



Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Act 2006

No. 102, 2006

**An Act to amend the law relating to aviation, and
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedule(s).....	3

Schedule 1—Amendments related to mutual recognition with New Zealand

		4
	<i>Civil Aviation Act 1988</i>	4
	<i>Civil Aviation (Carriers' Liability) Act 1959</i>	18



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No. 102, 2006

An Act to amend the law relating to aviation, and for related purposes

[Assented to 16 September 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Civil Aviation Legislation Amendment
(Mutual Recognition with New Zealand) Act 2006*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	16 September 2006
2. Schedule 1, items 1 to 19	A single day to be fixed by Proclamation.	30 March 2007 (see F2007L00796)
3. Schedule 1, item 20	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of item 10 of Schedule 2 to the <i>Civil Aviation Amendment Act 2005</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	30 March 2007 (paragraph (a) applies)
4. Schedule 1, items 21 to 28	At the same time as the provision(s) covered by table item 2.	30 March 2007
5. Schedule 1, items 29 to 31	The later of: (a) immediately after the commencement of the provision(s) covered by table item 2; and (b) immediately after the commencement of item 10 of Schedule 2 to the <i>Civil Aviation Amendment Act 2005</i> . However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	30 March 2007 (paragraph (a) applies)

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
6. Schedule 1, items 32 to 40	At the same time as the provision(s) covered by table item 2.	30 March 2007

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments related to mutual recognition with New Zealand

Civil Aviation Act 1988

1 Subsection 3(1)

Insert:

ANZA is short for Australia New Zealand Aviation.

2 Subsection 3(1)

Insert:

ANZA activities in Australian territory, in relation to a New Zealand AOC with ANZA privileges, means the operations in, or flights into or out of, Australian territory that are authorised by the AOC, to the extent that it is expressed to be issued under section 11G of the Civil Aviation Act 1990 of New Zealand.

3 Subsection 3(1)

Insert:

ANZA activities in New Zealand, in relation to an Australian AOC with ANZA privileges, means the operations in, or flights into or out of, New Zealand that are authorised by the AOC, to the extent that it is expressed to be issued for the purposes of the ANZA mutual recognition agreements.

4 Subsection 3(1)

Insert:

ANZA mutual recognition agreements means 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.

5 Subsection 3(1) (at the end of the definition of AOC)

Add:

Note: In some provisions **AOC** is used in the context of a New Zealand AOC with ANZA privileges (which is a document granted under the Civil Aviation Act 1990 of New Zealand).

6 Subsection 3(1)

Insert:

Australian AOC with ANZA privileges means an AOC that is expressed, wholly or partly, to be issued for the purposes of the ANZA mutual recognition agreements (see subsections 27(2AA) to (2AC)).

7 Subsection 3(1)

Insert:

Australian temporary stop notice has the meaning given by subsection 28D(1).

8 Subsection 3(1)

Insert:

CAA New Zealand means the Civil Aviation Authority established by the Civil Aviation Act 1990 of New Zealand, or any successor to that Authority.

9 Subsection 3(1)

Insert:

Director of CAA New Zealand has the same meaning as ***Director*** has in the Civil Aviation Act 1990 of New Zealand.

10 Subsection 3(1)

Insert:

in force for Australia, in relation to a New Zealand AOC with ANZA privileges, has the meaning given by section 3AA.

11 Subsection 3(1)

Insert:

New Zealand has the same meaning as in the Interpretation Act 1999 of New Zealand.

12 Subsection 3(1)

Insert:

New Zealand AOC with ANZA privileges has the same meaning as in section 2 of the Civil Aviation Act 1990 of New Zealand.

13 Subsection 3(1)

Insert:

New Zealand temporary stop notice has the same meaning as in section 2 of the Civil Aviation Act 1990 of New Zealand.

14 After section 3

Insert:

3AA When a New Zealand AOC with ANZA privileges is *in force for Australia*

- (1) For the purposes of this Act, a New Zealand AOC with ANZA privileges is *in force for Australia* if the AOC:
 - (a) is current under the Civil Aviation Act 1990 of New Zealand; and
 - (b) has come into force for Australia under subsection 28C(1) of this Act.
- (2) However, while an Australian temporary stop notice is in force in relation to particular activities authorised by a New Zealand AOC with ANZA privileges, the AOC is not *in force for Australia* in relation to those activities.

