cabin crew numbers where fewer passengers are on board, the capacity for Australian airlines to carry as few crew members as NZ flights already exists in some instances.

2.36 Finally, during the inquiry the Committee learnt that there was general agreement that the minimum number of cabin crew is set by the aircraft manufacturer in stipulating crew numbers required for evacuation. The FAAA states that "it is basically one flight attendant per floor-level exit, as used during the emergency evacuation testing trials".[33] The standard set relates to aircraft evacuation rather than process and procedure. DOTARS informed the Committee that "It is then up to the countries to decide how many attendants they want on board that aircraft".[34]

Air marshals

2.37 In contrast to Australia, NZ does not presently allow the use of sky marshals on flights. However, the Explanatory Memorandum stated the following with respect to with overseas operators and their compliance with domestic laws and regulations:

> Notwithstanding mutual recognition, aircraft operators will still have to comply with rules of the air and certain laws of the country they are operating in, unless otherwise provided. Examples include laws relating to aviation security...[35]

2.38 The DOTARS offered the following assurances on the issue:

> New Zealand airlines operating to, from or within Australia using a New Zealand AOC with ANZA privileges will still have to hold an Australian aviation security programme; in addition, the airlines have their own security manual.
>
> As is presently the case for Australian domestic airlines, New Zealand airlines operating within Australia will be required to carry Aviation

---

31 Virgin Blue Airlines Pty Limited, Submission 9, p. 2

32 Transcript of Evidence, 12 May 2004, p. 25

33 Transcript of Evidence, 12 May 2004, p 18

34 Transcript of Evidence, 12 May 2004, p 25

35 Explanatory Memorandum, p. 7

Security Officers if they are assessed as falling within the 'risk based Aviation Security Officer allocation process'.[36]

2.39 Given Australia's present capacity in regards to air marshals, the Committee does not consider this issue to be materially significant when considering the passage of this Bill.

Regulation from abroad

2.40 One of the principal concerns raised during this inquiry was the capacity of airlines to operate domestically in Australia on a regular basis while remaining on a New Zealand AOC. It was hypothesised that mutual recognition would be open to manipulation by airlines, principally in order to service the more lucrative Australian domestic routes while operating under New Zealand regulations with lower cost burdens.

2.41 Nonetheless, CAANZ provided this assurance in evidence to the Committee: following consultation between the two regulatory authorities and the relevant operator, an AOC would shift from NZ to Australian regulatory control if the airline's "centre of gravity" had sufficiently shifted, as measured against criteria outlined in the New Zealand Act.[37]

2.42 According to DOTARS, the New Zealand legislation reflects the Australia-New Zealand Air Services Agreement in establishing the criteria for deciding whether CAANZ is the appropriate aviation authority to issue and regulate an AOC with ANZA privileges. This agreement, requiring the consent of both governments to be amended, stipulates that CAANZ consider the following aspects of an AOC (or potential) holder's operation:

- Whether the airline's supervision of safety systems will be principally undertaken from or within New Zealand;
- Whether the airline's training and supervision of employees involved in those systems will be undertaken principally from or within New Zealand;
- Whether the majority of the resources used in those systems will be situated from or within New Zealand;
- Whether the persons who will control the operations will spend the majority of their time in New Zealand; and
- Where an aviation authority believes that an airline's situation has changed, and that it is no longer the aviation authority best able to oversee the airline's

36 Department of Transport and Regional Services, Submission 1, p. 5

37 Transcript of Evidence, 12 May 2004, p. 4

operations, transfer of responsibility for the airline to the other aviation authority will be negotiated.[38]

2.43 Conversely, section 28B(1)(d), sub paragraphs (i)-(iv) of the bill specifies these same criteria that must be met in determining whether CASA is the appropriate regulatory authority in relation to any given AOC.[39]

2.44 Should the bill be passed, the criteria established in both the New Zealand and Australian legislation would not enable Qantas to simply re-register its AOC in New Zealand while retaining the majority of its operations, resources, management systems and employee training in Australia. However, the Committee notes that these legislative measures would not prevent a Qantas subsidiary based in New Zealand from operating domestic services within Australia.

