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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

**CIVIL AVIATION LEGISLATION AMENDMENT (MUTUAL RECOGNITION
WITH NEW ZEALAND) BILL 2005**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Transport and Regional Services,
the Honourable John Anderson, MP)

**CIVIL AVIATION LEGISLATION AMENDMENT
(MUTUAL RECOGNITION WITH NEW ZEALAND) BILL 2005**

OUTLINE

This Bill amends the *Civil Aviation Act 1988* (the Act) to permit the mutual recognition of Air Operator's Certificates (AOCs) for operation of aircraft of more than 30 seats or 15,000 kg, as issued by the Civil Aviation Safety Authority (CASA) in Australia and the Civil Aviation Authority of New Zealand (CAANZ).

This Bill and its associated regulations make the first step in mutual recognition of aviation safety certificates between Australia and New Zealand. However, extension of mutual recognition of certificates beyond AOC for the operation of large aircraft will require further legislation.

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. Under current provisions of the two countries' aviation safety legislation, aircraft operators wishing to operate commercially in both countries need to hold and comply with two AOCs issued by their respective aviation safety regulators. This results in duplication, complexity and added administrative and financial burdens on operators. The proposed amendments will mean that an operator holding an AOC issued by CAANZ will be able to conduct operations in Australia without having to obtain an equivalent AOC issued by CASA, and vice versa.

Mutual recognition was anticipated by the 'Open Skies' Air Services Agreement¹ between Australia and New Zealand, which is intended to promote competition among Australian and New Zealand operators, including on domestic routes. The Agreement builds upon the 1996 Australia-New Zealand Single Aviation Market (SAM) Arrangements. The principle underlying mutual recognition is the same as that for the *Trans-Tasman Mutual Recognition Act 1997* and the *Mutual Recognition Act 1992*.

CASA and CAANZ identified regulations which may inadvertently pose difficulties for airlines operating under authority of a mutually-recognised AOC. This process was conducted on the basis of consistency with responsibilities under the *Convention on International Civil Aviation done at Chicago 1944* (Chicago Convention) and its Annexes, formulated into the following principles:

- Responsibility for safety oversight (audit and surveillance, granting of operating permissions and exemptions, etc) is to remain with the home regulator; and
- Rules regulating the manner and conduct of aircraft operations (Annex 6 rules) are to be those of the home jurisdiction.

The disapplication of rules will not affect the application of Australian rules regulating the flight and manoeuvre of aircraft (Annex 2 rules) to any aircraft flying within Australia, including aircraft operating under a mutually-recognised AOC.

¹ Agreement between the Government of Australia and the Government of New Zealand Relating to Air Services done at Auckland, 8 August 2002

This Bill was first introduced into Parliament in 2003 and was referred to the Rural and Regional Affairs and Transport Legislation Committee who reported their findings in June 2004. The majority report made two recommendations, the provision of an *ex post facto* safety assessment of mutual recognition and to remove the ability for mutual recognition to be extended beyond AOCs by regulations.

The recommendation to remove the ability for extension of mutual recognition has been incorporated into this Bill to provide Parliament with a high level of transparency in relation to the further extension of mutual recognition beyond AOCs.

Financial Impact Statement

It is not anticipated that budget allocations will be affected by this Bill.

CASA may incur additional costs in overseeing operations in New Zealand, however these should be offset by a reduction in costs of oversight of New Zealand operators in Australia.

REGULATION IMPACT STATEMENT

MUTUAL RECOGNITION OF AIR OPERATORS CERTIFICATES BETWEEN AUSTRALIA AND NEW ZEALAND

Introduction

This is a Regulation Impact Statement (RIS) for the proposed amendment of the *Civil Aviation Act 1988* to provide for the mutual recognition of Air Operator's Certificates (AOCs) for operation of aircraft of more than 30 seats or 15,000 kg, as issued by the Civil Aviation Safety Authority (CASA) in Australia and the Civil Aviation Authority of New Zealand (CAANZ).

This Bill represents the first step towards mutual recognition of aviation safety certificates and any extension of mutual recognition to certificates other than AOCs will be done by further amendment to the Act as recommended by the Rural and Regional Affairs and Transport Legislation Committee.

Mutual recognition will permit an eligible aircraft operator to carry out an aviation activity in either Australia or New Zealand, whether international or domestic, passenger or cargo, based on an Air Operator's Certificate (AOC) issued by the regulator of their home country. This follows from an acceptance that, while some systems and processes may vary, Australia and New Zealand have safety standards that produce equivalent safety outcomes in high capacity airline operations. The relevant aviation safety regulatory authorities for mutual recognition are the Civil Aviation Authority of New Zealand (CAANZ) and, in Australia, the Civil Aviation Safety Authority (CASA).

This RIS, although specifically for the mutual recognition of Air Operator's Certificates (AOCs) for operation of aircraft of more than 30 seats or 15,000 kg, also covers the principle of mutual recognition of aviation related certification between Australia and New Zealand.

Background

The principle underlying mutual recognition is the same as the principle behind the *Trans-Tasman Mutual Recognition Act 1997* and the *Mutual Recognition Act 1992*. The Australian and New Zealand Governments reaffirmed their commitment to adopt mutual recognition of aviation-related certification in a Memorandum of Understanding dated 20 November 2000 made in conjunction with the new 'open skies' Air Services Agreement between the two countries.

The Australian Minister for Transport and Regional Services and the New Zealand Minister of Transport signed the Air Services Agreement² on 8 August 2002. The Agreement is intended to promote competition and closer economic relations between

² Agreement between the Government of Australia and the Government of New Zealand Relating to Air Services done at Auckland, 8 August 2002.

the two countries and to build upon the principles contained in the 1996 Australia-New Zealand Single Aviation Market (SAM) Arrangements, while ensuring the highest degree of safety and security in air transport.

In March 2002, Australian and New Zealand Ministers for Transport agreed to implement the 'highest form' of mutual recognition of air operator certificates (AOCs), namely *that an operator that is the holder of an AOC issued in one country will not be required to hold an AOC in the second country in order to conduct air transport operations in that country.*

In addition the Governments agreed to a new, overarching, inter-governmental agreement on aviation mutual recognition which would set out the principles, objectives and joint understandings between Australia and New Zealand in relation to the mutual recognition of aviation-related safety certification. An annex to the new agreement will be an operational agreement between the two aviation safety regulators, CASA and CAANZ, which will establish working arrangements between the two.

