Chapter Two

Issues

Introduction

2.1 The Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005 (the bill) was preceded by a bill of the same title introduced into the Parliament in 2003. The 2003 bill was the subject of an inquiry by this committee's predecessor. The report of that inquiry was tabled in the Senate in June 2004. The inquiry identified a number of issues of concern and the majority report made two recommendations designed to address these concerns.

2.2 Recommendation 1 proposed that a comparative assessment of safety records of airlines operating in Australia under both Australian and New Zealand Air Operator Certificates (AOCs) be conducted 12 months after the commencement of the mutual recognition of AOCs and that the results of this assessment be tabled in the Parliament within 18 months of that commencement date. The Government accepted this recommendation and the committee was informed that the terms of reference for the safety assessment are currently being developed by Australia's Civil Aviation Safety Authority (CASA) in consultation with its New Zealand counterpart[1].

2.3 The second recommendation made in the majority report was to remove the ability to extend mutual recognition beyond the current proposal for AOCs by regulation. The 2005 bill has been revised to accommodate this recommendation.

2.4 During this inquiry, some of those concerns raised in the 2004 inquiry were revisited. These concerns related primarily to the underlying tenets and possible unintended consequences of the legislation rather than the broader policy to be implemented by the bill. The broader policy is a move towards developing a single Australia-New Zealand aviation market. It follows the Australian and New Zealand governments' signing of the Single Aviation Market (SAM) Arrangements in 1996 and an 'open skies' Air Services Agreement (ASA) in August 2002, which came into effect in August 2003.[2]

2.5 There were no new concerns raised in relation to the bill. This report makes reference to the 2004 report in the discussion on issues revisited. These issues include the arguments that mutual recognition will reduce administrative costs and the possible safety implications for Australian air travellers.

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1 Department of Transport and Regional Services submission indicates that it is intended that consultation with CAANZ will occur throughout the process, including the appointment of an independent assessor.

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

Administrative efficiencies

2.6 During the 2004 inquiry, the government and Qantas argued that a mutually recognised AOC would result in improved efficiency by reducing duplication and complexity and the associated administrative and financial burdens[3].

2.7 This matter was taken up during this inquiry. A representative of the Australian Federation of Air Pilots noted that cost savings arising out of mutual recognition are yet to be identified. 'People are talking about them. We are yet to see any hard facts that show that there are substantial savings in relation to this proposal.'[4]

2.8 Qantas noted in their recent submission that they will gain from the cost savings associated with the flexibility of movement of aircraft and crews:

> …it will provide the ability to transfer aircraft between our Australian and New Zealand based fleets to cover matters such as temporary unforeseen maintenance requirements and seasonal demand, without the need to go through the present re-registration processes, which are lengthy and attract payment of export/import taxes.[5]

2.9 However, there is still concern in the industry that the savings made will have unintended consequences. Concern was expressed that the implementation of the legislation will result in the reduction in employment opportunities and conditions for Australian workers.

2.10 The Flight Attendants' Association argued that mutual recognition may act to encourage operators to shift business to the country that had more viable cost saving measures for their enterprise:

> The airlines now have started employing overseas. Qantas has a base in New Zealand of international flight attendants who operate under vastly lower conditions than their Australian counterparts. They have set up subsidiary airlines in New Zealand, such as Jetconnect, and there is evidence that jobs that would normally have gone to young Australians are now moving overseas, in particular to New Zealand.[6]

2.11 These concerns were supported by evidence from the Australian Federation of Air Pilots. The representative told the committee of an agreement they had with Virgin Blue in relation to its New Zealand operations. The Federation was given the understanding that their membership would be employed to do the flying. Despite that agreement, Virgin Blue established its own company within New Zealand – Pacific

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3 Senate Rural and Regional Affairs and Transport Legislation Committee*: Provisions of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003,* pp. 1-2 and 5

