



Australian Government

Department of Transport and Regional Services

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The Secretary
Senate Rural and Regional Affairs
and Transport Legislation Committee
Suite SG.62
Parliament House
CANBERRA ACT 2600

Dear Secretary

I am writing in response to the Committee's inquiry into the Civil Aviation Legislation (Mutual Recognition with New Zealand and Other Matters) Bill 2003 (the Bill).

This Bill builds upon the Single Aviation Market arrangements and will progress the integration of the trans-Tasman aviation market. The Bill is aimed at removing barriers to airlines taking up commercial opportunities available under the trans-Tasman air service arrangements without compromising aviation safety.

Please find attached a submission in relation to the Bill. Specific issues that have been elaborated on within the submission to clarify the intent of the Bill include:

- Comparison of Regulations between Both Countries;
- International Standards;
- Safety Issues;
- Cabin Crew to Passenger Ratio;
- Security Issues;
- Funding Implications for the Civil Aviation Safety Authority;
- Why Mutual Recognition Will Work; and
- Consultation Conducted.

Thank you for the opportunity to make this submission. The contact officer for this matter is Merrilyn Chilvers, Assistant Secretary, Aviation Operations, ph 02 6274 7797.

Yours sincerely

Martin Dolan
First Assistant Secretary
Aviation and Airports Regulation
April 2004

SUBMISSION
CIVIL AVIATION LEGISLATION (MUTUAL RECOGNITION WITH
NEW ZEALAND AND OTHER MATTERS) BILL 2003

Overview

On 25 June 2003 the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003 was introduced into Parliament. The Bill amends the *Civil Aviation Act 1988* (the Act) to permit an eligible airline to carry out air services in both Australia and New Zealand, whether international or domestic, passenger or cargo under the authority of an Air Operator's Certificate (AOC) issued by the aviation authority of their home country. Initially, this will be restricted to Air Operator's Certificates (AOCs) for the airline operation of aircraft of more than 30 seats or more than 15,000 kgs, as issued by the Civil Aviation Safety Authority (CASA) in Australia and the Civil Aviation Authority of New Zealand (CAANZ).

A corresponding Bill to implement mutual recognition of AOCs, the Civil Aviation Amendment Bill 2003, was passed in the New Zealand Parliament on 18 March 2004.

The principle underlying mutual recognition of aviation-related safety certification is the same as the principle behind the *Trans-Tasman Mutual Recognition Act 1997* (TTMRA) and the *Mutual Recognition Act 1992*.

The Australian and New Zealand Aviation (ANZA) Mutual Recognition Principle, as it is called, permits a person authorised under Australian law to carry out an aviation activity in Australia to also carry out the same kind of aviation activity in New Zealand, and a person authorised under New Zealand law to carry out an aviation activity in New Zealand to also carry out the same kind of aviation activity in Australia.

The principle is based on the Governments' understanding that:

- a) while each country's aviation safety regulatory systems may differ slightly, they nevertheless achieve comparable safety outcomes;
- b) mutual recognition should be addressed at the level of whole safety systems rather than their constituent parts; and
- c) home regulators should retain regulatory responsibility for, and oversight of, persons they authorise to carry out aviation activities.

In order to benefit from the ANZA Mutual Recognition Principle, a person will require approval from the home regulator to carry out the aviation activity within the jurisdiction of the host regulator.

Under current provisions of the Civil Aviation Act, airlines need to hold and comply with two AOCs, one from each country (Australia and New Zealand), if they wish to conduct operations in both countries. This results in duplication, complexity and added administrative and financial burdens on operators. Mutual recognition will mean that an airline qualified under Article 2 of the 2002 Australian and New Zealand Air Services Agreement (ASA) holding an AOC issued by CASA will be able to conduct operations in New Zealand without having to obtain an equivalent AOC issued by CAANZ, and vice versa.

An AOC issued by the home aviation authority under mutual recognition will be known as an AOC with ANZA privileges. An AOC with ANZA privileges cannot authorise air services only in the host country.

Mutual recognition is a substantial step toward implementing the principle of the Single Aviation Market (SAM) arrangements between Australia and New Zealand established in 1996, and will increase the opportunity for Australian and New Zealand airlines to take advantage of the bilateral ASA signed in 2002.

History

Mutual recognition is a natural progression from the SAM that has been in place between Australia and New Zealand since 1996 within the spirit of the Closer Economic Relations Trade Agreement with New Zealand. SAM acknowledges the benefits of competition to consumer satisfaction and the principle of mutual recognition plays an important role in developing a single aviation market by enhancing the movement of aviation services between Australia and New Zealand.

In November 2000 the Australian and New Zealand Governments agreed in a Memorandum of Understanding to a target date of December 2003 for implementation of mutual recognition of all aviation-related certification covered by the 2002 ASA and not covered by the TTMRA.