15 At the end of section 7

Add:

; and (c) ANZA activities in New Zealand authorised by Australian AOCs with ANZA privileges.

16 After paragraph 9(1)(b)

Insert:

(ba) ANZA activities in New Zealand authorised by Australian AOCs with ANZA privileges;

17 Before paragraph 9(3)(a)

Insert:

(aa) implementing the ANZA mutual recognition agreements;

18 At the end of subsection 26(2)

Add:

; or (e) as authorised by a New Zealand AOC with ANZA privileges that is in force for Australia (but only so far as it authorises ANZA activities in Australian territory).

Note: For when a New Zealand AOC with ANZA privileges is in force for Australia, see section 3AA.

19 After Division 1 of Part III

Insert:

Division 1A—General provisions about mutual recognition under the ANZA mutual recognition agreements

26A Guide to how this Act deals with mutual recognition between Australia and New Zealand

- (1) This Division contains various general provisions relating to mutual recognition under the ANZA mutual recognition agreements.
- (2) Other provisions of this Act also deal with mutual recognition under the ANZA mutual recognition agreements, as set out in the table below.

Schedule 1 Amendments related to mutual recognition with New Zealand

Outline of other provisions of this Act that deal with mutual recognition

Item	For provisions concerning...	See...
1	New Zealand AOCs that will be recognised in Australia (known as <i>New Zealand AOCs with ANZA privileges</i>)	(a) section 3AA (when a New Zealand AOC with ANZA privileges is in force for Australia); and (b) paragraph 26(2)(e) and subsection 27(2) (operating in Australia under such an AOC); and (c) section 28C (holder of such an AOC to provide certain documents and information to CASA); and (d) sections 28D and 28E (the Director's power to issue and revoke Australian temporary stop notices); and (e) section 28G (disapplying regulations that would otherwise apply to the holder of a New Zealand AOC with ANZA privileges).
2	Australian AOCs that will be recognised in New Zealand (known as <i>Australian AOCs with ANZA privileges</i>)	(a) paragraph 7(c) (extension of Act to New Zealand activities); and (b) paragraph 9(1)(ba) (CASA's safety regulation role in relation to New Zealand activities); and (c) subsections 27(2AA) to (2AC) (CASA's power to issue Australian AOCs with ANZA privileges); and (d) paragraph 28(1)(e) and section 28B (additional conditions for issue of such AOCs); and (e) subsection 28BD(2) (holders of such AOCs to comply with New Zealand law); and (f) section 28F (CASA's obligations in response to a New Zealand temporary stop notice).

Outline of other provisions of this Act that deal with mutual recognition

Item	For provisions concerning...	See...
3	Other aspects of mutual recognition	(a) subsection 3(1) (definitions of key terms); and (b) paragraph 9(3)(aa) (CASA's role in implementing the ANZA mutual recognition agreements); and (c) Part IIIA (use of powers to monitor compliance with New Zealand law).

26B Disclosure of information by CASA to the Director of CAA New Zealand

- (1) CASA may disclose information (including personal information) to the Director of CAA New Zealand for a purpose connected with the ANZA mutual recognition agreements.

- (2) In this section:

personal information has the same meaning as in section 6 of the *Privacy Act 1988*.

26C Obligation to consult Director of CAA New Zealand before taking certain actions

Before taking any action under this Act or the regulations that would or might affect the ANZA activities in New Zealand that an Australian AOC with ANZA privileges authorises, CASA must:

- (a) if required by the ANZA mutual recognition agreements, consult the Director of CAA New Zealand; and
(b) carry out the consultation in accordance with the ANZA mutual recognition agreements.

26D Delegation of Australian powers to employees of CAA New Zealand

- (1) The Director may, in writing, delegate all or any of CASA's powers under this Act, other than Part IIIA, to an employee of CAA New Zealand for the purposes of the ANZA mutual recognition agreements.

- (2) A delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Director.

