



Australian Government

Department of Transport and Regional Services

File Reference: P2004/0013

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



Dear Secretary

I am writing to clarify the following issues that were raised in the Committee's inquiry into the Civil Aviation Legislation (Mutual Recognition with New Zealand and Other Matters) Bill 2003 (the Bill). Each issue has been dealt with in a separate Attachment:

- A. Provisions in legislation for an airline setting up in New Zealand to contest domestic routes in Australia;
- B. Cabin crew to passenger ratios;
- C. Reference to CASA in 2004 Budget;
- D. Copy of New Zealand's amendment to legislation; and
- E. Means of dealing with disputes under the Arrangement between the Australian and New Zealand Governments on Mutual Recognition of Aviation Related Certification.

The New Zealand legislation has not yet been consolidated, and the above amendments should be read in conjunction with the existing legislation, which can be found at <http://www.legislation.govt.nz/>.

Please note that I would like to make a minor amendment to Hansard (page RRA&T30) in relation to references of High Level Agreement by Merrilyn Chilvers, to read High Level Arrangement.

Thank you for the opportunity to make this supplementary 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
28 May 2004

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Provisions in legislation for an airline setting up in New Zealand to contest domestic routes in Australia.

QUESTION

Senator O'BRIEN: "...Singapore Airlines decides that in that environment it is going to set up in New Zealand and contest the main routes in Australia – and that the New Zealand government of the day, whoever it might be, says, 'It's pretty good having Singapore Airlines here and a maintenance base and we're going to change our regulations so that, even if the majority of their flights are in Australia, they can be registered here'. I want to know whether the legislation would stop that."

RESPONSE

In this example Singapore Airlines would have to apply to the Secretary of the New Zealand Ministry of Transport who would assess its eligibility from the criteria set out in the inter-governmental arrangements on mutual recognition between Australia and New Zealand. A late draft of these Arrangements has been provided to the Committee.

One element of those criteria is the requirement that the applicant be designated under the Agreement between the Government of Australia and the Government of New Zealand relating to Air Services of 2002 (the Agreement). A copy of the second article of that Agreement, which covers designation, is attached. In summary, it imposes restrictions on the ownership and effective control of carriers that can qualify for designation under the Agreement.

Australia has the opportunity to reject the designation if it does not believe that the requirements of the Agreement had been satisfied. The Agreement can only be amended with the consent of both Governments. It should be noted that there are provisions in the New Zealand legislation that ensure that the aviation authority able to provide the most effective safety oversight of the airline will be the one to issue the AOC with ANZA privileges.

In deciding whether it is the appropriate aviation authority to issue an AOC with ANZA privileges, CAANZ will consider:

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

The Bill currently before the Committee contains similar provisions.

Singapore Airlines is eligible to establish and operate domestically in Australia under Australian legislation.

- (l) "SAM airline" means an airline authorised in accordance with paragraph 4 or 6 of Article 2 (Designation, Authorisation and Revocation);
- (m) "scheduled air transport" means a series of flights performed by aircraft for the transport of passengers, cargo and mail between two or more points, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and which are operated in such a manner that each flight is open for use by members of the public;
- (n) "slot" means the right to schedule an aircraft movement at an airport;
- (o) "tariff" means any price, fare, rate or charge for the carriage of passengers (and their baggage) and/or cargo (excluding mail) in air transport, including transport on an intra-or interline basis, charged by airlines, including their agents, and the conditions governing the availability of such price, fare, rate or charge;
- (p) "territory" and "stop for non-traffic purposes" have the meaning respectively assigned to them in Articles 2 and 96 of the Convention provided that, in the case of New Zealand, the term "territory" shall exclude Tokelau; and
- (q) "user charge" means a charge made to airlines by a service provider for the provision of airport, airport environmental, air navigation and aviation security facilities, for aircraft, their crews, passengers and cargo.

ARTICLE 2

Designation, Authorisation and Revocation

DESIGNATED AIRLINES

1. Each Party shall have the right to designate as many airlines as it wishes to conduct international air transport in accordance with this Agreement and to withdraw or alter such designations. Such designations shall be transmitted to the other Party in writing through diplomatic channels. A designated airline may be either an operating airline or a marketing airline or both.
2. On receipt of such a designation, and of applications from the designated airline, in the form and manner prescribed for operating authorisations and technical permissions, the other Party shall grant appropriate authorisations and permissions with minimum procedural delay, provided that:
 - (a) the airline is incorporated and has its principal place of business in the territory of the Party designating the airline;
 - (b) effective control of that airline is vested in the Party designating the airline, nationals of that Party, or both;

(c) the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally applied to the operation of international air transport by the Party considering the application or applications;

(d) the airline holds the necessary operating permits;

(e) the Party designating the airline is maintaining and administering the standards set forth in Article 5 (Safety) and Article 6 (Aviation Security).

SAM AIRLINES

3. There shall be no limit on the number of SAM airlines that may be authorised to conduct air transport in accordance with the rights set out in this Agreement. A SAM airline may or may not be a designated airline. A SAM airline may be either an operating airline or a marketing airline or both.