2.45 The fine distinction between the operations of airlines and their subsidiaries was noted by CAANZ:

> … should either an Australian or New Zealand airline operating in the other country effectively become so large that the majority of its business is in the other country, it would be appropriate for the safety regulators to decide that that airline should be certificated in the other country's system because it has effectively changed its domicile. The situation that has arisen with Jet Connect and Pacific Blue is that the Australian airlines have elected to enter the New Zealand market, in terms of the air services agreement, by establishing a domestic subsidiary and having that operate under New Zealand certification. They are slightly different propositions.[40]

2.46 The Australian Federation of Air Pilots noted the legislative criteria outlining the appropriate regulatory authority, but commented that:

> Absent from the list is whether the majority of flying operations is undertaken from or within Australian territory.
>
> [The Bill] does not take into consideration the "fluid" nature of aviation. For example, Air New Zealand may quite reasonably seek ANZA privileges on its New Zealand AOC but later perform the majority of its flying within and out of Australia, whilst still meeting all of the criteria stipulated in the first area clause.[41]

2.47 Further, the issue of confusion amongst the flying public was also a concern for the Australian Federation of Air Pilots:

> It is likely that the Australian travelling public will believe that any aircraft flying within Australia will be operating to Australian law and regulated by

38 Department of Transport and Regional Services, Submission 1A, Attachment A.

39 Transcript of Evidence, 12 May 2004, p. 30

40 Transcript of Evidence, 12 May 2004, p. 7

41 Australian Federation of Air Pilots, Submission 6, p. 3

> the Australian air safety framework. They would be surprised to be told to direct their safety enquiry or complaint regarding an Australian domestic flight to CAANZ.[42]

2.48 Despite concerns that Australian operators may seek to shift to New Zealand AOC's through the use of subsidiaries, Captain Murray Warfield dismissed the idea of the Jet Connect subsidiary flying Australian domestic routes:

> As I understand it, there are absolutely no plans, or even dreams, to have Jet Connect operating domestically in Australia.[43]

2.49 However, Virgin Blue in its submission suggests that carriers, particularly those who currently do not hold an AOC with either country, may take "an opportunistic approach consisting of (in its most crude form) a race towards the cheapest regulatory option"[44]. The suggestion was that this would be to register in New Zealand.

Maintenance

2.50 One barrier to the potential scenario of NZ AOC holders operating extensively within the Australian domestic aviation market is that of maintenance certification. Presently, any Australian subsidiary operating out of New Zealand would be required to comply with New Zealand regulatory standards with regard to maintenance. This effectively means that planes would be required to return to New Zealand periodically in order to meet CAANZ maintenance standards, with no capacity for maintenance undertaken to CAANZ standards to occur in Australia.

2.51 The Committee notes, however, that the government has flagged maintenance certification as a possible area for mutual recognition with NZ in the future. Furthermore, such a change would only require regulatory, rather than legislative, change to come into force.

Committee Comment

2.52 The Committee notes that the bill represents another step in the practical implementation of the Single Aviation Market Arrangements and the 'open skies' Air Services Agreement between the Australian and New Zealand governments. These Arrangements and Agreement have a single Australia-New Zealand aviation market as a goal. The bill not only provides for the recognition of Air Operator Certificates for aircraft with over 30 seats or that are greater than 15,000 kilograms but also establishes a statutory framework for recognition of other safety certificates without further legislative amendment.

---

42 Australian Federation of Air Pilots, Submission 6, pp. 4-5

43 Transcript of Evidence, 12 May 2004, p. 13

44 Virgin Blue Airlines Pty Limited, Submission 9, p. 2

2.53 During the inquiry a number of issues were canvassed. The majority of the issues were clarified during the inquiry and the Committee has no further comment. However, the Committee makes some final comment in relation to the most significant of these issues – matters of security, safety or the competitiveness of the Australian industry.

