The Senate

Rural and Regional Affairs and Transport Legislation Committee

Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005

September 2005

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Chapter One

Introduction

Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005

1.1 The Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005 (the bill) was introduced into the Senate on 23 June 2005. On 10 August 2005, the bill was referred for inquiry to the Rural and Regional Affairs and Transport Legislation Committee (the committee) on the recommendation of the Senate Selection of Bills Committee.

1.2 A similar bill entitled the Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003 had been introduced into the previous Parliament in June 2003. It was the subject of an inquiry by the committee's predecessor which reported in June 2004.

1.3 The Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand and Other Matters) Bill 2003 lapsed with the proroguing of the 40th Parliament.[1] The differences between the 2005 bill and that which lapsed arise from recommendations made by the committee's predecessor on the initial bill.

Conduct of the inquiry

1.4 The committee approached those who had participated in the June 2004 inquiry inviting comment to the revised bill. It also agreed to consider the submissions made and evidence provided in the 2004 inquiry as part of this inquiry.

1.5 The committee sought further public comment by advertising the inquiry in *The Australian* on 17 and 31 August 2005. The committee received two submissions (see Appendix 1).

1.6 The committee held a public hearing in Canberra on 29 August 2005. It heard evidence from a number of witnesses, including the Flight Attendants' Association of Australia, Virgin Blue Airlines Pty Ltd, the Australian Federation of Air Pilots and the Department of Transport and Regional Services (see Appendix 2). All the evidence presented to the committee is available on the parliament's homepage at http://www.aph.gov.au

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

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1 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 1

Purpose of the bill

1.8 The bill amends the *Civil Aviation Act 1988* to permit the mutual recognition of certain aviation-related safety certification between Australia and New Zealand in relation to large aircraft (greater than 30 seats or 15,000 kgs).[2]

1.9 New Zealand has implemented corresponding amendments to its *Civil Aviation Act 1990* by the addition of 'Part 1A – ANZA Mutual Recognition'. The New Zealand legislation passed into law on 18 March 2004.[3]

1.10 The bill and its associated regulations is the first step toward mutual recognition of aviation safety certificates between Australia and New Zealand. It provides for the mutual recognition of Air Operator Certificates (AOCs) for large aircraft, as issued by the Civil Aviation Safety Authority (CASA) in Australia and the Civil Aviation Authority of New Zealand (CAANZ).

1.11 The possession of an AOC permits an air operator to conduct commercial activities. Aircraft operators wishing to operate in both Australia and New Zealand are currently required to hold, and comply with, two AOCs issued by their respective aviation safety regulators (CASA and CAANZ). The *Explanatory Memorandum* notes that:

> This results in duplication, complexity and added administrative and financial burdens on operators, which may in turn deter operators from establishing air services in the other country. This is inconsistent with the intention of the 'open skies' Air Services Agreement to promote competition among Australian and New Zealand operators, including on domestic routes.[4]

1.12 Under the new legislative arrangements, CASA will be able to approve an AOC for an Australian operator that will authorise operations in both Australia and New Zealand and will be accepted for use by New Zealand authorities. This particular AOC will be termed an Australian AOC with ANZA privileges – where ANZA means Australia and New Zealand Aviation.[5] Similar arrangements will allow New Zealand operators with a New Zealand AOC with ANZA privileges to operate on Australian routes.

1.13 The particular aviation authority that issues the AOC (with ANZA privileges) is the authority that will monitor its use by the operator – whether its operations are in Australia or New Zealand. This means that Australian operators choosing to hold an

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2 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 2

3 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 3

4 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005,* p. 4

5 Second Reading Speech, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005,* p. 2

AOC with ANZA privileges issued by CASA will be subject to regulatory oversight by CASA – even when operating in New Zealand, and vice versa.[6]

1.14 Any extension of mutual recognition to certificates other than AOCs (for the operation of large aircraft) will be achieved by further amendment to the *Civil Aviation Act 1988*. This provision implements recommendation 2 of the committee's report on the 2003 bill.[7]

Provisions of the bill

Mutual recognition

1.15 Schedule 1 contains the new provisions that will implement the mutual recognition arrangements with New Zealand.[8]

1.16 Items 2 and 3 define ANZA activities in Australian territory and New Zealand territory, respectively.[9] ANZA is the acronym for Australia and New Zealand Aviation.

