SUBMISSION BY THE CIVIL AVIATION AUTHORITY OF NEW ZEALAND TO THE AUSTRALIAN SENATE RURAL AND REGIONAL AFFAIRS AND TRANSPORT LEGISLATION COMMITTEE

Re: Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003

1. Introduction

The Civil Aviation Authority of New Zealand (CAA) appreciates the opportunity to make this submission to the Rural and Regional Affairs and Transport Legislation Committee on the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003.

The Mutual Recognition regime provided for in the Amendment Bill is the result of extensive work undertaken in Australia and New Zealand by a joint Steering Group since August 2001. The Steering Group which directed and undertook much of this work met regularly over this period, and included representatives from the Australian Civil Aviation Safety Authority (CASA), the Australian Department of Transport and Regional Services (DOTARS), the New Zealand Ministry of Transport (MOT) and the CAA.

The Project began with the commitment made by the respective Transport Ministers originally in 1996, and reaffirmed in 2000[1] to achieve mutual recognition of aviation-related certification in the context of the Single Aviation Market Arrangements 1996 and the "Open Skies" Air Services Agreement 2002 made between the two countries.

This submission by the CAA is made with the concurrence of the MOT and supports the proposed amendments to the Australian Civil Aviation Act 1988 to provide for Mutual Recognition with New Zealand. The submission describes some of the background to the work of the Steering Group and provides an explanation for some of the significant aspects of the proposed regime.

The CAA believes the proposed Mutual Recognition regime reflects the successful collaboration of the Steering Group members to deliver on the commitment of the two governments and that its introduction will bring the reality of a single aviation market a step closer. In particular, the CAA and the MOT believe that the means of achieving recognition in this case is soundly based, and will make the regime a model for other types of recognition in the future.

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[1] *(Extract from the Memorandum of Understanding to the 2000 ASA):*
MUTUAL RECOGNITION OF AVIATION-RELATED CERTIFICATION
"8. The Ministers agreed that their respective aviation safety authorities continue with the adoption of mutual recognition of all aviation-related certification relevant to the activities covered by this Agreement not covered by the Trans Tasman Mutual Recognition Arrangement, with a view to achieving mutual recognition by December 2003."

The CAA is happy to provide an oral presentation on this submission and to provide further explanation to the Committee if this is required.

2. Background

In 1996 the Australian and New Zealand governments concluded the Single Aviation Market (SAM) Arrangements between the two countries. The SAM Arrangements were part of the wider political and economic objectives that were being pursued by the two countries further to the NZ/Australia Closer Economic Relations (CER). Under the SAM all route and capacity restrictions were removed on services that could be operated between and within each country.

The SAM Arrangements also recorded a commitment by the respective Ministers to pursue mutual recognition of all aviation-related certification relevant to the Air Services Agreement.

Some work was undertaken by CASA and the CAA, in the following years, with discussions held between the two authorities on aircraft airworthiness standards and certification.

In November 2000 an "Open Skies" Air Services Agreement (ASA) was concluded with interim effect (to replace the 1961 Treaty and 1996 SAM) and in an attached Memorandum of Understanding (MoU) the Ministers reaffirmed their commitment to mutual recognition of aviation-related certification. The MoU committed the respective safety authorities in Australia and New Zealand to co-operating with a view to achieving mutual recognition by December 2003. The ASA was formally signed in August 2002.

3. Mutual Recognition Project

A Mutual Recognition project team was established in August 2001 with representatives from the regulatory authorities CAA and CASA, plus the New Zealand Ministry of Transport and the Australian Department of Transport and Regional Services – the respective government departments responsible for the administration of the ASA. The project Steering Group consisted of personnel representing the necessary operational, policy and legal disciplines to undertake the mutual recognition task.

From the outset the Steering Group adopted a high-level focus, developing an agreed set of principles that would underpin the desired mutual recognition regime. It was also necessary to agree on the initial scope or focus of the project within a longer-term plan to meet the MoU commitments. The regime proposed would recognise the comparable level of safety achieved under each country's civil aviation regulatory system, for the activity covered by the scope of the ASA. Mutual recognition would accept that while there are detailed differences in the standards, requirements and application of regulatory processes in each country, the outcome achieved under each country's system is equivalent.

Under the MR regime it is proposed that eligible air operators from each country (in terms of the ASA) would be able to exercise the privileges of the Air Operator Certificate (AOC) granted by the certificating authority, to

conduct domestic operations in the other country, and to conduct international flights between the two countries, without the issue of an AOC by the other country.