4 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 26

5 Qantas, Submission 2, 2005, p. 2

6 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 7

Blue. Pacific Blue engages its pilots through a contractor at a substantially lower rate of pay than the Virgin Blue pilots receive. The Federation argues, 'Pacific Blue seems, in our mind, to be a clear example of where things may go in the future if this bill is passed.'[7]

2.12 The question as to whether airlines will move base to take advantage of more cost efficient regulatory regimes was answered by a representative of DOTARS. There is provision in the bill to limit the ability of operators to pick and choose which regulatory system they will operate under. Under proposed section 28B, operators will have to base the majority of their resources in Australia to be monitored by CASA. In addition, the bill mentions that the location of training and checking bases would be examined, along with the operator's headquarters:[8]

> …to decide that perhaps the centre of gravity of the operations has shifted to the extent that it is no longer possible for them to effectively carry out surveillance, and in that case there would be a conversation between the two regulators and arrangements would be made.[9]

2.13 Certainly, Australia's regulatory authority CASA, is not anticipating an increase in administrative costs as a result of the proposed legislation:

> …in terms of costs to CASA, there really is no dramatic change as to the costs that we currently have in accordance with the costs that we will have in the future, in the same way that CASA issues AOCs for Australian airlines operation in New Zealand. We do undertake surveillance tasks et cetera of those airlines that operate there and those costs are already within our budget… I do not believe what is being proposed will make CASA incur significant additional costs.[10]

2.14 A further possible unintended consequence of the legislation raised during the inquiry was the implications for the regulatory regimes and safety standards of the airlines. The Flight Attendants' Association argued that:

> What we could have … is an institutionalised system with one level of safety for lower cost foreign operators operating in our country. … Secondly you would have a higher level of safety if you chose to fly with a main line Australian carrier operating to Australian standards.[11]

Relative safety standards

2.15 The 2004 report canvassed the impact of a mutual recognition policy on the safety of Australia's aviation environment. While it was readily acknowledged that

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7 RRAT Committee *Hansard Transcript,* 29 August 2005, pp. 23 and 26

8 RRAT Committee *Hansard Transcript,* 29 August 2005, pp. 30 and 35

9 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 35

10 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 31

11 RRAT Committee, *Hansard Transcript*, 29 August 2005, p. 7

both countries consistently met International Civil Aviation Organisation (ICAO) safety standards, a number of aviation organisations questioned whether there was in fact a comparable level of safety between the two countries.

2.16 The concept of mutual recognition is based on an acceptance by both Australia and New Zealand that their respective aviation safety legislation results in the safe operation of large capacity aircraft within their jurisdiction.

2.17 However, Mr Steven Reed, President of the Flight Attendants' Association of Australia (International Division) argued that:

> …there is no evidence that there is an equivalence between Australian and New Zealand safety systems. We have not seen anything to indicate that there is an equivalence, because the methodology used to assess safety equivalence we say is largely invalid. … We say that the safety assessment that has been used to make the assumptions has not been made public for scrutiny and we believe that it will be appropriate for organisations such as ourselves to have a look at those reports so that we can have a more detailed examination of them. It is our view that the bill should not proceed until the assumptions underpinning them have been scrutinised and indeed tested.[12]

2.18 Mr Guy Maclean, providing evidence on behalf of the Flight Attendants' Association of Australia (Domestic Division), also indicated that there were differences in aviation safety standards and gave as an example cabin safety auditors:

> This is where we have concerns; these are the safety implications: under this bill, a New Zealand-registered aircraft, for example, could operate in Australia solely under the requirements and oversight – indeed, this is what this bill is about – of the New Zealand civil aviation safety authority. They do not oversee safety to the same standard as we do in Australia. It is not that they cannot do it or that they are no good at it – they just do not do it. For example – and I think it is a good example – I am not aware that the New Zealand civil aviation safety authority has any cabin safety auditors who are specialist cabin safety operators.[13]

2.19 Representatives of Virgin Blue Airlines Pty Ltd indicated that they did not agree with the arguments proposing that the New Zealand regulatory regime was of a lower standard than that of Australia. The committee was told that Virgin Blue's subsidiary, Pacific Blue is certified by the New Zealand authorities and holds an Australian foreign airline operating certificate – issued by CASA.