4. Upon receipt of applications from a SAM airline, in the form and manner prescribed by the Party to whom the application is addressed, the Parties shall grant without delay the appropriate operating authorisation and technical permission for the conduct of air transport as a SAM airline, provided that:

(a) the airline is majority owned and effectively controlled by nationals of either or both Parties; and

(b) the airline has, as members of its board, at least a two-thirds majority of nationals of either or both Parties; and

(c) the airline has, as chairperson of its board, a national of either Party; and

(d) the airline has its head office in the territory of either Party; and

(e) the airline has its operational base in the territory of either Party; and

(f) the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally applied to the operation of air transport by the Party considering the application or applications; and

(g) the airline holds the necessary operating permits; and

(h) the standards set forth in Article 5 (Safety) and Article 6 (Security) are being maintained.

5. The aeronautical authorities of each Party shall notify the aeronautical authorities of the other Party in writing when they authorise a SAM airline to conduct air transport under this Agreement.

6. Notwithstanding anything set out in paragraph 4 (a) to (e) of this Article, the aeronautical authorities of the Parties may jointly approve an airline as a SAM airline.

GENERAL PROVISIONS

7. Either Party may withhold, revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Party or a SAM airline at any time where the conditions of paragraph 2 or paragraph 4 respectively of this Article are not met, or if the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

8. Unless immediate action is essential to prevent further non-compliance with sub-paragraph 2(d) or 2(e), or sub-paragraph 4(g) or 4(h) of this Article, the rights established in paragraph 7 of this Article shall be exercised only after consultation with the other Party.

9. This Article does not limit the rights of either Party to withhold, revoke, limit or impose conditions on the operating authorisation or technical permission of an airline in accordance with the provisions of Article 5 (Safety) or Article 6 (Aviation Security) of this Agreement.

ARTICLE 3

Grant of Rights

Each Party grants to the airlines of the other Party and to SAM airlines the following rights for the conduct of air transport:

- (a) the right to fly across its territory without landing;
- (b) the right to make stops in its territory for non-traffic purposes; and
- (c) in accordance with the Annex to this agreement, the right to make stops in its territory for the purpose of taking up and discharging traffic.

ARTICLE 4

Application of Laws

1. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the operation and navigation of aircraft shall be complied with by the other Party's airlines.

2. While entering, within, or leaving the territory of one Party, its laws, regulations and rules relating to the admission to or departure from its territory of passengers, crew, cargo and aircraft (including regulations and rules relating to entry, clearance, aviation security, immigration, passports, customs and quarantine or, in the case of mail, postal regulations) shall be complied with by, or on behalf of, such passengers and crew and in relation to such cargo of the other Party's airlines.

Cabin crew to Passenger Ratios

It has been clear from an early stage that the cabin crew ratios in the two countries are designed on different premises, but to achieve the same outcome. Both safety authorities have reviewed their respective systems and are satisfied that the safety outcomes in operations of aircraft of more than 30 seats or more than 15,000kgs are equivalent.

In both cases, the outcomes exceed the type certification requirements of the aircraft travelling the trans-Tasman route or operating domestically in either country.

Mutual recognition is not harmonisation. The Australian regulations will not be amended to align with New Zealand requirements or vice versa. Neither country is under any obligation to adjust their systems as the basis for mutual recognition is an acceptance that the two systems deliver equivalent safety outcomes. Should there be any future changes to Australia's cabin crew to passenger ratio, it would go through the same open and transparent process that any other domestic regulation change would go through, with all interested parties welcome to make submissions, and due consideration given to all views put forward within that process. The same would be true for changes to the equivalent New Zealand regime.

As regards potential security implications, these are handled under a separate regulatory regime. Any aircraft operating domestically in or internationally to or from Australia, whatever its origin, is subject to a single set of Australian standards.

Civil Aviation Safety Authority — financial viability

Expense (\$m)	2004-05	2005-06	2006-07	2007-08
Civil Aviation Safety Authority	-	-	-	-
Related revenue(a) (\$m)				
Australian Taxation Office	6.5	6.5	6.5	6.5

a. A positive number for revenue indicates an increase in the fiscal balance.

The Government will provide additional funding of \$29.2 million over four years to the Civil Aviation Safety Authority to assist it to maintain its long term financial position.

The Authority's ongoing financial position has been weakened by changes in the aviation industry which have resulted in lower fuel consumption (part of the Authority's budget funding is directly linked to aviation fuel excise collections). The Government considered the financial position of the Authority in the 2003-04 Budget and agreed to increase aviation fuel excise for one year. The Government has now decided to maintain the existing rate of aviation fuel excise.

The additional funding also includes \$3.2 million in 2004-05 pending the identification of structural changes, including reduced costs, to ensure the sustainability of the Authority's financial position without impacting on its capacity to regulate the safety of civil air operations in Australia and of Australian aircraft.

The increased funding for the Authority does not impact on the fiscal balance because the Authority was projecting losses in those years.

CIVIL AVIATION AMENDMENT ACT 2004

Public Act 2004 No 8

The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the Civil Aviation Amendment Act 2004.
- (2) In this Act, the Civil Aviation Act 1990 is called "the principal Act".

Part 1—Preliminary provisions

2 Commencement

- (1) Sections 4(1), 6, 7(1) and (2), 8, 9, 10(1), 11, 13, 14(1) to (4) and (6) to (8), 16, 17, 19, 20, 29, 31, 32, 33(1), and 41(1), and Part 1 of Schedule 1 come into force on a date to be appointed by the Governor-General by Order in Council.

...

3 Purpose

The purpose of this Act is to—

- (a) implement the ANZA mutual recognition agreements; and

...