2.54 Evidence provided to the Committee satisfied concerns on those issues of security such as the presence of air marshals aboard on internal flights in Australia. It is clear that any operator in Australia, regardless of whether its AOC has been issued in Australia or New Zealand, will "be subject to Australia's aviation security requirements".[45]

2.55 The safety issues, particularly as it relates to cabin crew numbers continues to concern the Committee. It notes that both Australian and New Zealand safety programs meet those required internationally (the ICAO standards) and that attendant numbers are one aspect of the safety program. It appreciates that as one aspect of the two countries programs the two requirements are not comparable. It also accepts that both countries have determined the cabin crew levels with regard to the manufacturers' minimum requirements for evacuation.

2.56 The Committee also notes that the analysis of the safety aspects of the two countries' regulations focused largely on equipment and procedures. This assessment found that these were "very similar because we have the same end in sight. We use similar aircraft".[46] The Committee acknowledges the argument that the two systems result in similar safety outcomes.

2.57 However, the Committee accepts that view put by the AIPA that a detailed analysis of the aviation records is essential to a proper comparison. In relation to cabin crew involvement in in-flight safety issues, the Committee notes that DOTARS, in evidence, stated that:

> When we analyse the incidents, we tend to find that there is a relatively small number of incidents. They tend to be dealt with by one or two crew acting together simply because of the confines of the aircraft. In talking to people developing ASO programs and other things, there is a limit in the cabin of the aircraft as to how many people you can have dealing with incidents. It usually turns on one or two people confronting an individual intent on getting to the front of the aircraft, as in the case of flight 1737. We tend to focus on the capability of those people, so the emphasis is on training with the airlines and so on.[47]

2.58 The Committee also accepts without empirical evidence it can be also be argued the assertion that Australia may be accepting a lower safety standard in a New

---

45 Transcript of Evidence, 12 May 2004, p 27

46 Transcript of Evidence, 12 May 2004, p 24

47 Transcript of Evidence, 12 May 2004, p 26

Zealand AOC cannot be justified. While the Committee has not been provided with any tangible evidence of the New Zealand operators having a lower safety record, it does acknowledge its responsibilities to the flying public in Australia. It therefore believes that the safety records in both countries should be examined. Noting that the co-operation of CAANZ will be required, the Committee makes the following recommendation.

Recommendation 1

2.59 The Committee recommends that 12 months after the commencement of the mutual recognition of AOCs, CASA conduct a comparative assessment of the safety records of airlines operating in Australia under both Australian and New Zealand AOCs and report the findings to the Commonwealth Parliament within 18 months after the commencement of the operation of the mutual recognition of the ACOs.

2.60 The other matter of continuing concern to the Committee is the provision that enables mutual recognition to be extended without further legislative amendment. The Committee notes that a possible extension will be to maintenance certification. It has reservations about extending mutual recognition without proper parliamentary scrutiny. While there was no suggestion during the inquiry that the standard of maintenance undertaken in New Zealand was lower than that conducted in Australia, concern was expressed about the actual maintenance standards. The ALAEA suggested that an independent review by the Australian Transport Safety Bureau.

2.61 The Committee is of the view that such concerns should be addressed prior to extending mutual recognition and therefore makes the following recommendation.

Recommendation 2

2.62 The Committee recommends that the bill be amended by omitting item 35 from Schedule 1.

2.63 Finally the Committee notes that the two major airlines in Australia are supportive of the legislation, although Virgin Blue would like to see a move towards the harmonisation in the industry. The evidence provided to the Committee also indicates significant differences between the employment conditions in the two countries, particularly for cabin crew. Given the arguments for mutual recognition are based on administrative and cost reductions, the Committee would be disappointed to see the aviation industry in Australia use it as an opportunity to reduce the employment opportunities for Australian citizens.