1.17 Item 4 defines ANZA mutual recognition agreements as being 'the agreement or arrangement, or agreements or arrangements, as amended and in force from time to time, identified in regulations made for the purposes of this definition'.[10]

1.18 The ANZA mutual recognition agreements will be identified in Regulations. It is envisaged that:

> …the principal arrangement defining the scope of the scheme will be in the form of an instrument of less-than-treaty status. The arrangement will set out joint understandings on the application of mutual recognition between the respective Governments. It will cover such key issues as the mutual recognition principle; set out the scope of the mutual recognition commitment; identify procedures to be followed in relation to temporary stop notices; allow for mutual assistance with enforcement; and cover future extension of mutual recognition arrangements. At this stage the Governments have agreed that ANZA mutual recognition should only apply to aircraft with greater than 30 seats or more than 15,000kg.[11]

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6 Second Reading Speech, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005,* p. 2

7 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005,* p. 1

8 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005,* p. 14

9 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 9

10 Department of the Parliamentary Library, Bills Digest No. 13, 2005-06, p. 9

11 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005,* p. 16

Temporary stop notices

1.19 A new section – 28D – will administer CASA's power to issue a temporary stop notice to a holder of a New Zealand AOC with ANZA privileges.

1.20 The bill includes a provision which allows a regulator to issue a temporary stop notice to an operator holding an AOC with ANZA privileges issued by the other regulator, who is normally responsible for regulating the safety of its operations. Temporary stop notices require the holder to cease all activity, and would only be issued if the safety regulator considered there was a serious risk to flying safety.

Scrutiny of Bills

1.21 The Senate Scrutiny of Bills Committee has the responsibility for examining all legislation that comes before the Senate. Its terms of reference include matters relating to rights and liberties and also parliamentary scrutiny.

1.22 Item 2 in the table to subclause 3(1) in the bill provides that provisions relating to mutual recognition will commence on 'a single day to be fixed by Proclamation' with no limit specified within which the bill must commence in any event.[12]

1.23 The Scrutiny of Bills Committee made specific comments in relation to this item:

> The Committee takes the view that Parliament is responsible for determining when laws are to come into force, and that commencement provisions should contain appropriate restrictions on the period during which legislation might commence.[13]

1.24 The Scrutiny of Bills Committee noted the statement in the explanatory memorandum that the deferred commencement is 'to enable the signing of the inter-governmental arrangement on mutual recognition by the Governments of Australia and New Zealand.' At the same time however, the Scrutiny Committee sought the Minister's advice as to whether the commencement clause should not also be subject to a provision that, if the agreement has not been signed by some fixed date, the Act will be automatically treated as having been repealed.[14]

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12 Explanatory Memorandum, *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Bill 2005,* p. 14; Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 8/05,* p. 8

13 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 8/05,* p. 8

14 Senate Standing Committee for the Scrutiny of Bills, *Alert Digest 8/05,* p. 9

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.
>
> 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

Dissenting Report – Labor Senators

Labor Senators do not accept the committee's report.

Despite evidence being presented now to two inquiries into this Bill, the Government is proposing to introduce a new aviation regime, without having undertaken any research to justify the changes, or to assess the likely outcomes. Instead, the Government continues to rely on hearsay evidence that there will benefits, but little or no costs.

Again, no evidence was presented to this inquiry that quantified the benefits of this proposed amendment to the Civil Aviation Act.

Labor maintains the view that the potential costs of the introduction of this legislation are likely to be considerable, but again, no research has been undertaken by the Government to articulate or quantify these costs – despite this being a recommendation included in the dissenting report when this bill was considered by the Committee in 2004.

The greatest potential cost to Australia is the impact air safety.