Only those Australian and New Zealand operators covered by the Air Services Agreement will be eligible for mutual recognition.

The phased approach for the introduction of mutual recognition was agreed to by both Governments, however a recommendation made by Rural and Regional Affairs and Transport Legislation Committee, which has been incorporated into this Bill, requires any extension of mutual recognition beyond AOC for operation of large aircraft to be adopted through legislation. This provides for transparency and clarity of the processes undertaken.

Notwithstanding mutual recognition, aircraft operators will still have to comply with rules of the air and certain laws of the country they are operating in, unless otherwise provided. Examples include laws relating to aviation security, curfew, air traffic control, airport slot management, noise and the environment, occupational health and safety and anti-discrimination legislation and all related business laws.

The issue/problem

Under current legislation, aircraft operators wishing to operate high capacity airlines in both countries need to hold two AOCs, one issued by each authority, and need to comply with both. 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. Mutual recognition is therefore designed to decrease the amount of regulation placed on eligible aircraft operators in this respect.

The principle of mutual recognition plays an important role in the operation of single markets by allowing the free movement of goods and services. This has been recognised by the European Union, where the principle of mutual recognition has become the cornerstone of its single market. Mutual recognition relies, however, on both parties

having full confidence that the certification process of the other party can wholly satisfy its requirements.

In line with this, mutual recognition of aviation-related safety certification is an important element of the SAM Arrangement between Australia and New Zealand and is possible because each country enjoys aviation safety regulatory regimes that result in a safe aviation environment for aircraft of greater than 30 seats or equivalent. On that basis, and in the light of joint Government policy, an AOC issued by one safety regulatory authority (eg CASA) should be capable of being accepted by the other (eg. CAANZ).

Stakeholders generally acknowledged mutual recognition as beneficial, however suggested that the financial benefit to them will be administrative rather than operational. This said, mutual recognition arrangements have been shown to bring other benefits, both immediate and long term, tangible and intangible, including promoting efficient transportation and compatible regulatory systems³. In this context, mutual recognition will permit greater flexibility in airline operations, thereby improving aircraft utilisation and return on assets. This is important in an industry where the capital outlay is very high.

The consequence of taking no action would be the loss of benefits for industry from the SAM Arrangement. Mutual recognition forms part of the SAM Arrangement, therefore, the full effect of the SAM Arrangement has not been realised as yet. It is important for Australia to maximise the benefits available through this arrangement, mutual recognition loosens the administrative burden placed on industry due to the double requirement of applying for AOCs in the two countries. The likely benefits or costs are analysed in more detail further within this RIS.

The desired objective

The safety aspect of high capacity airlines was the key consideration in terms of mutual recognition of Air Operator's Certificates (AOCs) for the operation of aircraft of more than 30 seats or 15,000 kg. Given that the safety of the two operating environments was recognised, the amendments are designed to promote aviation and competition in Australia and New Zealand by reducing the regulatory burden on aviation operators from having to hold dual AOCs.

In legislative terms, the mutual recognition obligation requires Australia to enact provisions that achieve two distinct purposes:

- to provide for **recognition** by Australia of an ANZA AOC issued by CAANZ for the purpose of authorising operations in Australia by the holders of those documents; and
- to provide for CASA to **authorise** an eligible Australian AOC holder to conduct operations in New Zealand in accordance with an Australian ANZA AOC that will be recognised by the CAANZ.

³ *Community External Trade Policy in the Field of Standards and Conformity Assessment*, Communication of the (European) Commission, 4 April 2003.

Current regulation/ policy

Under the Civil Aviation Act an aircraft must not, except in certain circumstances, fly into, out of or within, Australian territory unless it is authorised by an AOC. For a foreign registered aircraft to be operated on a commercial flight within Australia as part of an international flight, a “foreign aircraft AOC” would be required. An Australian aircraft must not operate commercially outside Australian territory unless it is authorised by an Australian AOC.

An AOC is a document provided to an organisation that defines its approval to operate aircraft. As such it is a document that requires aviation regulatory authorities (such as CASA and CAANZ) to consider a number of factors in assessing an operator’s ability to conduct its operations safely. These factors include its facilities and operational bases, management structure, communication networks, financial viability, training procedures, operational manuals and maintenance procedures. It also covers the qualifications of its key personnel, the types of aircraft it operates and the routes on which it operates those aircraft. When an operator wishes to change key personnel, aircraft or routes, for example because it wishes to add additional routes and/or aircraft types to its operations, it needs to apply to its home authority to have its AOC amended or reissued.

Identification of options

In 2002, Ministers considered four basic options for the implementation of mutual recognition, as described below.

- Option 1: An operator that is the holder of an Air Operator’s Certificate (AOC) issued in one country will not be required to hold an AOC in the second country in order to conduct air transport operations in that country.
- Option 2: A variation of Option 1. This option would involve the issue of a recognition or registration certificate that enabled airlines to operate within the second country on the basis of certification issued in the home country.
- Option 3: An AOC issued in one country would be accepted by the second country as evidence of acceptable standards, and a local AOC would subsequently be issued.
- Option 4: An AOC issued in one country would be accepted by the second country, only if certain preconditions were satisfied.

Ministers chose Option 1 as their preferred approach on the basis that this was the purest and highest form of mutual recognition. (The only other possibility would be to retain the status quo, in which case mutual recognition could not be implemented and expected benefits would not be achieved.)

Impact analysis

Who is affected by the problem and who is likely to be affected by its proposed solutions?

The liberalisation of air services arrangements is part of the Government’s wider micro-economic reforms of the transport sector. The benefits of liberalising air services

arrangements was noted by the Minister for Transport and Regional Services, the Hon John Anderson MP, in his policy statement of June 2000, *International Air Services*.

When the 'open skies' Air Services Agreement with New Zealand was negotiated in November 2000, the overall value of the Australia-New Zealand Single Aviation Market was estimated at \$6.8 billion (NZ\$8.7 billion). Mutual recognition will help to ensure that the benefits of integration continue, making it easier for Australian and New Zealand airlines to operate services in both countries, to integrate their fleets and achieve operating efficiencies. Efficiency, in turn, contributes to economic growth and rising incomes. For example, in 1999 the OECD⁴ estimated that, in the case of Australia, unilateral trade liberalisation has, in effect, put A\$1,000 per year in the hands of the average Australian family.