The Steering Group investigated a number of options for achieving this outcome, based on the issue or non-issue of aviation documents and the requirements of the existing legislation and rules of both countries. A preferred option was identified, being the simplest and highest level form of mutual recognition, and this option was recommended to the respective Ministers in briefing papers prepared in early 2002.

4. Mutual Recognition Principles

The principles and some of the essential elements of the regime recommended by the Steering Group, and approved by the Ministers in March 2002, were as follows:

- Mutual recognition, although broadly specified in the MoU commitment, would be confined initially to airline AOCs authorising operations with aircraft with more than 30 passenger seats.
- Recognition is based, from the safety regulator's viewpoint, on the comparable level of safety achieved under each system in the specified activity area.
- The regulatory systems of each country would remain intact and would not be "mixed" in relation to the certification and oversight of individual SAM operators.
- Certification, surveillance and all safety compliance functions would remain the responsibility of the certificating authority, as there is only one operating document (AOC) in place.
- Recognition will be achieved in both countries by adoption of similar provisions in the respective Civil Aviation Acts.
- Harmonisation of rules is neither required nor is being pursued under this MR regime, but may be an eventual consequence of it.

5. Development of the Legislation

The draft legislation was developed jointly by the New Zealand and Australian teams in a specialist legal sub group commencing in early 2002. These teams included officials from the regulatory authorities and the respective departments, as well as representatives from the New Zealand and Australian legal drafting agencies (Parliamentary Counsel Office (PCO in New Zealand and Office of Parliamentary Counsel (OPC) in Australia).

The Steering Group met quarterly and the legal and operational subgroups more frequently as required to achieve the legislation deadlines. The legislation was compared and reviewed clause by clause by this joint team and the differences were identified, explained and resolved at each point. Differences in the legislation arise from the different legislative structures in

place in Australia and New Zealand and the different drafting styles adopted in each country. In Australia the issue of Air Operator Certificates, and requirements relating to use of foreign registered aircraft, are contained in the Civil Aviation Act whereas in New Zealand these matters are covered in Civil Aviation Rules. These differences have required careful consideration to produce overall a consistent result in the two parallel pieces of legislation.

During the process of jointly developing the legislation there were numerous face to face meetings held in both countries to examine the successive drafts clause by clause. The team fully considered the implications of the Trans Tasman Mutual Recognition Arrangement (TTMRA), other mutual recognition schemes (for example in Australia, certain inter State Agreements) and the application of domestic law in each country.

As a result of this intensive and joint work by the legal sub group of the Steering Group, we are confident that the legislation produces an identical result in practice in each jurisdiction.

6. Description of the Legislative Scheme

A new Part 1A of the New Zealand Civil Aviation Act will (when brought into force) provide for the implementation of the Australia-New Zealand aviation (ANZA) mutual recognition agreements by-

- Recognising, in New Zealand, air operator certificates issued in Australia to air operators domiciled in Australia ("Australian AOCs with ANZA privileges")

- Providing for the issue to air operators in New Zealand, who are eligible to operate services under the air services arrangements in place between Australia and New Zealand, of air operator certificates that will authorise air operations to be conducted in Australia – and be recognised in Australia ("New Zealand AOCs with ANZA privileges")

- Providing for a "temporary stop notice" that the Director may give to the holder of an Australian AOC requiring the operator to cease operations in New Zealand where the Director determines there is a serious risk to civil aviation safety in New Zealand

- Providing for consultation between the CAA and CASA regarding the change of country of certification when circumstances arise that give the Director reason to believe that it would be in the interests of civil aviation safety for the holder to conduct air operations under the Australian civil aviation regulatory system; or when the holder is no longer able to comply with the conditions specified in the amendment regarding the location of effective management control of its operations

- Clauses requiring the two authorities to consult with each other and to co-operate in the exchange of information and offers of assistance in applying the ANZA mutual recognition arrangements.

The amendments to the Civil Aviation Acts in both Australia and New Zealand were introduced in June and July 2003.

Both pieces of legislation will provide for the future expansion of mutual recognition beyond the acceptance of air operator certificates into other areas of aviation related certification as contemplated by the Ministerial commitment. While the current changes are specifically directed at airline Air Operator Certificates (AOCs), the structure is in place to allow continuation of the project team's work on a similar basis in future.