Part 2—Amendments to principal Act and related provisions

4 Interpretation

- (1) Inserted definitions of ANZA, ANZA mutual recognition agreements, Australia, Australian AOC with ANZA privileges, Australian temporary stop notice, CASA, New Zealand AOC with ANZA privileges, New Zealand temporary stop notice, into s2 of the principal Act.

...

6 Grant or renewal of aviation document

Added s9(1)(ba) to the principal Act.

7 Criteria for fit and proper person test

- (1) Added s10(1)(g) to the principal Act.
- (2) Substituted words in s10(4)(a) of the principal Act.

...

8 New Part 1A inserted

Inserted Part 1A (comprising s11A - s11J) into the principal Act.

9 Director may require or carry out safety and security inspections and monitoring

- (1) Inserted words into s15(1)(a) of the principal Act.
- (2) Inserted s15(1A) into the principal Act.
- (3) Inserted s15(2A) into the principal Act.

10 Power of Director to suspend aviation document or impose conditions

(1) Added word to s17(1) of, and added s17(1)(e) to, the principal Act.

...

11 Power to revoke aviation document or impose conditions
Inserted s18(1A) into the principal Act.

...

13 Delegation of Authority's or Director's functions or powers to persons outside Authority
Inserted s23B(2A) into the principal Act.

14 General power of entry

(1) Inserted words into s24(1) of the principal Act.

(2) Inserted s24(1A) into the principal Act.

(3) Inserted s24(2)(ab) into the principal Act.

(4) Inserted words into s24(2)(b) of the principal Act.

...

(6) Inserted words into s24(3)(a) of the principal Act.

(7) Substituted s24(3)(b) of the principal Act.

(8) Added words to s24(6) of, and added s24(6)(c) to, the principal Act.

...

16 Power of Minister to make ordinary rules
Inserted s28(1)(ab) into the principal Act.

17 Rules relating to general matters
Inserted s30(ca) into the principal Act.

...

19 Matters to be taken into account in making rules
Substituted s33(2)(g) of the principal Act.

20 New sections 46D and 46E inserted
Inserted s46D & s46E into the principal Act.

...

29 Appeal to District Court
Added s66(5)...(j) to the principal Act.

...

32 Director of Civil Aviation
Inserted s72I(3D) into the principal Act.

...

33 **Civil Aviation Registry**
(1) Inserted s74(2)(ab) into the principal Act.

39 **Regulations**

(2) Inserted s100(1)(ed) into the principal Act.

41 **Consequential amendments**

(1) The Civil Aviation Rules are amended in the manner set out in Part 1 of Schedule 1 as from the date of commencement specified in, or appointed under, section 2(1).

SCHEDULES

Schedule 1

s41(1), (2)

Consequential amendments to Civil Aviation Rules

Part 1—Amendments coming into force on a date appointed by Order in Council

Rule 1.1

Insert, in their appropriate alphabetical order:

"Australian AOC with ANZA privileges has the same meaning as in section 3(1) of the Civil Aviation Act 1988 (Aust)

"New Zealand AOC with ANZA privileges has the meaning set out in section 11G of the Act".

Rule 1.3

Insert, after the abbreviation AMSL, the following abbreviation:

"ANZA means Australia New Zealand Aviation".

Rule 19.15

Add the following paragraph:

"(d) Nothing in paragraph (a) or paragraph (b) applies to aircraft engaged in air operations conducted in New Zealand under an Australian AOC with ANZA privileges."

Rule 19.201

Add the following paragraph:

"(c) The conditions and requirements prescribed in 19.205 and 19.207 do not apply to air operations conducted in New Zealand under an Australian AOC with ANZA privileges."

Rule 91.1

Add the following paragraph:

"(e) The following rules do not apply in the case of air operations conducted in New Zealand under an Australian AOC with ANZA privileges:

"(1) 91.111(1):

"(2) 91.112:

- " (3) 91.115:
- " (4) 91.121:
- " (5) 91.123:
- " (6) 91.201(1)(i):
- " (7) 91.201(3):
- " (8) 91.205:
- " (9) 91.207:
- " (10) 91.209:
- " (11) 91.211:
- " (12) 91.213:
- " (13) 91.215:
- " (14) 91.221:
- " (15) 91.401:
- " (16) 91.501:
- " (17) 91.503:
- " (18) 91.505:
- " (19) 91.507:
- " (20) 91.509:
- " (21) 91.511:
- " (22) 91.513:
- " (23) 91.515:
- " (24) 91.517:
- " (25) 91.519:
- " (26) 91.521:
- " (27) 91.523:
- " (28) 91.525:
- " (29) 91.527:
- " (30) 91.529:
- " (31) 91.531:
- " (32) 91.533:
- " (33) 91.537:
- " (34) 91.539:
- " (35) 91.543:
- " (36) 91.545:
- " (37) 91.707:"

Rule 108.1

Omit the words "and Part 129" and substitute the words ", Part 129, and for operations conducted under an Australian AOC with ANZA privileges".

New rule 108.63

Insert, after rule 108.61:

"108.63 Air security programme required

The holder of an Australian AOC with ANZA privileges must establish and implement an air operator security programme that meets the relevant requirements of this Part."

Rule 119.1

Revoke and substitute the following rule:

"119.1 Purpose

" (a) This Part prescribes requirements for the certification and continuing operations of persons domiciled in New Zealand conducting air operations under Parts 121, 125, and 135.