Mutual recognition may, however, result in a period of structural adjustment in the industry in the medium term. This is because variations in some operational requirements between Australia and New Zealand may be perceived as conferring commercial advantages on operators from one or other of the countries. By way of example, as noted by one stakeholder, there is the potential for considerable disparity between the salaries of Australian and New Zealand pilots operating the same type of aircraft but under different AOCs. This, in turn, may have implications for industrial relations even though there is no intention for mutual recognition to impact on the existing employment arrangements of operations on either side of the Tasman.

Structural pressures are often accepted as being in the long-term national interest in order to ensure that Australian operators remain competitive internationally. However, with regard to mutual recognition, no commercial consideration will be permitted to override safety standards. For example, mutual recognition will not provide an opportunity for aircraft operators to 'shop around' for the safety regulator they regard as the most commercially advantageous if, by doing so, effective safety oversight could not be maintained.

For purely safety reasons, the amendments will therefore ensure that the safety regulatory authority best placed to provide effective safety oversight of an operator will be the one to issue that operator's AOC. This will be effected by a range of criteria to be considered by CASA before issuing an ANZA AOC such as where the company's safety management systems are based. Minimal administrative costs are expected from this process.

It is important to recognise that savings obtained by aircraft operators may, to some extent, be offset by any future CASA charge to cover the cost of safety surveillance inspections and other regulatory activity associated with Australian AOC holders operating in New Zealand. Currently, CASA does not recover the cost of undertaking overseas audits.

⁴ *Open Markets Matter: The Benefits of Trade and Investment Liberalisation*, OECD Policy Brief 8, October 1999.

How will each proposed option affect existing regulations and the roles of existing regulatory authorities?

Provision for mutual recognition requires amendment of the *Civil Aviation Act 1988*. Australian rules of the air (contained in a number of regulations made under the Civil Aviation Act) will continue to apply to New Zealand operators in Australian airspace.

It is possible that consequential amendment of other legislation may be necessary as a result of mutual recognition to ensure operators are not double charged; this is currently being assessed. By way of background, under the new arrangements a New Zealand operator scheduling domestic services in Australia would, appropriately, have to pay customs duties and GST. They would, however, also pay the aviation fuels levy that includes a component to fund CASA, even though CASA will not be the agency actually regulating the New Zealand operator. Additionally, the operator will also be liable to pay fees and charges imposed by its own regulator, CAANZ, resulting in a double charge for safety regulation services. If CASA imposes charges for its overseas audits in the future, Australian operators in New Zealand are likely to be in a similar position in terms of the New Zealand passenger levy unless a solution can be found that is acceptable to both countries.

In deciding upon a solution to this problem, it will be important to ensure that both regulators do not inadvertently lose revenue. Possible changes to the funding arrangements will be explored with the Departments of Treasury, Finance and Administration, the Australian Taxation Office and, possibly, the Australian Customs Service, given that any change will be likely to require amendment of their portfolio legislation.

Identify and categorise the expected impacts of the proposed options as likely benefits or likely costs

For more information on some of these issues, please see information given above.

Possible benefits from mutual recognition

Consumer	Business	Government/ Economy
<ul style="list-style-type: none">• Lower fares if cost savings passed on by airlines.• Greater choice of airline operators and improved and more innovative service.	<ul style="list-style-type: none">• Administrative savings from not having to hold and comply with dual AOCs.• Increased operating efficiencies and capital utilisation from greater opportunity for fleet integration and return on assets.	<ul style="list-style-type: none">• Long-term efficiencies from the promotion of competition.• Benefits to related industry sectors, such as domestic tourism.

Possible costs from mutual recognition

Consumer	Business	Government/ Economy
<ul style="list-style-type: none"> • Inconvenience in the event of industry unrest. 	<ul style="list-style-type: none"> • Australian AOC holders may be placed at a competitive disadvantage in the short to medium term. 	<ul style="list-style-type: none"> • The administrative costs of the scheme. • Loss of revenue to fund CASA if a fee for overseas inspections is not imposed.
	<ul style="list-style-type: none"> • Costs of CASA audits of Australian operators in New Zealand if fees are introduced. • Costs in the event of industry unrest, particularly to the tourism industry. 	<ul style="list-style-type: none"> • Costs in the medium to longer term arising from industry adjustment and rationalisation as a result of competition from New Zealand operators. • Potential industrial unrest from a perceived loss of employment and employment conditions, with spill-over disruption to other sectors such as the tourism industry and the economy generally.

Possible Benefits from retaining the status quo

Consumer	Business	Government/ Economy
<ul style="list-style-type: none"> • N/A 	<ul style="list-style-type: none"> • Short to medium term benefits from protection from competition. 	<ul style="list-style-type: none"> • Cost savings from not having to implement or administer the scheme (though substantial outlays already incurred). • Avoidance of any potential for industrial disharmony.

Possible Costs from retaining the status quo

Consumer	Business	Government/ Economy
<ul style="list-style-type: none"> • No potential for fare reduction or greater choice. 	<ul style="list-style-type: none"> • Loss of potential administrative savings and return on assets. • Loss of potential gains from operating efficiencies as a result of fleet integration. • Loss of future savings from a broadening of the scheme to include other certificates. 	<ul style="list-style-type: none"> • Loss of resources already invested in implementing the proposal. • Loss of spin-off benefits to other sectors, such as tourism. • Loss of potential gains from the promotion of competition.

Distributional effects

From a safety perspective, mutual recognition will have no adverse impact. This is because, ultimately, it rests on the acceptance by both Governments that the safety regulatory regimes in place in Australia and New Zealand produce skies that are equally safe for most operations. Although there may be different means of achieving safety standards, these are accepted as providing equivalent safety outcomes.

Eligible aircraft operators will be the first to realise savings. Consumers will benefit to the extent that airlines pass on savings through reduced fares, and to the extent that they benefit from increased competition in the industry. Savings made by consumers may in turn confer benefits on the domestic tourism industry.

As noted above, New Zealand AOC holders operating in Australia may benefit from commercial advantage in some areas due to different operational requirements and, possibly, employment conditions. Where this occurs, there could be flow on effects to the Australian economy generally arising from structural adjustment in the industry and, as noted by some stakeholders, the impact on industrial relations.