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

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

Operators with AOCs with ANZA privileges will seek to operate on Australian domestic routes, and it was acknowledged during the hearings that Virgin Pacific, established in New Zealand to take advantage of the lower cost structures, could seek to extend its operations into Australia.

Given that different safety regimes are in place between Australia and New Zealand – and that operators with AOCs with ANZA privileges will have access to a lower cost structure on this basis – Labor Senators believe it will be difficult for Australian Authorities to not approve applications for lowering of the safety standards on other

domestic routes in Australia. This will lead to an overall reduction in safety standards across the Australian aviation industry.

Labor Senators believe that this report fails to recognise the importance of cabin crew to operational safety. Evidence presented to the previous inquiry showed that research undertaken by Professor Galea at the Fire Safety Research Faculty at Greenwich University's School of Numerical Modelling has shown a clear correlation between higher crew ratios and more effective (and safer) aircraft evacuations. This fundamental research has not been recognised in this report. In addition, the role that cabin crew played in saving lives during recent aviation safety incidents in Toronto and Osaka was not recognised by the committee.

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

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

Labor therefore does not support the recommendation of the report – rather recommending that the Bill not be passed by the Australian Parliament.

Senator Anne McEwen (Labor Senator for South Australia)

Senator Glen Sterle (Labor Senator for Western Australia)

Senator Kerry O'Brien (Labor Senator for Tasmania)

Dissenting Report by Australian Greens
Senator Christine Milne

The Committee itself recognises that *," 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 this may not be in the best interests of the industry or the travelling public, particularly if it results in the reduction of standards of safety Australian passengers enjoy."* Paragraph 2.40.

Whilst the majority report has taken into account the concerns that were raised in the inquiry by the Australian Federation of Air Pilots and the Flight Attendants' Association of Australia regarding potential job losses and reductions in airline safety from implementation of the legislation, it has reached a conclusion inconsistent with this evidence and its own analysis.

The legislation simplifies the ability for airline operators to transfer aircraft operations between Australia and New Zealand. This may encourage operators to shift business to whichever country provides greater cost saving measures, with a potential loss of jobs from the Australian airline industry.

While both Australia and New Zealand meet International Civil Aviation Organisation safety standards, these provide only a minimum safety standard. The Australian and New Zealand aviation safety regulations are not equivalent, and there were significant concerns raised during the inquiry about the differences in cabin crew to passenger ratios which had a potential impact on safety. An unintended consequence of the legislation is that there would be different safety standards for Australian airline operators and foreign airline operators both flying over Australia. To recognise safety concerns and then to recommend that the legislation be passed, is inconsistent with the government's policy of upgrading airline security.

The Australian Greens cannot support legislation that results in Australian airline operators reducing standards of employment or employment opportunities for cabin crew and pilots, or moving their operations offshore, or reductions in safety standards for airline passengers.

Recommendation:
Unintended consequences become intended consequences when they are known. In recommending that the Bill be passed, this Committee is condoning the known inevitable consequences which are clearly not in the best interest of Australian workers, operators or the travelling public. The bill should not be passed.

Senator Christine Milne
Australian Greens Senator for Tasmania

Appendix 1

List of Submissions

1. Department of Transport and Regional Services
2. Qantas Airways Limited

Appendix 2

Witnesses who appeared before the Committee at the Public Hearing

Monday, 29 August 2005
Parliament House, Canberra

Flight Attendants Association of Australia – International and Domestic Division
Mr Steven Reed, President, International Division
Mr Guy Maclean, Government and Regulatory Affairs Adviser, Domestic Division

Virgin Blue Airlines Pty Ltd
Mr John Bartlett, General Manager Safety Systems
Mr John O'Callaghan, Government Relations Adviser

Australian Federation of Air Pilots
Mr Terry O'Connell, Executive Director

Department of Transport and Regional Services
Mrs Merrilyn Chilvers, General Manager, Aviation Operations, Aviation and Airports Business Division
Ms Wancy Lam, Senior Lawyer

Civil Aviation Safety Authority
Mr Arthur White, Acting Group General Manager, Air Transport Operations Group
Ms Nicola Hinder, Acting General Manager, Corporate Relations