" (b) This Part does not apply to the holder of an Australian AOC with ANZA privileges."

Rule 119.11

Omit paragraph (a) and substitute the following paragraph:

"(a) An applicant is entitled to an airline air operator certificate if the Director is satisfied that, in accordance with section 9 of the Act,—

" (1) the applicant meets the applicable requirements of subpart B; and

" (2) the applicant, where the applicant is a natural person, and the applicant's senior persons required by 119.51(a)(1) and (2) are fit and proper persons; and

" (3) the granting of the certificate is not contrary to the interests of aviation safety; and

" (4) in the case of a New Zealand AOC with ANZA privileges, the airline operations to, from, or within Australia will be conducted using—

" (i) in the case of passenger operations, aircraft with a capacity of more than 30 passenger seats, or a maximum certificated take-off weight of more than 15,000 kg; and

" (ii) in the case of cargo or combined cargo and passenger operations, aircraft with a maximum certificated take-off weight of more than 15,000 kg or a maximum payload capacity of more than 3,410 kg."

Rule 119.15(b)

Add the words "; and" and the following paragraph:

"(9) where applicable, the authorisations and limitations for routes and areas of air operations conducted in Australia by a holder of a New Zealand AOC with ANZA privileges."

New rule 121.15

Insert, after rule 121.13:

"121.15 Applicability to air operations conducted under an Australian AOC with ANZA privileges

The following rules do not apply in the case of air operations conducted in New Zealand under an Australian AOC with ANZA privileges:

" (1) 121.79:

" (2) 121.81:

" (3) 121.83:

" (4) 121.89:

" (5) 121.91(b):

" (6) 121.91(c):

" (7) 121.93:

" (8) 121.803:

" (9) 121.805."

Rule 129.3

Revoke the definition of foreign air transport operation and substitute the following definition:

"foreign air transport operation means an air transport operation conducted by a person not domiciled in New Zealand that is—

" (a) to or from New Zealand; or

" (b) within New Zealand as part of an air operation to or from New Zealand."

Rule 129.5

Revoke this rule and substitute the following rule:

"129.5 Requirement for certificate

" (a) No person shall perform an operation to which this Part applies except under the authority of, and in accordance with, a foreign air operator certificate issued under this Part.

" (b) The requirements in paragraph (a) do not apply to air operations conducted in New Zealand under an Australian AOC with ANZA privileges."

CIVIL AVIATION ACT 1990
Public Act 1990 No 98

...
2 Interpretation

In this Act, unless the context otherwise requires,—

...
[ANZA:

{ Editorial Note: "ANZA": Definition to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s4(1)). The definition that is to be inserted is listed below for reference.

"ANZA means Australia New Zealand Aviation" }]

[ANZA mutual recognition agreements:

{ Editorial Note: "ANZA mutual recognition agreements": Definition to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s4(1)). The definition that is to be inserted is listed below for reference.

"ANZA mutual recognition agreements means the agreements or arrangements specified in regulations made under section 100(1)(ed)" }]

...
[Australia:

{ Editorial Note: "Australia": Definition to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s4(1)). The definition that is to be inserted is listed below for reference.

"Australia means the Commonwealth of Australia; and, when used in a geographical sense, includes any external territory of Australia" }]

[Australian AOC with ANZA privileges:

{ Editorial Note: "Australian AOC with ANZA privileges": Definition to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s4(1)). The definition that is to be inserted is listed below for reference.

"Australian AOC with ANZA privileges has the same meaning as in section 3(1) of the Civil Aviation Act 1988 (Aust)" }]

[Australian temporary stop notice:

{ Editorial Note: "Australian temporary stop notice": Definition to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s4(1)). The definition that is to be inserted is listed below for reference.

"Australian temporary stop notice has the same meaning as in section 3(1) of the Civil Aviation Act 1988 (Aust)" }]

...
[CASA:

{ Editorial Note: "CASA": Definition to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s4(1)). The definition that is to be inserted is listed below for reference.

"CASA means—

(a) the Civil Aviation Safety Authority established by the Civil Aviation Act 1988 (Aust); and

(b) any successor of that Authority" } }

...

[New Zealand AOC with ANZA privileges:

{ Editorial Note: "New Zealand AOC with ANZA privileges": Definition to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s4(1)). The definition that is to be inserted is listed below for reference.

"New Zealand AOC with ANZA privileges has the meaning set out in section 11G" } }

...

[New Zealand temporary stop notice:

{ Editorial Note: "New Zealand temporary stop notice": Definition to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s4(1)). The definition that is to be inserted is listed below for reference.

"New Zealand temporary stop notice means a notice issued under section 11C(1)" } }

...

Part 1—Entry into the civil aviation system

...

9 Grant or renewal of aviation document

(1) After considering any application for the grant or renewal of an aviation document, the [Director] shall, as soon as is practicable, grant the application if he or she is satisfied that—

...

[(ba)]

{ Editorial Note: s9(1)(ba) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s6). The s9(1)(ba) that is to be inserted is listed below for reference.

"(ba) in the case of a New Zealand AOC with ANZA privileges,—

"(i) the requirements in section 11G(2) are met; and

"(ii) the applicant meets or will meet the conditions in section 11G(4); and" }

10 Criteria for fit and proper person test

(1) For the purpose of determining whether or not a person is a fit and proper person [for any purpose under] this Act, the [Director] shall, having regard to the degree and nature of the person's proposed involvement in the New Zealand civil aviation system, have regard to, and give such weight as the [Director] considers appropriate to, the following matters:

...