Consultation

Invitations to comment on mutual recognition were made through the media and direct invitation to representatives of business (and their umbrella groups), unions, consumer and Commonwealth and State Government agencies. Of individual aircraft operators, only those identified as operating aircraft of greater than 30 seats or equivalent were directly invited to participate, since these will be the parties most affected. A list of stakeholders consulted by mail is attached. A call for submissions was also placed in the Weekend Australian of 15-16 February 2003. Invitations to a “roundtable” with the Department of Transport and Regional Services (DOTARS) were extended to 12 key stakeholders; the roundtable was held on 25 February 2003. Two airlines attended, Qantas and Virgin Blue.

Other than the Department of Transport and Urban Planning of South Australia, and the New South Wales Air Transport Council, nil comment was received from Commonwealth or State agencies.

Stakeholder views

Over half of the stakeholders who responded openly supported the initiative. The following points were made:

- savings would mainly be administrative but greater advantages will be realised when mutual recognition also encompasses airworthiness and maintenance systems approvals;
- the economics of mutual recognition could facilitate the ability of freight operators to extend the current Australian domestic express freight network to New Zealand;
- mutual recognition is welcome, mainly for the benefits in reduction of administration of two AOC's held by the company;

- for operators not already holding dual AOC's, benefits will be even greater; and
- mutual recognition is necessary to give effect to aviation policies already in place.

Queries and concerns raised by stakeholders are given below, with DOTARS' responses.

Query/ concern	Response
Mutual recognition should be extended as soon as possible to cover areas such as dry leasing of Australian registered aircraft.	Amendments to the Civil Aviation Act are being drafted to permit this.
CASA should not impose fees for its overseas inspections.	Consideration is, in fact, being given to allowing CASA the power to impose fees for overseas inspections however this will involve a separate amendment of the Civil Aviation (Fees) Regulations.
The overall economic benefit to Australia from the initiative is not apparent, for example New Zealand operators will be able to operate using aircraft that are more cost effective to obtain from New Zealand.	The liberal air services arrangements between Australia and New Zealand were deliberately designed to give companies flexibility in making business decisions, in keeping with the SAM Agreement. Consistent with other market liberalisations, they will deliver better outcomes for Australian and New Zealand consumers.
Differences in cost structures arising from the different safety regulations may result in an eventual move by some airlines to transfer their AOC, and jobs, to New Zealand.	Economically, there would be no restriction on doing so. However, for safety reasons, operators will be required to hold an AOC issued by the safety regulator best placed to provide effective safety oversight, in practice the regulator of the country where the majority of their operations are located. This will not prevent operators from choosing to hold dual AOCs to cover their separate operations in Australia and New Zealand, if they prefer, though they will not be able to hold an ANZA AOC in combination with any other.
There should be no restriction placed on operators in terms of which AOC they hold, to do so would be inconsistent with the Air Services Agreement and the SAM Agreement.	For safety reasons, operators will be required to hold an AOC issued by the safety regulator best placed to provide effective safety oversight, in practice the regulator of the country where the majority of their operations are located. Amendments to the Act to give effect to this will be valid and within the Commonwealth's law making power under the Constitution.
Mutual recognition will lead to Australia adopting lower, unsafe, standards in the	There are no plans in terms of mutual recognition to amend Australia's aviation safety standards or to harmonise them with those of New Zealand and

Query/ concern	Response
medium to long term.	there is no legislation to support such a proposal. Australia considers world best practice when formulating its safety standards. Mutual recognition is premised on the fact that both aviation safety systems provide an equivalent safety outcome.
One stakeholder was opposed to mutual recognition, noting that it would compound problems faced by the company of being unable to compete with New Zealand companies overseas who operate to more lenient standards in some areas.	As the stakeholder is not known to operate aircraft of more than 30 seats they will not be directly affected by the proposed amendments at this time. Nevertheless, their comment on their current situation has been noted.
With regard to the ‘red card’ rights that would be given to the safety authorities, the two regulators should immediately consult upon one being issued so that operators do not suffer from poor decision making.	The red card is a tool of last resort and regulators will be in close communication at the time of issue. Officials from both Governments agree that this should be the fairest process possible, and used only in instances of imminent safety risk. An operational agreement will provide for consultation to avoid uncoordinated decisions regarding red cards.
That the information supplied to stakeholders implied that the means for determining eligibility of operators for mutual recognition might not be equivalent.	This was not intended. Determination of eligibility by both countries will be equitable. Only those Australian and New Zealand operators covered by the Air Services Agreement will be eligible for mutual recognition.
<p>One stakeholder had the following queries:</p> <ul style="list-style-type: none"> • On what basis has Australia determined that Australia and New Zealand have safety systems that can be accepted as equivalent in terms of safety outcome? • How does New Zealand compare in terms of accident and incident statistics and is the New Zealand regulatory regime a factor in the perception that New Zealand statistics are higher? • What happens if CASA believes a New Zealand AOC holder should be grounded for safety reasons but this is not agreed or actioned by CAANZ? 	<p>In summary:</p> <ul style="list-style-type: none"> • CASA has advised that an analysis of the safety systems has been conducted and both sides are confident that aviation can inter-operate safely in the form being considered. As signatories to the Chicago Convention, Australia and New Zealand are both subject to ICAO audits; the publicly available audit findings indicate both have equivalent safety regimes. • There has been no detailed analysis of accidents or incidents, however as noted above, the two countries are considered to have comparable records, particularly in relation to larger capacity aircraft. • It is highly unlikely that the regulators would take a significantly different view however a dispute resolution mechanism is being contemplated. If mutual recognition were significantly compromised by an event of this

Query/ concern	Response
	kind, it would need to be brought to the attention of the responsible Ministers of Australia and New Zealand.
<ul style="list-style-type: none"> • Have industrial issues been considered? For example, there is the potential for considerable disparity between the salaries of Australian and New Zealand pilots operating the same type of aircraft in this country or in New Zealand. The operating cost structures, taxes and employment conditions of each community have to be considered in this context. Industrial disharmony brought about by misguided policy is not in the public interest for either country. 	<ul style="list-style-type: none"> • Mutual recognition deals with safety and the acceptance that both jurisdictions have comparable safety standards. The initiative is not intended to impact on existing employment arrangements on either side of the Tasman or to have industrial implications, however with different systems some industrial matters have been brought into focus. Ultimately, companies will need to manage their own industrial issues.
<ul style="list-style-type: none"> • One stakeholder queried why the 30 seat cut off was chosen. 	<ul style="list-style-type: none"> • The requirement for mutual recognition to apply to aircraft of greater than 30 seats was chosen because it is consistent with corresponding New Zealand and Australian rules and regulations. Safety standards for this sector of the industry are considered equivalent in both jurisdictions. Consideration may be given to extending mutual recognition to below 30 seats in the future.