International Standards

CASA and CAANZ considered the consequences for aviation safety of the interaction between the aviation safety regimes of Australia and New Zealand relating to high capacity airline operations. Both organisations noted that operators certified under either regime have for many years operated international flights safely between the two countries, and that both safety regimes met international safety standards promulgated by the International Civil Aviation Organization (ICAO).

Part of the consideration of the respective safety regimes was based on an earlier review of the then recently completed ICAO Universal Safety Oversight Audits conducted on each country, covering Annex 1 - Personnel Licensing, Annex 6 - Operation of Aircraft, and Annex 8 - Airworthiness of Aircraft. The ICAO audits of Australia and New Zealand were undertaken in August 1999, with follow up audits in September 2001.

Review of Regulations between Both Countries

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.

CASA and CAANZ have reviewed their regulations (as referred to in Australia) and rules (as referred to in New Zealand) and identified the amendments required to avoid possible conflict.

In reviewing their operating regulations and rules, and starting from the premise that both aviation safety systems provide equivalent safety outcomes, 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 etc. The safety outcome would thus be enhanced by leaving intact the whole suite of operating regulations/rules on each side.

Similarly, and as already occurs as a standard international practice, an aircraft operates in accordance with the "rules of the air" (as distinct from the rules of operation) applicable to the airspace in which it is operating. Therefore the rules of the air applied by either Australia or New Zealand in their own airspace will continue to apply to all aircraft and it is not necessary to consider differences in this respect.

The end result was that only the areas of regulation where the rules of operation and the rules of the air interacted were required to be reviewed. This review canvassed three areas as follows:

- Review of the equipment and facilities required to operate in the airspace – ground proximity warning system (GPWS), radios, language skills, etc. This involved a review of existing regulations in these areas to ensure that those relating to navigating through airspace would continue to apply appropriately and also to ensure that equipment fit was either consistent or would need to be complied with. Aside from the need for NZ aircraft to comply with specified equipment requirements, the assessment found no conflict in air navigation technique.
- Review of the Australian rules leading to operation to ensure they support operations in New Zealand airspace – no conflicts found.
- Review of past experience of the interaction between Australian and New Zealand operators in Australian and New Zealand airspace. New Zealand airlines already operate in Australian airspace and have done so for many years. In this respect, they have always operated in accordance with New Zealand rules of operation and Australian rules of the air. Consultations were undertaken within the two authorities to ascertain whether there were any known conflicts or difficulties. The only issue identified requiring resolution related to equipment fit as previously mentioned.

Following the review, the authorities found that with only minor adjustment to their respective rule sets, and the acknowledgment by CAANZ of some mandatory equipment requirements by ICAO due in 2004 (e.g. specific ground proximity warning and aircraft collision warning equipment), the two aviation safety regimes will interact without conflict and provide a level of safety assurance meeting or exceeding international standards for high capacity airline operations.

Australia's aviation safety standards do not need to be amended to harmonise them with those of New Zealand as a result of mutual recognition. However, it is proposed that the *Civil Aviation Regulations 1988* be amended to remove instances of

duplication of regulatory requirements imposed on holders of New Zealand AOCs with ANZA privileges.

Potential Safety Issue: Comparable Safety Regimes

Mutual recognition will not compromise aviation safety in Australia because CASA's safety regulatory role will essentially remain the same. CASA conducts routine surveillance on foreign aircraft on Australia's behalf and this arrangement will remain in place for airlines with ANZA privileges. CASA, in its role of host aviation regulatory authority, will have the power to issue a temporary stop notice to an airline operating in Australia holding a New Zealand AOC with ANZA privileges if CASA has a serious concern about part or all of that airline's operations in Australia.

As signatories to the Chicago Convention, Australia and New Zealand are both subject to safety oversight audits by ICAO. The publicly available audit findings indicate that the respective safety regimes deliver equivalent safety outcomes. The audit reports may be found at www.dotrs.gov.au/avnapt/ipb/icao/usoap.htm for Australia and www.caa.govt.nz/publicinfo/ICAO_audit.htm for New Zealand.

CASA and CAANZ have reviewed their respective regulations and safety systems and both regulatory authorities are confident that those regulations and systems achieve equivalent safety outcomes for operators of large capacity aircraft. The two countries are considered by both Governments and the regulatory authorities to have comparable safety records in relation to large capacity aircraft.

Potential Safety Issue: Cabin Crew to Passenger Ratio

Cabin crew are required first and foremost for passenger safety. ICAO requires cabin crew to facilitate evacuation of an aircraft, however ICAO does not specify a minimum requirement. This means that there is considerable variation in the cabin crew to passenger ratio amongst airlines already operating foreign registered aircraft to, from and within Australia.