[(g)]

{ Editorial Note: s10(1)(g) is to be added on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s7(1)). The s10(1)(g) that is to be added is listed below for reference.

"(g) in the case where a New Zealand AOC with ANZA privileges applies, the person's compliance with the conditions specified in section 11G(4)." }

...
[(4) Subsection (1) of this section applies to a body corporate with the following modifications:

(a) Paragraphs (a), (b), (c), (e), and (f) of that subsection shall be read as if they refer to the body corporate and its officers:

{ *Editorial Note: s10(4)(a): Words "and (f)" are to be omitted and words "(f), and (g)" are to be substituted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s7(2)).* }

...

Part 1A—ANZA mutual recognition

{ *Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8).* }

[Preliminary provisions

[11A Purpose

{ *Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11A that is to be inserted is listed below for reference.*

"11A Purpose

"The purpose of this Part is to implement the ANZA mutual recognition agreements." }

[Australian AOCs with ANZA privileges

[11B Holder of Australian AOC with ANZA privileges entitled to conduct air operations in New Zealand

{ *Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11B and cross-heading above that are to be inserted are listed below for reference.*

"Australian AOCs with ANZA privileges

"11B Holder of Australian AOC with ANZA privileges entitled to conduct air operations in New Zealand

"(1) The holder of an Australian AOC with ANZA privileges may conduct air operations to, from, or within New Zealand if the holder provides the Director with—

" (a) a copy of the Australian AOC with ANZA privileges; and

" (b) written notice of the following:

" (i) the details of all conditions imposed by CASA in relation to the Australian AOC with ANZA privileges; and

" (ii) the holder's Australian—

" (A) business address; and

" (B) telephone number; and

" (C) fax number (if any); and

" (iii) the holder's New Zealand—

" (A) business address; and

“ (B) telephone number; and
“ (C) fax number (if any); and
“ (iv) the holder's email address (if any); and
“ (v) any other prescribed information; and
“ (c) the holder's consent in writing to the making of inquiries to, and the exchange of information with, CASA regarding that holder's civil aviation activities.

“(2) A holder of an Australian AOC with ANZA privileges must ensure that the Director is advised of every alteration to the Australian AOC with ANZA privileges or to the information provided by the holder to the Director within 7 days of the date on which the alteration is made.” }

[11C New Zealand temporary stop notice

{ Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11C that is to be inserted is listed below for reference.

“11C New Zealand temporary stop notice

“(1) The Director may give the holder of an Australian AOC with ANZA privileges a written temporary stop notice that requires the holder to cease conducting all or any air operations in New Zealand for the period (which must not be more than 7 days) specified in the notice.

“(2) The Director may issue a New Zealand temporary stop notice only if the Director considers that, as a result of the holder conducting all or any air operations in New Zealand, there is a serious risk to civil aviation safety in New Zealand.

“(3) Immediately on receiving a New Zealand temporary stop notice, the holder must cease conducting the air operations specified in the notice in New Zealand for the period specified in the notice.

“(4) The Director may not delegate the power to issue or revoke a New Zealand temporary stop notice.

“(5) The Director may amend or revoke a New Zealand temporary stop notice before the period specified in that notice has expired.

“(6) The Director must revoke a New Zealand temporary stop notice if the Authority receives notification from CASA of the Director of CASA's response to the New Zealand temporary stop notice.” }

[11D Contents of New Zealand temporary stop notice

{ Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11D that is to be inserted is listed below for reference.

“11D Contents of New Zealand temporary stop notice

“(1) A New Zealand temporary stop notice must specify—

“ (a) the reasons why the Director considers that there is a serious risk to civil aviation safety in New Zealand; and

" (b) the period for which the holder of the Australian AOC with ANZA privileges must cease conducting air operations in New Zealand.

"(2) Failure to comply with subsection (1) does not invalidate the New Zealand temporary stop notice." }

[11E Director to notify CASA about New Zealand temporary stop notice
{ Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11E that is to be inserted is listed below for reference.

"11E Director to notify CASA about New Zealand temporary stop notice
"As soon as practicable after giving a New Zealand temporary stop notice to the holder of an Australian AOC with ANZA privileges, the Director must give CASA a copy of the notice and any other information that CASA may require." }

[AOCs with ANZA privileges

[11F Requirements for AOCs with ANZA privileges
{ Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11F and cross-heading above that are to be inserted are listed below for reference.

"AOCs with ANZA privileges

"11F Requirements for AOCs with ANZA privileges
"(1) Whenever the Director makes a decision under this Act in relation to a New Zealand AOC with ANZA privileges, the Director must take into account all relevant Australian and New Zealand regulatory requirements in relation to New Zealand AOCs with ANZA privileges.

"(2) In making a decision under this Act in relation to a New Zealand AOC with ANZA privileges, the Director—
"(a) must, if appropriate, consult CASA; and
"(b) may take into account any of the following items that the Director receives from CASA:

- "(i) advice;
- "(ii) guidelines;
- "(iii) recommendations;
- "(iv) other relevant information." }

[11G Grant of New Zealand AOC with ANZA privileges
{ Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11G that is to be inserted is listed below for reference.

"11G Grant of New Zealand AOC with ANZA privileges
"(1) The Director may, in accordance with this Act and any rules made under this Act, grant to an air operator in New Zealand an authorisation (called a New Zealand AOC

with ANZA privileges) that will authorise the air operator to conduct air operations to, from, or within Australia.