Conclusion and recommended option

The Government is committed to mutual recognition, which requires legislative amendment to be implemented. This is therefore the preferred option.

Retaining the status quo would not be consistent with Government policy and its obligations arising from the bilateral Air Services Agreement between Australia and New Zealand.

Implementation and review

Legislative change will be effected primarily through amendment of the *Civil Aviation Act 1988*. The effectiveness of the amendments will be constantly tested as the safety regulatory authorities in both countries apply the legislation. There is no sunset clause built into the amendments, therefore termination of mutual recognition will need to be by legislative amendment.

CIVIL AVIATION LEGISLATION AMENDMENT (MUTUAL RECOGNITION
WITH NEW ZEALAND) BILL 2005

NOTES ON CLAUSES

Clause 1: Short title

This clause provides that the bill will be called the *Civil Aviation Legislation Amendment (Mutual Recognition with New Zealand) Act 2005* once enacted.

Clause 2: Commencement

This clause provides that provisions relating to mutual recognition will commence on a day to be fixed by proclamation. This is to enable the signing of the inter-governmental arrangement on mutual recognition by the Governments of Australia and New Zealand and completion of the operational arrangements between regulating agencies. Amongst other things these arrangements will set the scope of the mutual recognition commitment.

Clause 3: Schedule(s)

This provision provides that the amendments to the Acts (*Civil Aviation Act 1988* and the *Civil Aviation (Carriers' Liability) Act 1959*) set out in the Schedule will be made by the Bill.

For the remainder of this Explanatory Memorandum the term 'the Act' will be used to refer to the *Civil Aviation Act 1988*.

Schedule 1 – Amendments related to Mutual Recognition with New Zealand

This Schedule contains the new provisions that will implement the mutual recognition arrangements with New Zealand.

These provisions will give effect to the Australia New Zealand Aviation Mutual Recognition Principle to be set out in the inter-governmental arrangement, namely:

'a person authorised under Australian law to carry out an aviation activity in Australia may carry out the same kind of aviation activity in New Zealand, and a person authorised under New Zealand law to carry out an aviation activity in New Zealand may carry out the same kind of aviation activity in Australia.'

The principle is subject to the person being approved by the home regulator to carry out the aviation activity within the jurisdiction of the host regulator. This principle will not apply to occupational certificates such as pilot licences, which are eligible to be recognised under the *Trans-Tasman Mutual Recognition Act 1997*.

Subject to the conditions of this Bill, mutual recognition of aviation-related safety certification will permit an eligible aircraft operator to conduct aviation activities in both Australia and New Zealand using an Air Operator's Certificate (AOC) issued by the safety regulator of their home country. This is because the AOC will be recognised as valid by the safety regulator in the host country. AOCs mutually recognised in this way will be called Australian or New Zealand AOCs with ANZA privileges, depending on which country is the country of issue.

At this stage only AOCs will be mutually recognised, however other types of certification may be mutually recognised in the future, if considered appropriate by the Australian and New Zealand Governments. In Australia this would require further amendments to the Act.

International, domestic, passenger and cargo services will all be covered by mutual recognition however it will be restricted to larger aircraft of more than 30 seats or greater than 15,000 kilograms in weight (maximum take off weight) at this stage.

Mutual recognition is based on an acceptance that, while some systems and processes may vary, Australia and New Zealand have safety standards that produce equivalent safety outcomes. This said, there is still a need for the safety regulators to consult and cooperate together, and this is mentioned throughout the Act with regard to a number of matters, including the issue of AOCs and other actions that may affect the activities authorised by such AOCs.

CASA's function is to implement mutual recognition, as prescribed in the Act, the Regulations, and other arrangements made between the Government's of Australia and New Zealand from time to time. Its counterpart in New Zealand is the Civil Aviation Authority of New Zealand (CAANZ).

There will be occasions when it will be practical for CASA to delegate its powers to CAANZ (and vice versa). However, CASA's investigation powers under Part IIIA may not be delegated to CAANZ. Further, the power to issue a temporary stop notice (discussed below) will not be delegated since it makes no sense to do so given that a home authority already has the power to take immediate action against one of its own operators. Delegation of powers will be a matter of discretion between the two regulators, subject to the provisions of our respective legislation.

It is important that, when using delegated powers, material and information collected by the host regulator on behalf of the home regulator be available for evidentiary use under the laws of the home country. The power to do so is provided under this Act. Similarly, the Act provides that the two regulators may exchange information in order to carry out their statutory powers and functions.

On rare occasions it may be necessary for the safety regulator in the host country to act swiftly because of a serious safety concern posed by an operator holding an AOC with ANZA privileges issued by the other country. In these rare circumstances the host regulator has the power to issue a temporary stop notice that prevents the operator from carrying out the aviation activity until the home authority can take any appropriate action to address the safety concern. Such notices can only last for a maximum of seven days. The intention behind this provision is to maintain safety at all times but to take only such action as is considered necessary for that purpose.

Strong communication and cooperation between CASA and the CAANZ will underpin mutual recognition and are required by the provisions of this Act. Indeed mutual recognition has only been possible because of the joint understanding and commitment of the two regulatory agencies to continued safe practice.

The objective of the mutual recognition provisions is to promote and foster aviation activity between Australia and New Zealand but with no diminution of safety.

Amendments to the Civil Aviation Act 1988

Items 1 to 13

These clauses insert new definitions for certain terms used in the Bill into section 3(1) of the principal Act. In particular:

ANZA stands for Australia and New Zealand Aviation. This is the name or term used for the aviation mutual recognition scheme and has been used to distinguish this scheme from other Australia-New Zealand mutual recognition schemes, such as that established under the *Trans-Tasman Mutual Recognition Act 1997*.