26E Delegation of New Zealand powers and functions to CASA officers

- (1) Subject to subsection (2), an officer may exercise powers or perform functions delegated to the officer under the Civil Aviation Act 1990 of New Zealand, but only so far as they relate to New Zealand AOCs with ANZA privileges.
- (2) Subsection (1) does not apply to powers or functions conferred by section 15, 21 or 24 of the Civil Aviation Act 1990 of New Zealand.

20 Subsection 26A(2) (after paragraph (d) in the cell at table item 2, column headed “See...”)

Insert:

- (da) subsection 28BAA(2) (making certain additional conditions for issue of Australian AOCs with ANZA privileges have effect as ongoing conditions); and

21 Subsection 27(2)

After “AOC”, insert “, by a New Zealand AOC with ANZA privileges that is in force for Australia (but only so far as it authorises ANZA activities in Australian territory)”.

22 At the end of subsection 27(2)

Add:

Note: For when a New Zealand AOC with ANZA privileges is in force for Australia, see section 3AA.

23 After subsection 27(2)

Insert:

- (2AA) For the purpose of the ANZA mutual recognition agreements, CASA may issue an AOC that authorises aircraft to operate in, or fly into or out of, New Zealand, but only if the AOC also

authorises aircraft to operate in, or fly into or out of, Australian territory.

Note: The kind of operations authorised by the AOC in New Zealand need not be the same kind of operations as are authorised by the AOC in Australian territory.

(2AB) Subsection (2AA) is not intended to limit the circumstances in which CASA may, otherwise than for the purpose of the ANZA mutual recognition agreements, issue an AOC that covers matters referred to in that subsection.

(2AC) An AOC that is, to an extent (whether wholly or partly), issued for the purpose of the ANZA mutual recognition agreements, must be expressed to be issued for that purpose to that extent.

24 At the end of section 27

Add:

(10) For the purpose of subsection (2A) as it applies to an Australian AOC with ANZA privileges, a foreign registered aircraft does not include an aircraft registered in New Zealand.

25 Subsection 27AE(4) (definition of *foreign aircraft AOC*)

Repeal the definition, substitute:

foreign aircraft AOC means:

- (a) an AOC (other than an Australian AOC with ANZA privileges) authorising the operation of a foreign registered aircraft on flights that are not regulated domestic flights; or
- (b) an Australian AOC with ANZA privileges authorising the operation of a foreign registered aircraft, other than an aircraft registered in New Zealand, on flights that are not regulated domestic flights.

26 Paragraph 28(1)(c)

Repeal the paragraph, substitute:

- (c) if the AOC sought is:
 - (i) an AOC (other than an Australian AOC with ANZA privileges) authorising the operation of a foreign registered aircraft on regulated domestic flights; or
 - (ii) an Australian AOC with ANZA privileges authorising the operation of a foreign registered aircraft, other than

an aircraft registered in New Zealand, on regulated domestic flights;

CASA is also satisfied that the additional conditions in section 28A are satisfied; and

27 At the end of subsection 28(1)

Add:

- (d) CASA is satisfied that the person does not hold a New Zealand AOC with ANZA privileges that covers all or any of the AOC operations; and
- (e) if the AOC sought is an Australian AOC with ANZA privileges—the additional conditions in section 28B are satisfied.

28 At the end of Subdivision D of Division 2 of Part III

Add:

28B Additional conditions for issue of an Australian AOC with ANZA privileges

- (1) The additional conditions that must be satisfied for the purposes of paragraph 28(1)(e) are:
 - (a) that CASA is satisfied that the applicant does not hold an aviation document granted by the Director of CAA New Zealand that authorises the applicant to conduct all or any of the ANZA activities in New Zealand that the AOC will authorise; and
 - (b) that the Secretary of the Department has advised CASA that, having regard to the ANZA mutual recognition agreements, the applicant is eligible for consideration for an Australian AOC with ANZA privileges; and
 - (c) that CASA is satisfied that the applicant has complied, or is capable of complying, with the provisions of the Civil Aviation Act 1990 of New Zealand, and the regulations and rules made under that Act, that will apply to the applicant in relation to the ANZA activities in New Zealand that the AOC will authorise; and
 - (d) that CASA is satisfied that it will be able to effectively regulate all the operations covered by the application, having regard to the following matters:

- (i) whether the applicant’s supervision of systems that affect the safety of the operations will be principally undertaken from or within Australian territory; and
 - (ii) whether the applicant’s training and supervision of employees involved in those systems will be undertaken principally from or within Australian territory; and
 - (iii) whether the majority of the resources used in those systems that are required for the operations will be situated within Australian territory; and
 - (iv) whether the persons who will control the operations will spend the majority of their time in Australian territory; and
- (e) any applicable additional conditions set out in regulations.
- (2) CASA must consult the Director of CAA New Zealand about whether the conditions referred to in subsection (1) (other than paragraph (1)(b)) are satisfied.