“(2) Before the Director may grant a New Zealand AOC with ANZA privileges, the Director must—

“(a) be satisfied that the air operator will be conducting air operations to, from, or within New Zealand; and

“(b) receive from the licensing authority written confirmation that, if the New Zealand AOC with ANZA privileges is issued to the air operator, the licensing authority considers that the air operator will be eligible to conduct air operations in Australia under the air services arrangements in place between Australia and New Zealand; and

“(c) be satisfied that the air operator has complied with, or is capable of complying with, all the relevant requirements of the Civil Aviation Act 1988 (Aust) and regulations and civil aviation orders made under that Act that relate to safety; and

“(d) consult with CASA.

“(3) A New Zealand AOC with ANZA privileges may be granted by amending an appropriate existing aviation document or by granting an appropriate new aviation document.

“(4) A New Zealand AOC with ANZA privileges is subject to the conditions that the holder—

“(a) must conduct air operations to, from, or within New Zealand; and

“(b) must not hold an Australian AOC with ANZA privileges authorising the holder to conduct air operations that are covered by the New Zealand AOC with ANZA privileges; and

“(c) must comply with all the requirements of the Civil Aviation Act 1988 (Aust) and regulations and civil aviation orders made under that Act that apply to the holder; and

“(d) must undertake the supervision of its management systems from or within New Zealand; and

“(e) must ensure that the training and supervision of its employees is principally undertaken from or within New Zealand; and

“(f) must ensure that the majority of resources associated with the exercise of the privileges of the AOC are situated within New Zealand; and

“(g) must ensure that the people who control the exercise of the privileges of the AOC spend the majority of their time in New Zealand.

“(5) A New Zealand AOC with ANZA privileges may be issued on any other conditions that the Director thinks appropriate.

“(6) In subsection (2), licensing authority has the same meaning as in Part 8A.” }
Status Compendium

[11H Action by Director when CASA gives Australian temporary stop notice to holder of New Zealand AOC with ANZA privileges

{ Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11H that is to be inserted is listed below for reference.

"11H Action by Director when CASA gives Australian temporary stop notice to holder of New Zealand AOC with ANZA privileges

" (1) After the Director receives notification from CASA that CASA has given the holder of a New Zealand AOC with ANZA privileges an Australian temporary stop notice, the Director must—

" (a) immediately consider the circumstances that gave rise to the giving of the notice; and

" (b) decide, as soon as practicable and in accordance with the ANZA mutual recognition agreements, whether he or she should—

" (i) suspend in whole or in part the New Zealand AOC with ANZA privileges under section 17; or

" (ii) revoke in whole or in part the New Zealand AOC with ANZA privileges under section 18; or

" (iii) impose conditions on the New Zealand AOC with ANZA privileges under section 17 or section 18; or

" (iv) take any other action in relation to that New Zealand AOC holder.

"(2) The Director must notify CASA of his or her decision and of any action taken." }

[11I Change of country of certification

{ Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11I that is to be inserted is listed below for reference.

"11I Change of country of certification

"(1) This section applies if the Director believes on reasonable grounds that—

" (a) it would be in the interests of Australian and New Zealand civil aviation safety for the holder to conduct air operations in the Australian civil aviation system; and

" (b) the holder of a New Zealand AOC with ANZA privileges is no longer able to comply with all the conditions specified in section 11G(4).

"(2) If this section applies, the Director must—

" (a) consult with CASA; and

" (b) notify the holder—

" (i) that the Director believes on reasonable grounds that the holder is no longer able to comply with all the conditions specified in section 11G(4); and

" (ii) of the grounds for the Director's belief; and

" (c) allow the holder at least 90 days from the date of the Director's notification under paragraph (b) to refute and comment on the Director's belief.

"(3) If, after the process referred to in subsection (2) has been properly completed, the Director is satisfied that, in the interests of Australian and New Zealand civil aviation safety, the holder should no longer exercise ANZA privileges, the Director may—

" (a) amend the New Zealand AOC with ANZA privileges;

" (b) withdraw the privileges attaching to the AOC.

"(4) Any person in respect of whom a decision is taken under subsection (3) may appeal against that decision to a District Court under section 66." }

[11J Delegation of Australian powers relating to Australian AOCs with ANZA privileges to employees of Authority

{ Editorial Note: Part 1A (comprising s11A - s11J) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s8) The s11J that is to be inserted is listed below for reference.

"11J Delegation of Australian powers relating to Australian AOCs with ANZA privileges to employees of Authority

"An employee of the Authority may, subject to any directions from the Director of CASA, perform any function or exercise any power delegated to that employee under the Civil Aviation Act 1988 (Aust) for the purpose of enabling that employee to perform the function or exercise the power in New Zealand in respect of Australian AOCs with ANZA privileges." }

....

Part 2—Functions, powers, and duties of participants in the civil aviation system

[[15 Director may require or carry out safety and security inspections and monitoring

(1) The Director may in writing require any person who—

(a) Holds an aviation document; or

{ Editorial Note: s15(1)(a): Words "or an Australian AOC with ANZA privileges" are to be inserted after "aviation document" on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s9(1)). }

...

to undergo or carry out such inspections and such monitoring as the Director considers necessary in the interests of civil aviation safety and security.