ANZA activities in Australian territory are those aviation activities undertaken in Australia (including air operations to or from Australia) by operators holding a valid New Zealand AOC with ANZA privileges issued by the Civil Aviation Authority of New Zealand (CAANZ).

ANZA activities in New Zealand are those aviation activities undertaken in New Zealand (including air operations to or from New Zealand) by operators holding a valid Australian AOC with ANZA privileges issued by the Civil Aviation Safety Authority (CASA).

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.

It will also provide for an operational arrangement between CASA and CAANZ which will outline procedures for the implementation of mutual recognition between the two regulatory authorities.

The content of these arrangements is currently being finalised. It should be noted that Clause 2 permits the commencement of the mutual recognition amendments to the Act to be delayed until these arrangements have been concluded.

Australian AOC with ANZA privileges is an AOC issued by CASA to an operator pursuant to the mutual recognition provisions of the *Civil Aviation Act 1988*. Such an AOC authorises the holder to carry out the aviation activities specified in the document for both New Zealand and Australia and will be recognised as valid by CAANZ if the applicable requirements of New Zealand's *Civil Aviation Act 1990* are met. Under the new subsections 27(2AA) to (2AC), the document must specify aviation activities in relation to both countries, though they need not be the same activities. That is, an Australian AOC with ANZA privileges cannot authorise aviation activities for New Zealand alone. (See notes on Item 24.)

Australian temporary stop notice refers to the notice given by CASA to a holder of a New Zealand AOC with ANZA privileges requiring the holder to cease operations, in whole or part, due to a serious concern regarding aviation safety. Temporary stop notices can only be issued for a maximum of seven days, allowing time for the matter to be considered by CAANZ. See the notes to Item 31 for more information on the temporary stop notice.

CAA New Zealand (Civil Aviation Authority of New Zealand) is the name of the current aviation safety regulator in New Zealand. CAANZ is CASA's New Zealand counterpart.

Director of CAA New Zealand is a statutory office holder under the *Civil Aviation Act 1990* of New Zealand. As CEO of CAANZ, he/she is the counterpart to Australia's Director of Aviation Safety, CASA's CEO.

New Zealand includes New Zealand and all its territories. It has the same meaning as in the *Interpretation Act 1999* of New Zealand.

New Zealand AOC with ANZA privileges means the same as the definition in *Civil Aviation Act 1990* New Zealand. It is an AOC granted to an operator by CAANZ pursuant to the mutual recognition provisions of that Act. This AOC authorises the holder to carry out the aviation activities specified in the document for both New Zealand and Australia and will be recognised as valid by CASA if the applicable requirements of Australia's *Civil Aviation Act 1988* are met. The document must specify aviation activities in relation to both countries, though they need not be the same activities. That is, a New Zealand AOC with ANZA privileges cannot authorise aviation activities for Australia alone.

New Zealand temporary stop notice means the same as the definition in *Civil Aviation Act 1990* New Zealand. It refers to the notice given by CAANZ to the holder of an Australian AOC with ANZA privileges requiring the holder to cease operations, in

whole or part, due to a serious concern regarding aviation safety. It will work in a similar way to that of an Australian temporary stop notice (see the notes to Item 31 for more information on the temporary stop notice).

Item 14

This item inserts a new section 3AA into the Act, which clarifies when a New Zealand AOC with ANZA privileges is in force for Australia. Subsection (1) gives effect to the jointly agreed principle that a New Zealand issued AOC which has been issued for the purposes of mutual recognition (ie with ANZA privileges) may be used in Australia once the Civil Aviation Safety Authority (CASA) has been notified under subsection 28C(1) (see Item 31). Subsection (2) provides that a New Zealand issued AOC with ANZA privileges will cease to have effect when a temporary stop notice is in force under section 28D (Item 31). In this case an operator would be committing an offence under section 29 of the Act if they continued to operate in contravention of the stop notice. If the stop notice expires or is lifted under section 28E (Item 31), then the affected New Zealand AOC with ANZA privileges would come back into force.

Item 15

The Act has limited extra-territorial operation. In accordance with Australia's international obligations, it does not, for example, extend to operation of foreign registered aircraft operating outside Australian territory. However, under mutual recognition, it will be possible for the holder of an Australian AOC with ANZA privileges to operate a New Zealand registered aircraft into, from and within New Zealand. The amendment to section 7 of the Act in Item 17 ensures that the Act has sufficient extra-territorial effect to regulate such activities.

Item 16

CASA has a list of defined functions, which are set out in section 9 of the Act. In particular paragraphs 9(1)(a) and (b) provide that:

‘CASA has the function of conducting the safety regulation of the following, in accordance with this Act and the regulations:

- (a) civil air operations in Australian territory;
- (b) the operation of Australian aircraft outside Australian territory;...

To permit the free deployment of aircraft in the Australia New Zealand single aviation market (SAM), operators using ANZA privileges will be able to use both Australian and New Zealand registered aircraft in both countries. This item inserts a new function into that list to permit CASA to regulate ANZA activities in New Zealand that have been authorised under Australian issued AOCs. It clarifies that CASA can regulate any aircraft (including those on the New Zealand register) used by the holder of an Australian AOC with ANZA privileges when they are being used in New Zealand.

Item 17

In addition to its main function under subsection 9(1), CASA also has some subsidiary functions set out in subsection 9(3) of the Act. This item inserts the function of implementing the ANZA mutual recognition agreements. This provision is not intended to give CASA the responsibility for mutual recognition matters generally. The policy responsibility for the mutual recognition arrangements will remain with the Minister and his or her Department. The new function has been assigned to ensure that CASA has authority to carry out the terms of the arrangements using its resources without exceeding its statutory mandate.

Item 18

Section 26 provides that aircraft on international flights to and from Australia must have permission from CASA. Item 20 inserts a reference to New Zealand AOCs with ANZA privileges into the existing list in subsection 26(2) that contemplates that aircraft will arrive in, and depart from, Australia as part of ANZA activities. It provides for a new paragraph (e) that grants permission as authorised by a New Zealand issued AOC with ANZA privileges that is in force for Australia, but only does so to the extent that it authorises ANZA activities in Australia, as opposed to other international activities.

Item 19

Section 26A inserts an overview of mutual recognition to assist readers of the legislation.