In the absence of an ICAO standard on the ratio of cabin crew to passengers, both Australia and New Zealand have developed their requirements independently. This has led to a sliding scale of cabin crew to passengers carried (in the Australian context) or passenger seats (in the New Zealand context), based on different criteria. Because of these different approaches it is not valid to make a direct comparison between the two systems.

The minimum number of cabin attendants which are required to be carried on board an Australian-registered aircraft engaged in charter or regular public transport flights, no matter what nationality the operator is and no matter where in the world the aircraft is operated, is prescribed in subsection 6 of Civil Aviation Order 20.16.3. The method for calculating that number is set out in **Attachment A**.

The minimum number of flight attendants which are required to be carried on board a large capacity aeroplane operated by an operator domiciled in New Zealand, no matter what the nationality of the aircraft and no matter where in the world the aircraft is operated, is prescribed in rule 121.519 of the Civil Aviation Rules of New Zealand, a copy of which is set out in **Attachment B**.

In developing their respective cabin crew ratio regimes, Australian and New Zealand aviation safety authorities have taken into account factors such as:

- the training for cabin crew;
- operational procedures;
- emergency training and procedures handling of cabin crew and pilots;
- staff selection;
- crew supervision;
- the selection and fitment of emergency equipment; and
- systems support for rostering and duty arrangements.

Nonetheless, Australia recognises New Zealand type certification and the New Zealand rules meet Australian type certification requirements for the evacuation of passengers. The CAANZ has the ability to require an airline to carry more cabin crew if it considers this to be appropriate.

Security Issues:

Mutual recognition will not affect Australian aviation security regulation.

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 Security Officers if they are assessed as falling within the ‘risk based Aviation Security Officer allocation process’.

The Office of Transport Security (OTS) monitors the training of cabin crew to cope with security incidents. This requirement is amongst the matters the OTS considers in assessing an airline security programme. Where the OTS has evidence to suggest an airline lacks the capacity to handle in-flight security incidents, it would address that issue by requiring amendments to the programme and monitoring compliance with the amended programme.

Funding Implications for CASA

Under mutual recognition, regulatory oversight of an airline will be undertaken by the aviation authority that issued the AOC with ANZA privileges, regardless of which country the airline is operating in. CASA will therefore regulate Australian airlines operating in New Zealand under mutual recognition, and will incur costs in doing so. CASA does not intend to change the fees it charges for assessing AOCs for applicants wanting ANZA privileges as a result of mutual recognition.

The normal domestic charges will also apply to domestic services regardless of the operator. New Zealand operators operating domestically in Australia will therefore incur the aviation fuels levy, which partly funds CASA’s regulatory activities. New Zealand airlines operating only international services under mutual recognition will continue to be exempt from the fuel levy, as is currently the case for all foreign operated airlines, because the aviation fuels levy applies only to domestic operations.

Australian airlines operating in New Zealand will be liable to pay New Zealand domestic aviation charges, including the New Zealand passenger levy.

Consultation

Invitations to comment on mutual recognition were made through the media and direct invitation to representatives of business (and their umbrella groups), unions, consumer and Commonwealth and State Government agencies. Of individual aircraft operators, only those identified as operating aircraft of greater than 30 seats or equivalent were directly invited to participate, since these will be the most affected. A call for submissions was also placed in the Weekend Australian of 15-16 February 2003. Invitations to a “round table” with the Department of Transport and Regional Services (DOTARS) were extended to 12 key stakeholders; the roundtable was held on 25 February 2003. Two airlines attended: Qantas and Virgin Blue.

Other than the Department of Transport and Urban Planning of South Australia and the New South Wales Air Transport Council, no comment was received from the Commonwealth or other State agencies.

Stakeholder views and concerns may be found in the Explanatory Memorandum **Attachment E** with DOTARS’ responses alongside.

Please also find at **Attachment C**, for your information, a table of the domestic airline traffic for the year ending 31 December 2003, which indicates the size of the Australian domestic market that stands to benefit from the mutual recognition arrangements and the draft Regulations at **Attachment D**.

Why will Mutual Recognition Work

- Mutual recognition helps Australia to meet an international obligation that has been in place since 1996 and will be a significant step forward in the integration of the trans-Tasman aviation market aimed at removing barriers to airlines taking up commercial opportunities available under trans-Tasman air services arrangements.
- Mutual recognition will remove the cost of an AOC on the operations of airlines with ANZA privileges without reducing safety and will assist airlines to make their operations more flexible by improving aircraft utilisation and return on assets - this is important in an industry where the capital outlay is very high.
- Mutual recognition will be underpinned by an inter-governmental agreement setting out the principles, objectives and joint understandings between Australia and New Zealand. This will be complemented by an inter-agency operational agreement between CASA and CAANZ establishing practical working arrangements between the two authorities.
- Mutual recognition is optional and at the discretion of airlines qualified under the 2002 ASA. An airline wishing to operate in both Australia and New Zealand can continue to operate under current arrangements, by holding an AOC from each country. However, airlines cannot hold an AOC with ANZA privileges and a standard AOC for the same aviation activity at the same time.