[(1A)]

{ Editorial Note: s15(1A): To be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s9(2)). The s15(1A) that is to be inserted is listed below for reference.

"(1A) In the case of an Australian AOC with ANZA privileges, the Director may only carry out inspections and monitoring at the request of CASA." }

...

[(2A)]

{ Editorial Note: s15(2A): To be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s9(3)). The s15(2A) that is to be inserted is listed below for reference.

"(2A) The Director may, in respect of a holder of a New Zealand AOC with ANZA privileges, carry out in Australia any inspections and monitoring that the Director considers necessary in the interests of civil aviation safety." }

...

17 Power of Director to suspend aviation document or impose conditions

(1) The Director may suspend any aviation document issued under this Act or rules made under this Act or impose conditions in respect of any such document, if he or she considers such action necessary in the interests of safety, and if he or she—

...
{ Editorial Note: s17(1)(d). Word "; or" to be added on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s10(1). }

[(e)]

{ Editorial Note: s17(1)(e): To be added on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s10(1). The s17(1)(e) that is to be added is listed below for reference.

"(e) in the case of a holder of a New Zealand AOC with ANZA privileges, has received from the Director of CASA a copy of an Australian temporary stop notice given to the holder." }

[18 Power to revoke aviation document or impose conditions

...
[(1A)]

{ Editorial Note: s18(1A): To be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s11). The s18(1A) that is to be inserted is listed below for reference.

"(1A) Without limiting subsection (1), the Director may revoke or impose permanent conditions on an aviation document if the Director—

" (a) has been advised by the Director of CASA that CASA has given the holder of the document an Australian temporary stop notice; and

" (b) considers that the revocation or imposition of permanent conditions is necessary in the interests of aviation safety." }

...

[23B Delegation of Authority's or Director's functions or powers to persons outside Authority

...
[(2A)]

{ Editorial Note: s23B(2A): To be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s13). The s23B(2A) that is to be inserted is listed below for reference.

"(2A) Any function or power that may be delegated under subsection (2) to a person in New Zealand who is not an employee of the Authority may be delegated under that subsection to an officer of CASA for the purpose of enabling that officer to perform the function or exercise the power in Australia in respect of New Zealand AOCs with ANZA privileges." }

24 General power of entry

(1) For the purpose of carrying out his or her functions, duties, or powers under this Act or regulations or rules made under this Act, every person duly authorised by the [Director] shall have right of access at any reasonable time to the following:

{ Editorial Note: s24(1): Words "or for the purpose of the ANZA mutual recognition agreements" to be inserted after "rules made under this Act" on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s14(1)). }

(a) Any aircraft, aerodrome, building, or place:

(b) Any document or record concerning any aircraft, aeronautical product, or aviation related service.

[(1A)]

{ Editorial Note: s24(1A) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s14(2)). The s24(1A) that is to be inserted is listed below for reference.

“(1A) In the case of an Australian AOC with ANZA privileges, the power conferred by subsection (1) may only be exercised at the request of CASA.” }

(2) Without limiting the power conferred by subsection (1) of this section, every person duly authorised by the [Director] who has reasonable grounds to believe that—

...

[(ab)]

{ Editorial Note: s24(2)(ab) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s14(3)). The s24(2)(ab) that is to be inserted is listed below for reference.

“(ab) in the case of an Australian AOC with ANZA privileges, a breach of the Civil Aviation 1988 (Aust) or of regulations or orders made under that Act is being, or is about to be, committed; or” }

(b) A condition imposed under any civil aviation document is not being complied with; or

{ Editorial Note: s24(2)(b): Words “or Australian AOC with ANZA privileges” are to be inserted after “document” on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s14(4)). }

...

may at any reasonable time enter any aircraft, aerodrome, building, or place, and carry out an inspection to determine whether or not a matter referred to in paragraphs (a) to (c) of this subsection exists.

[(3) Every person who is authorised to enter any aircraft, aerodrome, building, or place under subsection (1) or subsection (2)—

(a) may require any person who is in possession of an aviation document, or of any certificate, book, manual, record, list, notice, or other document that is required to be kept under this Act, to produce or surrender it; and

{ Editorial Note: s24(3)(a): Words “or, in the case of an Australian AOC with ANZA privileges, under Australian law” are to be inserted after “Act” on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s14(6)). }

(b) must, if a document is surrendered under paragraph (a), inform the relevant aviation document holders orally, as soon as practicable, and in writing that the document has been surrendered.]

{ Editorial Note: s24(3)(b) is to be repealed and substituted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s14(7)). The s24(3)(b) that is to be substituted is listed below for reference.

“(b) must, if a document is surrendered under paragraph (a), orally inform the relevant aviation document holders or, if applicable, the relevant Australian AOC with ANZA privileges holder, as soon as practicable, and in writing that the document has been surrendered.” }

...

(6) Every person exercising the power of entry conferred by subsection (1) or subsection (2) of this section shall carry a warrant of authority issued by the [Director] specifying—

...

{ Editorial Note: s24(6)(b): Word “; and” is to be added on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s14(7)). }

[(c)]

{ Editorial Note: s24(6)(c) is to be repealed and substituted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s14(7)). The s24(6)(c) that is to be substituted is listed below for reference.

“(c) in the case of an Australian AOC with ANZA privileges, that the power is being exercised at the request of CASA.” }

Part 3—Rules

28 Power of Minister to make ordinary rules

(1) The Minister may from time to time make rules (in this Act called ordinary rules) for all or any of the following purposes:

...