Section 26B permits CASA to disclose information to CAANZ for purposes relating to the ANZA mutual recognition agreements. Such information would include general information about operators issued with AOCs with ANZA privileges, such as the authorisations contained on the AOCs, details of aircraft, aerodromes, key safety personnel etc., and may be disclosed to CAANZ, for example, for purposes of CAANZ's routine surveillance to ensure compliance with relevant New Zealand civil aviation legislative provisions by operators conducting ANZA activities in Australia. This section expressly authorises CASA to disclose personal information (for example, the names and business contact details of relevant employees of the holders of AOCs with ANZA privileges) for the purpose specified in the provision and ensures CASA would not be in breach of the *Privacy Act 1988*.

Section 26C requires CASA to consult with the Director of CAA NZ before taking any action which would or might affect an operator's right to conduct ANZA activities in New Zealand under an Australian AOC with ANZA privileges. Such action could, for example, be the revocation or variation of the AOC to remove or vary the ANZA privileges. However, the obligation to consult would only arise in circumstances specified in the ANZA mutual recognition agreements (see paragraph 26C(a)). Any consultation required under this section must follow the procedures provided in such 'agreements' (see paragraph 26C(b)).

Section 26D permits the Director of CASA, if necessary, to delegate any of CASA's powers, other than those in Part IIIA (the investigation powers), to CAANZ to enable

CAANZ to perform certain functions in New Zealand on behalf of CASA for purposes of the ANZA mutual recognition agreements. Consistent with Commonwealth legal policy, and to provide appropriate checks and balances in relation to any exercise of power conferred under Commonwealth law, employees of CAA NZ, in their exercise of CASA's powers, will be subject to the directions of the Director of CASA.

Section 26E states that CASA officers may exercise powers or perform functions which are delegated to them by the Director of CAA under section 23B(2A) of the *Civil Aviation Act 1990* of New Zealand ('the NZ Act'). These powers may be exercised only in relation to New Zealand AOCs with ANZA privileges.

CASA officers will not be able to be delegated powers or functions under section 15 (which covers safety & security inspections and monitoring), section 21 (power to detain aircraft, seize products and impose conditions and prohibitions) or section 24 (general power of entry to place) of the NZ Act.

The 'cross-delegation' of powers in the new Sections 26D and 26E will only be used for the exercise of domestic administrative powers under the law of the country whose authority delegated the power. Where, for example, the CAANZ wishes to exercise surveillance powers, it would need to ask an authorised CASA investigator to exercise his or her powers under Part IIIA (see Items 32-34). Alternatively for investigations into possible offences, CAANZ would need to make a request through the *Mutual Assistance in Criminal Matters Act 1987*. CASA would be in a similar position in relation to their monitoring and investigations in New Zealand.

Item 20

This item inserts a new paragraph (da) in the table at subsection 26A(2) entitled Outline of other provisions of this Act that deal with mutual recognition. This is to ensure that the additional conditions for issue of Australian AOCs with ANZA privileges have on-going effect.

Item 21

Item 21 inserts a reference to 'New Zealand AOC with ANZA privileges that is current in Australia', so that the operation of any aircraft within, into or out of Australia, or the operation of any Australian aircraft outside Australia, would also be permitted as long as such operation is authorised under a current New Zealand AOC with ANZA privileges. It only does so to the extent that it authorises ANZA activities in Australia, as opposed to other aviation activities. This is one of the key provisions that give effect to mutual recognition so that those AOCs issued by CAA NZ within the mutual recognition scheme would be treated as if they were AOCs issued by CASA.

Item 22

Item 22 inserts a note at the end of subsection 27(2) to draw attention to the fact that the phrase 'New Zealand AOC with ANZA privileges that is current in Australia' has a specific meaning for purposes of the Act.

Item 23

Item 23 sets out the threshold conditions under which CASA may issue an Australian AOC with ANZA privileges.

As a matter of basic requirement under the new subsection (2AA), CASA may issue an AOC to authorise operations within, into or out of New Zealand ('New Zealand operations') only if the same AOC also authorises operations within, into or out of Australia ('Australian operations'). This provision prevents CASA from issuing an AOC which authorises only New Zealand operations. However, the type of New Zealand operations authorised under the AOC do not need to be the same as the Australian operations authorised under that AOC. For example, CASA may issue an Australian AOC with ANZA privileges to authorise only regular public transport passenger operations in Australia but only charter freight operations in New Zealand.

Subsection (2AB) clarifies that CASA may continue to issue AOCs that authorise operations into or out of New Zealand, separate from the mutual recognition system. Such AOCs will not be subject to the provisions that apply solely in relation to AOCs with ANZA privileges.

Subsection (2AC) requires that every Australian AOC with ANZA privileges must indicate that it is such an AOC. This is to ensure that AOCs issued by CASA to authorise operations into or out of New Zealand but which were issued outside the mutual recognition scheme would not be confused with Australian AOCs with ANZA privileges.

Item 24

Subsection 27(2A) of the Act requires that foreign registered aircraft being used on regulated domestic flights must be specified individually on an AOC. Under the amendment to the Act in item 24 New Zealand registered aircraft being used on regulated domestic flights are able to be specified on an Australian AOC with ANZA privileges by reference to a class of aircraft, i.e. as if they were Australian aircraft.

Item 25

Item 25 amends the definition of 'foreign aircraft AOC' so that New Zealand aircraft operating under an Australian AOC with ANZA privileges would not be treated as foreign aircraft for purposes of section 27AE. Aircraft registered in countries other than Australia and New Zealand, eg. the UK, ('non-ANZA aircraft') would continue to require a foreign aircraft AOC before they may be operated on flights that are not regulated domestic flights. Note that an Australian AOC with ANZA privileges may be partly 'foreign AOC' for purposes of section 27AE to the extent that the AOC authorises operation of non-ANZA aircraft on flights that are not regulated domestic flights. In other words, section 27AE applies to any AOC application in respect of operations on flights that are not regulated domestic flights using non-ANZA aircraft, notwithstanding that the same application also seeks authorisation to carry out ANZA activities in New Zealand. To the extent that the application is seeking authorisation to carry out ANZA activities in New Zealand, the additional conditions under section 28B would apply.