29 Paragraph 28BA(1)(aa)

Omit “condition”, substitute “conditions”.

30 Section 28BAA

Before “An”, insert “(1)”.

31 At the end of section 28BAA

Add:

- (2) If the AOC is an Australian AOC with ANZA privileges, the AOC also has effect subject to the conditions that:
- (a) CASA remains satisfied as mentioned in paragraphs 28B(1)(a), (c) and (d) in relation to the ANZA activities in New Zealand that the AOC authorises; and
 - (b) the Secretary of the Department does not advise CASA that, having regard to the ANZA mutual recognition agreements, the holder of the AOC is no longer eligible to hold an Australian AOC with ANZA privileges.

32 Section 28BD

Before “The”, insert “(1)”.

33 At the end of section 28BD

Add:

- (2) The holder of an Australian AOC with ANZA privileges must comply with all requirements of the Civil Aviation Act 1990 of New Zealand, and of the regulations and rules under that Act, that apply to the holder in relation to the ANZA activities in New Zealand authorised by the AOC.

34 At the end of Division 2 of Part III

Add:

Subdivision F—Other provisions relating to Australian and New Zealand AOCs with ANZA privileges

28C Certain documents and information to be given to CASA by holder of New Zealand AOC with ANZA privileges

- (1) A New Zealand AOC with ANZA privileges comes into force for Australia when the holder gives CASA:
 - (a) a copy of the AOC; and
 - (b) written notice of the following:
 - (i) details of all conditions imposed by the Director of CAA New Zealand in relation to the AOC;
 - (ii) the holder's New Zealand contact details, including business address, telephone number, fax number (if any), and e-mail address (if any);
 - (iii) the holder's Australian contact details, including business address, telephone number, fax number (if any), and e-mail address (if any);
 - (iv) any other information required by the regulations.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

- (2) If the AOC is varied after it has come into force for Australia, the holder must give CASA a copy of the varied AOC by the end of 7 days after the day on which the holder receives the varied AOC or a copy of it.

Penalty: 2 penalty units.

Note 1: Section 137.2 of the *Criminal Code* creates an offence for providing false or misleading documents.

Note 2: The obligation to give CASA a copy of the varied AOC is a continuing obligation and the holder is guilty of an offence for each day, after the 7 day period, until the copy is given to CASA (see section 4K of the *Crimes Act 1914*).

(3) If, after the AOC has come into force for Australia, there is a change to:

(a) what ANZA activities in Australia are authorised by the AOC; or

(b) any information previously provided by the holder under subsection (1) or this subsection;

the holder must give CASA written notice of the change by the end of 7 days after the day on which the change occurs.

Penalty: 2 penalty units.

Note 1: Section 137.1 of the *Criminal Code* creates an offence for providing false or misleading information.

Note 2: The obligation to notify CASA of a change is a continuing obligation and the holder is guilty of an offence for each day, after the 7 day period, until written notice of the change is given to CASA (see section 4K of the *Crimes Act 1914*).

(4) Subsections (2) and (3) are offences of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

28D Director's power to give an Australian temporary stop notice to holder of New Zealand AOC with ANZA privileges

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

Note: Section 11J of the Civil Aviation Act 1990 of New Zealand obliges the Director of CAA New Zealand to consider what action to take in response to a notice under this subsection.

(2) The Director may issue the notice only if he or she considers that the conduct of the activities to which the notice will apply constitutes a serious risk to civil aviation safety in Australian territory.

- (3) Subject to section 28E, the notice comes into force when it is given to the holder and remains in force for the period specified in the notice.
- (4) The notice must state the facts and circumstances which, in the Director's opinion, give rise to the serious risk to civil aviation safety in Australian territory.
- (5) The Director must give a copy of the notice to the Director of CAA New Zealand as soon as practicable after the Director of CASA gives the notice to the holder.
- (6) A failure to comply with subsection (4) or (5) does not invalidate the notice.
- (7) The Director may not delegate the power to give an Australian temporary stop notice.