[(ab)]

{ Editorial Note: s28(1)(ab) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s16). The s28(1)(ab) that is to be inserted is listed below for reference.

“(ab) to allow for the mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements.” }

...

30 Rules relating to general matters

Without limiting the power conferred by section 28 of this Act, the Minister may make ordinary rules for all or any of the following purposes:

[(ca)]

{ Editorial Note: s30(ca) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s17). The s30(ca) that is to be inserted is listed below for reference.

“(ca) to provide for the privileges of an air operator certificate to include conducting air operations in Australia.” }

...

33 Matters to be taken into account in making rules

...

(2) In making any rule the Minister or the Director, as the case may be, shall have regard to, and shall give such weight as he or she considers appropriate in each case to, the following:

...

{ Editorial Note: s33(2)(g) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s19). The s33(2)(g) that is to be inserted is listed below for reference.

“(g) the international circumstances in respect of—

“(i) aviation safety and security; and

“(ii) mutual recognition of safety certifications in accordance with the ANZA mutual recognition agreements.” }

...

Part 5—Offences and penalties safety offences

[46D Failure to provide information to Director relating to Australian AOCs with ANZA privileges

{ Editorial Note: s46D & s46E are to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s20). The s46D that is to be inserted is listed below for reference.

"46D Failure to provide information to Director relating to Australian AOCs with ANZA privileges

"(1) Every person commits an offence who conducts an air operation in New Zealand while in breach of section 11B(1) or (2).

"(2) Every person who commits an offence against subsection (1) is liable,—

" (a) in the case of an individual, to a fine not exceeding \$5,000; or

" (b) in the case of a body corporate, to a fine not exceeding \$25,000." }

[46E Failure to cease conducting air operations in New Zealand

{ Editorial Note: s46D & s46E are to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s20). The s46E that is to be inserted is listed below for reference.

"46E Failure to cease conducting air operations in New Zealand

"(1) Every person commits an offence who fails to comply with section 11C(3).

"(2) Every person who commits an offence against subsection (1) is liable,—

" (a) in the case of an individual, to a fine not exceeding \$10,000; or

" (b) in the case of a body corporate, to a fine not exceeding \$100,000." }

Part 6—Rights of appeal

[[66 Appeal to District Court

(1) A person may appeal to a District Court against a specified decision ...

...

(5) In this section, a **specified decision** is a decision—

...

(j)]

{ Editorial Note: s66(5)(e)-(j) are to be added on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s29). The s66(5)(j) that is to be added is listed below for reference.

" (j) to amend an AOC with ANZA privileges or withdraw those privileges under section 11I(3)." }

Part 6A—Civil Aviation Authority of New Zealand

[72I Director of Civil Aviation

...

[(3D)]

Means of dealing with disputes under the Arrangement between the Australian and New Zealand Governments on mutual recognition of Aviation Related Certification.

QUESTION

Senator O'BRIEN—I have not had a chance to read the document. Is there anything in our agreement which would prevent our legislation being conditional on certain things happening or continuing to happen in New Zealand?

Mr Dolan—We would have to check.

Senator O'BRIEN—I am happy for you to take that on notice.

CHAIR—There would have to be some performance—

Senator O'BRIEN—There are two aspects to this: first, if you have an agreement and it is not being honoured you may have some way of dealing with it; second, you may have legislation that has provisions conditional on reciprocal provisions. That is all I have.

RESPONSE

The means of dealing with disputes are covered within the High Level Arrangement (HLA). There are provisions within the HLA for dealing with issues such as temporary stop notices.

There is also provision under the HLA for the resolution of differences, by consultation between the two Governments. Details of the process are set out in the operational agreement between CASA and the Civil Aviation Authority of New Zealand. In regard to any amendments that may be required, Governments may amend the HLA at any time by mutual arrangement through exchange of diplomatic notes; and withdrawal from or termination of the arrangement is possible through an exchange of ministerial notes, allowing 12 months thereafter for effect.

The legislation also requires that CASA remains satisfied in relation to the operations that are covered by the AOC. The Secretary of the Department of Transport and Regional Services will advise CASA if the holder of the AOC is no longer eligible under the HLA to hold an Australian AOC with ANZA privileges.

{ Editorial Note: s72I(3D) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s32). The s72I(3D) that is to be inserted is listed below for reference.

“(3D) The Director may enter into arrangements with CASA for the purpose of giving effect to the ANZA mutual recognition agreements.” }

Part 7—Registries and information services

74 Civil Aviation Registry

(1) The [Authority] shall establish a Civil Aviation Registry.

(2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry:

...

[(ab)]

{ Editorial Note: s74(2)(ab) is to be inserted on a date to be appointed by the Governor-General by Order in Council (see 2004 No 8, s33(1)). The s74(2)(ab) that is to be inserted is listed below for reference.

“(ab) every Australian AOC with ANZA privileges:” }

...

100 Regulations

(1) The Governor-General may, from time to time, by Order in Council, make regulations for all or any of the following purposes:

....

[(ed)]

{ Editorial Note: s100(1)(ed) is to be inserted on 1 June 2004 by 2004 No 8, s39(2). The s100(1)(ed) that is to be inserted is listed below for reference.

“(ed) specifying, for the purposes of Part 1A, the agreements or arrangements between the Governments of Australia and New Zealand regarding mutual recognition of aviation-related certification:” }