2.20 Mr John Bartlett, Head of Safety Systems for Virgin Blue Airlines, stated that the operating certificate:

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12 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 2

13 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 4

> …recognises acceptance of those airline safety standards and, more importantly, recognises that the state of certification – in this case New Zealand – has an effective and acceptable regulatory aviation safety oversight capability. In this regard, the acceptability of equivalence of safety outcomes between Australia and New Zealand is already established and in operation.[14]

2.21 Mr Terry O'Connell, Executive Director of the Australian Federation of Air Pilots (AFAP) also raised concerns in relation to safety regulation. In evidence, he advanced the proposition that harmonisation of the two regulatory systems should be examined rather than mutual recognition.[15]

2.22 He was also critical of the use of ICAO to establish and justify a safety position:

> ICAO provides a minimum position – in effect, the lowest common safety benchmark on a global basis. Aviation safety in Australia has traditionally been about establishing and maintaining margins of safety over and above the minimum standards.[16]

2.23 The Department of Transport and Regional Services maintained that the introduction of the new legislation would not compromise safety. In the Department's submission, it argued that:

> The Australian Government remains committed to aviation safety and would not enter into an agreement that compromised safety. The Government has been advised by CASA that Australia and New Zealand have comparable safety outcomes.[17]

2.24 In response to criticism of ICAO standards, Ms Merrilyn Chilvers, General Manager, Aviation Operations, argued that:

> I do not think it is fair to say that ICAO comments on relative safety. It has a program of safety audits, which it does on a systematic basis, where it audits each country's compliance with annexes under the Chicago convention, noting whether or not a country complies and whether differences have been lodged. But it would not say that one country is safer than another. It is a matter of compliance with the annexes.

2.25 During the inquiry, concern about the different regulatory standards and the safety implications of the two regimes focussed on the issue of cabin crew. It was a matter that was also considered during the 2004 inquiry.

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14 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 15

15 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 23

16 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 23

17 Department of Transport and Regional Services, Submission 1, 2005, p. 2

Cabin crew ratios

2.26 Australian and New Zealand apply different regulatory standards for cabin crew to passenger ratios.

2.27 Mr Guy Maclean, representing the Flight Attendants' Association of Australia, when asked to provide the committee with an update on the crew to passenger ratios on Australian and New Zealand aircraft, indicated that there was a fundamental difference in relation to Australia's crew to passenger ratio that was not well understood:

> … Our ratio is a passenger standard; it refers to one crew member per 36 passengers. The American, European and New Zealand ratios are passenger seat standards. They refer to one to 50 passenger seats. They are like apples and oranges; they cannot be directly compared but they generally are. What you get is an invalid comparison between the number 36 and the number 50, which makes us look artificially low and automatically makes us look at if we are on a great wicket here with an extremely advantageous crew ratio. In the European, US and New Zealand standards, because there is a passenger seat ratio, even if there are two people on the aeroplane there must be the crew ratio of one to 50; in the Australian ratio that could vary at times and the crew numbers could be reduced.[18]

2.28 The Flight Attendants' Association indicated that the possibility of aircraft operating with less cabin crew could create problems in relation to safety. The committee was told that under New Zealand regulations, aircraft are able to operate with less than one crew member per main floor level exit. It was also told that while traditionally, this practice has not been allowed (or done) in Australia:

> …recently we are seeing that the operators are wishing to operate single-aisle aircraft with less than one crew member per main exit, and that would obviously entail less than one crew member in command of a raft, for example, or operating a raft in a ditching. They are now looking for the flexibility to have, in what they refer to as 'exceptional circumstances', less than a crew member per door – so, for example, one crew member on a 737 at the forward end responsible for two doors. We have never done that in this country. It is just starting to arise.[19]