7. Acceptance of Differences in Rules and Regulations

The Project Steering Group tasked an Operations sub group to study and report on the operational issues that arose during the development of the mutual recognition scheme. The sub group members, consisting of representatives from CASA and the CAA, considered the application of the maintenance and operating requirements to large passenger aircraft under each system. As part of this process the sub group compared the CASA and CAA requirements, identifying any differences and assessing the implications for the operation of the overall scheme.

The operations sub group found a high degree of similarity in the rules and regulations covering large aircraft operations in both countries. This was not surprising given the established nature of the civil aviation regulatory systems in Australia and New Zealand, the international set of minimum standards developed and promulgated by the International Civil Aviation Organisation (ICAO) and the record of high compliance achieved by Australia and New Zealand as evidenced by the recent ICAO safety oversight audits, and the similar while not identical operating environments in each country. These factors, and the comparable level of safety achieved by airline operations under each system, have been the basis of acceptance of certifications under the scheme.

There are differences in the detail of the requirements and standards relating to airworthiness, equipment fit etc, and these while tabulated have simply been noted by the Steering Group. The Operations sub group, and the Steering Group, are satisfied that these differences (evenly distributed between the CASA and CAA systems) are not relevant and need not be given any additional attention in approving the overall scheme. The existence of such differences was anticipated and does not detract from the overall result.

In New Zealand, domestic operations had been conducted under CAA certification for some 15 years by Ansett's subsidiary, Ansett New Zealand, and then briefly (under New Zealand ownership) as Qantas New Zealand. Notably, as a consequence of the latter's collapse, Qantas operated domestically in New Zealand in its own right under the Australia-New Zealand ASA, but owing to the existing regulatory system (which mutual recognition will obviate in future) under a "Foreign Air Operators Certificate" issued by the CAA.

More recently both Qantas and Virgin Blue have established subsidiary companies to operate in New Zealand (Jet Connect and Pacific Blue respectively). These operators have all achieved certification under the New Zealand system and gained operational experience in that environment. The CAA for its part has gained experience in the certification of these airlines and

in particular the acceptance of operating manuals and procedures that have been adapted from those developed for the Australian requirements. The straightforward nature of the "re-certification" process in New Zealand, and the successful period of operation since, confirms the CAA's view that the two systems are closely aligned and that any differences of detail are easily accommodated.

The CAA and CASA while developing their own rules systems have engaged in harmonisation efforts where practicable. A recent example was the development of airspace rules under the respective Parts 71 and 73, and this work achieved a degree of harmonisation of requirements to the extent possible given the different institutional arrangements that apply in each country. These efforts will continue and expand in the future.

8. High-level Arrangement and other Agreements

A draft "High-level Arrangement" is to be formalised as soon as possible by the Australian and New Zealand governments, to give effect to the mutual recognition principle and setting out a process for its future implementation. Matters covered by the Arrangement include the following:

- Scope of the commitment
- Purpose of the temporary stop notice
- Mutual assistance with enforcement
- Funding and charging
- Dispute resolution procedures
- Provisions for an Operational Agreement between CAA and CASA

As noted above, an Operational Agreement to be made between the CAA and CASA will set out the procedures for contact between the safety authorities on matters relating to the MR regime, including the exchange of information and provision of advice necessary to support the arrangements in place.

Mutual recognition will be extended to other aviation certification covered by the 2002 ASA in future, based on the principles set out in the High-level Arrangement and following a period of operation of the new regime.

9. Concluding Remarks

Eligible airlines under the ANZA mutual recognition arrangements are those Australian or New Zealand airlines that are either "designated Airlines" or Single Aviation Market (SAM) airlines, in terms of the current air services arrangements. Under the High-level Arrangement (and as provided for in legislation) the regime will be limited in application initially to airlines conducting passenger or freight operations in aircraft with 30 or more passenger seats, or aircraft greater than 15,000kg.

The amendments to the Civil Aviation Act 1990 in New Zealand have been enacted, having received the Royal Assent on 27 March 2004. The mutual

recognition provisions contained in a new Part 1A to the Act are presently suspended and will come into force on a date to coincide with the enactment of the similar provisions in Australia.

The entry into force of the New Zealand legislation depends on the enactment of the Australian mutual recognition provisions substantially unchanged. Any changes to the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003 could lead to a different (non-uniform) application of the regime in each country and hence would need to be carefully examined for their effect on the New Zealand legislation and ultimately the integrity of the overall scheme.

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