Senator the Hon. Bill Heffernan
Chair

Appendix 1

List of Submissions

1. Department of Transport and Regional Services

1A Department of Transport and Regional Services

2. Flight Attendants Association of Australia (International Division)

3. Qantas Airways Limited

4. Australian Licensed Aircraft Engineers Association

5. Civil Aviation Authority of New Zealand

6. Australian Federation of Air Pilots

7. Australian and International Pilots Association

8. MacAviation

9. Virgin Blue Airlines Pty Limited

Appendix 2

Witnesses who appeared before the Committee at the public hearing

Wednesday, 12 May 2004
Parliament House, Canberra

Civil Aviation Authority New Zealand – via teleconference
Mr Steve Douglas, General Manager, Government Relations
Ms Leslie MacIntosh, Chief Legal Counsel
Mr Peter Davey, Manager Policy and International Relations
Mr Chris Lamain, Manager Airline Maintenance
Mr Nigel Mouat, Principal Adviser (Infrastructure and Services), Policy Group

Qantas Airways Ltd
Mr David Hawes, Head of Government and International Relations
Captain Murray Warfield, General Manger, Regulatory and Industry Affairs

Flight Attendants Association of Australia – International division
Mr Steven Reed, President, International Division
Mr Klaus Von Reth, Special Projects Officer for OH & S and Regulatory Affairs

Australian Licensed Aircraft Engineers Association
Mr Michael O'Rance, Federal President
Mr Kevin Dadge, Federal Executive Member
Mr Christopher Ryan, Industrial Manager

Department of Transport and Regional Services
Mr Martin Dolan, First Assistant Secretary Aviation and Airports Regulation
Mr Andrew Tongue, First Assistant Secretary, Office of Transport Security
Mr Arthur White, Acting Executive Manager, Aviation Safety Compliance Division
Ms Nicola Hinder, Acting, Executive Manager, Corporate Affairs
Mr Vince Sutherland, Acting Manager International Relations

Mr Guy Maclean (Private capacity)

Dissenting Report

Labor and Democrat Senators do not accept the findings of the review

The Government is proposing to introduce a new aviation regime but have not undertaken the research to justify change. They appear to have relied on hearsay information that there will be benefits with little costs.

No evidence was presented to the committee that quantified the benefits of this proposed amendment to the Civil Aviation Act. Both the Department of Transport and Regional Services and Qantas, when asked to quantify the perceived benefits were unable to do so.

Labor believes that the potential costs of the introduction of this legislation are considerable, but again, no research has been undertaken by the Government to articulate or quantify these costs.

The greatest cost for Australia is the potential for reduced safety.

Labor does not accept that the Government has presented any evidence to support the premise that Australia and New Zealand present "comparable safety outcomes". No comparative study of the regulations and practices pertaining to Australia and New Zealand has been undertaken, rather, the Australian Government has relied on the fact that both Australia and New Zealand have met ICAO audit conditions.

Evidence was submitted on a number of occasions that the ICAO audit process is no basis for a comparative ranking of safety systems. Labor cannot accept that the ICAO audit process can be used as the only support for the basic premise of the Bill that the safety systems of Australia and New Zealand are comparable.

Labor Senators believe that this report is overly dismissive of the importance of cabin crew to operational safety. Research undertaken by Professor Galea at the Fire Safety Research Faculty at Greenwich University's School of Numerical Modelling has shown a clear correlation between higher crew ratios and more effective (ie safer) aircraft evacuations. This fundamental research has not been recognised in this report.

The report also fails to recognise that the Australian Government, following a Civil Aviation Safety Authority review of regulations relating to crew ratios, determined that crew ratios in Australia should not change.

Labor Senators believe that the basic analysis to compare the safety systems of the two regimes must be undertaken prior to the introduction of this Bill. It defies logic to undertake this basic research after the change has been made.

Labor Senators therefore do not support Recommendation 1.

Labor Senators therefore recommend that prior to the passage of this Bill, the Australian Government, through CASA, conduct:

- a comparative assessment of the safety systems operating in Australia and New Zealand;
- a full regulatory analysis of the two systems; and
- a detailed analysis of the full costs and benefits of the proposed legislation.

Labor supports Recommendation 2.

Senator Kerry O'Brien **Senator Geoff Buckland**

Senator Lyn Allison (Australian Democrats)