2.29 The Australian Federation of Air Pilots also raised the issue of cabin crew ratios and the potential impact on safety. The Federation indicated support for the Flight Attendants' Association's views in relation to diminished cabin crew to passenger ratios[20] and told the committee that in 'relation to levels of safety, we would certainly argue that it is a diminished safety position.'[21]

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18 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 3

19 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 3

20 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 27

21 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 24

2.30 Mr John Bartlett, Head of Safety Systems, Virgin Blue Airlines Pty Ltd, indicated that as far as the airline's management was concerned, the management of cabin safety is underpinned by standard operating procedures approved by CASA. The airline's approved procedures to deal with in-flight emergencies and evacuations are predicated on the availability of four flight attendants on all of its aircraft[22]: 'the presence of extra flight attendants carried to meet the required ratio of one to 36 is not considered from a safety perspective'.[23]

2.31 In explaining the airline's approach to the management of risk, Mr Bartlett argued that it is the culmination of the processes, standards and behaviours that determine safe outcomes consistently.[24] He told the committee:

> We are talking here from a management perspective about ensuring that everybody, including our flight attendants, is armed with the procedures, the documentation, the training and the skill sets to ensure that safe outcomes are predicated. We cannot just see whether it happens. It is the consistent application of these procedures that ensures safe outcomes for our passengers, and not the prescription of any one in particular – for example, the ratio of cabin crew to passengers.
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> These considerations firmly and empirically, we believe, establish the standards to be met in establishing a regime that ensures safe outcomes for passengers. In New Zealand – and it happens to be the internationally accepted standard – the standard of one to 50 clearly meets the criteria. Australia holds with a ratio of one to 36. Whatever the genesis of this ratio, there is clearly no safety case to be made to support the proposition.[25]

2.32 The Department of Transport and Regional Services acknowledged that the number of cabin crew to passengers remains an issue of concern in relation to the bill. The department, however maintains its 2004 position in relation to cabin crew ratios and argued that:

> 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.[26]

2.33 During the hearing on the bill, the committee questioned the department in relation to the basis on which the determinations on flight crew and passenger ratios

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22 RRAT Committee *Hansard Transcript,* 29 August 2005, pp. 15-16

23 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 16

24 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 16

25 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 16

26 Department of Transport and Regional Services, Submission 1, 2004, p. 4

are made. The committee was told that the basis of the ratio was an historical one and that no further research had been undertaken in relation to crew ratios and safety issues since the last inquiry.[27]

2.34 The committee questioned whether, based on the evidence provided in relation to Pacific Blue and Virgin Blue – where there is one fewer cabin crew member on identical aircraft operated by related companies across the Tasman – the new legislation would result in a reduction in cabin crew on Australian flights.

2.35 Mr Arthur White, Acting Executive Manager, Airline Operations, CASA, told the committee that CASA had not conducted any research in relation to cabin crew to passenger ratios, and that the last consultation had involved a discussion paper released in 2000. A subsequent notice of proposed rule was released in 2002 and the ratio was maintained at 1:36 – based largely on submissions put forward by flight attendants' associations.

2.36 Whilst indicating that the Australian airlines were yet to write to CASA formally seeking a change to the ratio, Ms Nicola Hinder, Acting Manager of Corporate Relations, told the committee that:

> We have received word from the airlines that at some time they will be looking to come to CASA with a safety case to demonstrate whether changes are required. CASA has responded by saying that, while at this stage we have not made any moves to change the 1:36 ratio, we will look at safety cases if they are presented to us. We remain open to making changes, but they must be supported by an appropriate safety case to support the changes.[28]

2.37 The committee also explored the possible implications for airline security of a decreased cabin crew ratio. When asked specifically whether a decreased cabin crew to passenger ratio would have an impact on security, Ms Merrilyn Chilvers, General Manager, Aviation Operations, told the committee that:

> The Australian and New Zealand situations are different in respect of security because in New Zealand the security is administered by the civil aviation authority whereas here it is administered by the Office of Transport Security within the department. The issue of an AOC by New Zealand does not cover off the security requirements, so any New Zealand operator wishing to operate here with the ANZA privileges would be required to have an aviation security program approved by the Office of Transport Security. What the Office of Transport Security would be looking at would be the capacity of the cabin crew to deal with incidents, so they would be looking at the outcome rather than setting down specific numbers.[29]

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27 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 31

28 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 33

29 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 34

Air marshals

2.38 Whilst the issue of air marshals was raised during the inquiry, the committee notes that there was not the same level of concern raised as during the previous inquiry.

2.39 Mr Terry O'Connell, Executive Director of the Australian Federation of Air Pilots, was asked by the committee about the Federation's views on the issue of air marshals:

> **Senator O'Brien –** What is your view on the issue of sky marshals? Does your association have concerns at the prohibition of sky marshals on aircraft operating under New Zealand AOCs?
>
> **Mr O'Connell –** The federation does not hold a strong position in relation to air marshals. We have accepted that they have been introduced into Australian operations. They do exist within Australia, as we all know. Our position is that there should have been more consultation, but we are satisfied now with the operation of the sky marshals. Obviously, anything that adds to security we are prepared to accept. Our position is that we would prefer to see sky marshals now than not see them.[30]

2.40 The submission provided by the Department of Transport and Regional Services indicated that on the issue of air marshals:

> …the Office of Transport Security has advised that New Zealand airlines operating to, from or within Australia using a New Zealand AOC with ANZA (Australian and New Zealand Aviation) privileges will still have to hold an Australian aviation security programme. In addition, the airlines have their own security manual.[31]

2.41 The committee sought further clarification from the department and was informed that New Zealand airlines operating domestic services within Australia would be required to comply with Australia's aviation security regime including 'allowing air security officers on board'.[32]

Committee comment

2.42 The report on the 2004 inquiry noted that evidence had been provided during the inquiry on the significant differences between the employment conditions in Australia and New Zealand. Further, it indicated that committee's disappointment if

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30 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 27

31 Department of Transport and Regional Services, Submission 1, 2005, p. 2

32 Department of Transport and Regional Services, answer to question taken on notice, provided 31 August 2005

the aviation industry based in Australia used mutual recognition as an opportunity to reduce employment opportunities for Australians in the industry.[33]

2.43 During this inquiry, concerns about employment conditions and opportunities were again evident. The committee notes that even without the mutual recognition regime for AOCs in place, the Australian Federation of Air Pilots cited an example of employment opportunities going offshore.

2.44 Virgin Blue acknowledged that the difference in cabin crew ratios between the two countries 'does result, potentially, in a less than level playing field in both countries, with operators in Australia exposed to a significant cost penalty'.[34]

2.45 The committee believes that however unintended, it is inevitable that the proposed legislation will encourage Australian operators to either reduce standards of employment or employment opportunities for cabin crew and pilots or encourage operators to move offshore. The committee believes that in this may not be in the best interests of the industry or the travelling public, particularly if it results in the reduction of the standard of safety Australian passengers enjoy.

2.46 The committee notes that work on the 2004 inquiry recommendation relating to a comparative assessment of the safety records between Australia and New Zealand has already commenced. It believes that this assessment should be finalised and considered by Australia's Civil Aviation Safety Authority (CASA) prior to any changes being made to Australia's regulatory safety regime relating to large aircraft. Further, CASA, in making any changes to the regulatory regime relating to large aircraft, should be required to provide to the Minister for tabling in the Parliament a statement of reasons for the changes supported by relevant material.

Recommendation

The committee recommends that the bill be passed.

Senator the Hon. Bill Heffernan
Chair

33 Senate Rural and Regional Affairs and Transport Legislation Committee*: Provisions of the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003,* p. 17.

34 RRAT Committee *Hansard Transcript,* 29 August 2005, p. 16