- Airlines with ANZA privileges must continue to comply with other laws and regulations of the host country, for example, rules of the air, environment, curfew and security laws.

ATTACHMENT A

Australia: Calculating the minimum number of cabin attendants required to be carried on a charter or RPT flight (Civil Aviation Order 20.16.3 subsection 6)

Information required

To undertake this calculation, the following information is required:

1. the total number of passengers being carried on the flight, including infants and children (**Pax**);
2. the number of infants and children being carried on the flight (**Inf**);
3. the number of pilots for the flight (**Pit**);
4. the number of separate compartments in the aircraft which will be occupied by at least one passenger (**Cpm**);
5. the number of cabin attendants used to demonstrate the emergency evacuation of the aircraft type during its type certification process (**TC**); and
6. if **Pax** > 216 – the minimum number of cabin attendants prescribed by CASA (**CASA**).

Method

1. Using Table 1, determine the minimum number of cabin attendants required under subparagraphs 6.1(a), (b) and (c), and paragraph 6.2, of CAO 20.16.3. Call this number **A**.
2. If **A** = 0, then the minimum number of cabin attendants required for the flight is 0 (see subparagraph 6.1(d)).
3. If **A** > 0, then the minimum number of cabin attendants required for the flight is the *highest* of **A** or **Cpm** or **TC** (see subparagraph 6.1(d)).

Table 1 – Minimum cabin attendants required under subparagraphs 6.1(a), (b) and (c), and paragraph 6.2, of CAO 20.16.3

If you are carrying this many passengers (Pax)...	...of whom at least this number are infants or children...	...then you need this many cabin attendants (A).
less	0 3	0 0 if, and only if, Pit = 2 and b fi control of passengers in normal and emergency operations is
16 to 36	0	1
38	passenger > 36	1
76	0	2
to 108	passenger > 72	2
109 to 114	0	3
to 144	1 per passenger > 10	4
145 to 152	0	4
145 to 180	1 per passenger > 14	4
181 to 189	0	5
181 to 216	1 per passenger > 180	6
217+	0	6
217+	0.05 × (Pax – Inf), rounded up	As prescribed by CASA, with a minimum of 1 per floor level exit in any cabin with two aisles (i.e. CASA) As prescribed by CASA for a number of passengers equal to Pax minus the number in the second column

ATTACHMENT B

New Zealand: Minimum number of cabin attendants to be carried in accordance with New Zealand rules

(Extracted from NZ Civil Aviation Rules, Part 121, CAA Consolidation, 1 August 2003)

121.519 Flight attendants duty assignment

- (a) Each holder of an air operator certificate shall ensure its aeroplanes are operated with at least the minimum number of flight attendants carried as crew members—
- (1) specified by the manufacturer's recommended emergency evacuation procedures for the aeroplane configuration being used; and
 - (2) specified by the certified design criteria for the aeroplane; and
 - (3) that will ensure at least one flight attendant is present in each occupied compartment; and
 - (4) in accordance with the minimum number specified in Table 3.

Table 3. Required flight attendants

Aeroplane Passenger Capacity:	Flight Attendants required
15 through 50	1
51 through 100	2
101 through 150	3
151 through 200	4
201 through 250	6
251 through 300	7
301 through 350	9
351 through 400	10
401 through 450	11
451 through 500	12
for each further 50 passengers	1

- (b) The certificate holder shall designate—
- (1) for each air operation requiring two or more flight attendants, a senior flight-attendant responsible to the pilot-in-command for the operational and safety functions of each flight attendant; and
 - (2) for each air operation requiring six or more flight attendants, a deputy senior flight-attendant.
- (c) Notwithstanding the requirements of paragraph (a)(4), one less flight attendant than that specified in Table 3 may be carried to allow the continuation of an air operation in the event a required flight attendant becomes unfit because of sickness or injury during their duty period, provided—
- (1) the requirements of paragraphs (a)(1), (2), and (3) can be met; and
 - (2) the remaining flight attendants are trained and competent to operate safely with the reduced number of flight attendants in accordance with the procedures specified in the certificate holder's exposition; and
 - (3) numbers are restored to comply with the requirements of paragraph (a)(4) at the first aerodrome of landing where a replacement would normally be expected to be available.