28E Revocation of an Australian temporary stop notice

- (1) The Director may revoke an Australian temporary stop notice by notice in writing to the holder of the relevant New Zealand AOC with ANZA privileges.
- (2) The Director must revoke an Australian temporary stop notice if, while the notice is in force, CASA receives notice from the Director of CAA New Zealand of that Director's decision in response to the Australian temporary stop notice, whether or not the decision is to take action.
- (3) The Director may not delegate the power to revoke an Australian temporary stop notice.

28F CASA's obligation on receiving copy of a New Zealand temporary stop notice

- (1) If the Director of CAA New Zealand gives CASA a copy of a New Zealand temporary stop notice that relates to a particular Australian AOC with ANZA privileges, CASA must consider the notice immediately and decide, as soon as is practicable, what action (if any) to take under this Act or the regulations in relation to the AOC or the holder of the AOC.

- (2) In deciding what action to take, CASA must comply with the ANZA mutual recognition agreements.
- (3) CASA must notify the Director of CAA New Zealand of its decision, and if its decision is to take action, what that action is.

Note: CASA must consult the Director of CAA New Zealand if CASA proposes to take action that would or might affect ANZA activities in New Zealand (see section 26C).

28G Disapplying regulations that would otherwise apply to the holder of a New Zealand AOC with ANZA privileges

- (1) The regulations may provide that specified regulations made under this Act do not apply in relation to all or specified ANZA activities in Australian territory authorised by a New Zealand AOC with ANZA privileges.
- (2) Without limiting subsection (1), regulations made for the purposes of that subsection may provide that specified regulations made under this Act do not apply in relation to an aircraft while it is being operated under a New Zealand AOC with ANZA privileges.

35 After subsection 32AC(1)

Insert:

- (1A) Powers under subsection (1) can only be exercised for the purpose of finding out whether legislation referred to in paragraph (b) of the definition of *relevant legislation* in subsection (2) is being complied with if a request has been made to CASA, in accordance with the ANZA mutual recognition agreements, for the exercise of powers under this Part in relation to that legislation.

36 Subsection 32AC(2) (definition of *relevant legislation*)

Repeal the definition, substitute:

relevant legislation means:

- (a) this Act, the regulations and the Civil Aviation Orders; and
- (b) the Civil Aviation Act 1990 of New Zealand, and the regulations and rules made under that Act.

37 After subsection 32AD(1)

Insert:

- (1A) An application under subsection (1) can only be made for the purpose of finding out whether legislation referred to in paragraph (b) of the definition of *relevant legislation* in subsection 32AC(2) is being complied with if a request has been made to CASA, in accordance with the ANZA mutual recognition agreements, for the exercise of powers under this Part in relation to that legislation.

38 After subsection 98(3)

Insert:

- (3AA) Despite the ANZA mutual recognition agreements, the regulations cannot allow for the mutual recognition of ANZA safety certifications (other than AOCs) between Australia and New Zealand. For this purpose, an *ANZA safety certification* is:
- (a) a civil aviation authorisation; or
 - (b) an aviation document, within the meaning of the Civil Aviation Act 1990 of New Zealand.
- (3AB) Subsection (3AA) does not prevent the making of regulations for purposes connected with the *Trans-Tasman Mutual Recognition Act 1997*.

Civil Aviation (Carriers' Liability) Act 1959

39 Subsection 26(1) (at the end of the definition of *airline licence*)

Add:

- ; or (c) a New Zealand AOC with ANZA privileges (as defined in section 3 of the *Civil Aviation Act 1988*) authorising airline operations.

40 Subsection 26(1) (at the end of the definition of *charter licence*)

Add:

- ; or (c) a New Zealand AOC with ANZA privileges (as defined in section 3 of the *Civil Aviation Act 1988*) authorising charter operations.

*[Minister's second reading speech made in—
Senate on 23 June 2005
House of Representatives on 6 September 2006]*

(128/05)

Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Act 2006 *No.*
102, 2006 19