Item 26

Paragraph 28(1)(c) of the Act requires that an applicant for an AOC authorising the operation of foreign registered aircraft on regulated domestic flights must satisfy CASA of the matters set out in section 28A. However, under the mutual recognition scheme CASA will not be required to be satisfied of the matters set out in section 28A in relation to New Zealand registered aircraft engaged in regulated domestic flights to the extent they are operated under an Australian AOC with ANZA privileges.

Item 26 amends paragraph 28(1)(c) so that the entry conditions generally applicable to certain AOCs do not apply to Australian AOCs with ANZA privileges. Those certain AOCs are:

- Australian AOCs *without* ANZA privileges; and
- Australian AOCs with ANZA privileges that cover aircraft not registered in either Australia or New Zealand (that is, to the extent that such AOCs authorise activities that are not ‘ANZA activities in New Zealand’).

Item 27

Item 27 introduces two new criteria that must be satisfied before CASA is obliged to issue an AOC.

The new paragraph 28(1)(d) is intended to prevent any operator from holding two separate AOCs that authorise the same air operations. In other words, an operator who already holds a New Zealand AOC with ANZA privileges cannot obtain an Australian AOC which permits the same operations as those permitted under their New Zealand AOC. Where an operator holds a NZ AOC, CASA would need to be satisfied that this AOC is surrendered before issuing an Australian AOC with ANZA privileges.

The new paragraph 28(1)(e) provides that where the AOC sought is an Australian AOC with ANZA privileges, then the additional conditions set out in section 28B must also be met.

Item 28

Item 28 inserts the new section 28B, which provides a list of the additional conditions that must be met before CASA is obliged to issue an Australian AOC with ANZA privileges.

Paragraph (1)(a) prevents any operator from holding two separate AOCs that authorise the same air operations. More precisely, an operator who holds a New Zealand AOC cannot obtain an Australian AOC with ANZA privileges which permits the same operations as those already permitted under their New Zealand AOC.

Paragraph (1)(b) is about the eligibility criteria that must be satisfied before an operator may enjoy ANZA privileges. Such criteria are set out in the ANZA mutual recognition agreement/s negotiated between the Australian and New Zealand governments, having regard to a range of economic as well as safety considerations. CASA is not able to

issue an Australian AOC with ANZA privileges unless and until it has been advised by the Secretary to the Department of Transport and Regional Services that the operator meets the eligibility criteria provided in the mutual recognition agreement/s.

Paragraph (1)(c) provides another entry condition concerning the compliance with New Zealand civil aviation safety laws. Before CASA is obliged to issue an Australian AOC with ANZA privileges, it must be satisfied that the applicant is capable of complying with New Zealand safety rules that are applicable to the operator in relation to their ANZA activities in New Zealand. Note that this entry condition, like most other entry conditions on AOCs, is also an on-going condition by virtue of the new subsection 28BAA(2) (Item 31). In other words, paragraph (1)(c) operates in two ways: (1) it requires CASA to be satisfied that the applicant is capable of complying with the relevant New Zealand laws, before CASA is obliged to issue an Australian AOC with ANZA privileges; and (2) once the AOC with ANZA privileges has been issued, the fact that the holder has not actually complied with the relevant New Zealand laws would allow CASA to remove the ANZA privileges from the AOC.

Paragraph (1)(d) is to ensure that CASA would only issue an Australian AOC with ANZA privileges when it is satisfied that it has the ability to adequately oversee the operations of the holder of the AOC. Sub-paragraphs (i) to (iv) provide the relevant considerations that must be taken into account by CASA in determining whether it would have the ability to provide sufficient safety oversight in respect of a particular operator. Note that the conditions set out in sub-paragraphs (d)(i) to (iv) are cumulative, which means all those conditions must be met before CASA may come to the conclusion that it is capable of effectively regulating all the operations covered by the application. Since this entry condition will be an on going condition, the ANZA mutual recognition agreements will provide for transfer of country of certification to New Zealand where an AOC holder can no longer be overseen by CASA.

Paragraph (1)(e) allows further conditions on AOCs to be provided in the regulations. For example, the regulations may require that the holder of an Australian AOC with ANZA privileges will use only aircraft fitted to carry more than 30 passengers. Any future extension of mutual recognition to AOCs for smaller aircraft may be achieved through amendments to such regulations.

CASA is obliged to consult the Director of CAA New Zealand in relation to the conditions set out in paragraphs (1)(a), (c), (d), and (e).

Item 29

Under paragraph 28BA(1)(aa) replaces the word ‘condition’ to ‘conditions’.

Item 30

This amendment is consequential to the insertion of a new subsection (2) into section 28BAA as per Item 31 as discussed below.

Item 31

Section 28BAA provides that an AOC has effect subject to the condition that CASA remains satisfied that the AOC holder continues to satisfy the criteria set out in paragraphs 28(1)(a) and (b) of the Act, such as compliance with the Act. In essence, this means the ‘entry conditions’ provided under paragraphs 28(1)(a) and (b) become on-going conditions on the AOC as well by virtue of section 28BAA. Item 31 inserts a new subsection (2) into this section, so that Australian AOCs with ANZA privileges would be subject to the condition that CASA remain satisfied of the matters set out in paragraphs 28B(1)(a), (c) and (d) of the Act, and that the Secretary of the Department has not advised CASA that the holder of the AOC is no longer eligible for ANZA privileges under the ANZA mutual recognition agreements. Therefore, the entry conditions imposed by paragraphs 28B(1)(a), (c) and (d) are also on-going conditions on Australian AOCs with ANZA privileges.

It should be noted that any condition imposed by regulations made under paragraph 28BA(1)(b) would also be on-going, in the sense that the AOC holder must continue to satisfy such conditions after the AOC has been issued. Therefore, any ‘additional condition’ set out in a regulation made under paragraph 28B(1)(e), which must be satisfied before an Australian AOC with ANZA privileges may be issued, may be made an on-going condition as well by a regulation under paragraph 28BA(1)(b). For example, if a regulation is made under paragraph 28B(1)(e) to require CASA to be satisfied that the applicant for an Australian AOC with ANZA privileges will use only Australian or New Zealand registered aircraft for its ANZA activities in New Zealand, then there may also be a corresponding regulation made under paragraph 28BA(1)(b) of the Act to provide that an Australian AOC with ANZA privileges has effect subject to the condition that the country of registration for the aircraft remains either Australia or New Zealand.

Item 32

This amendment is consequential to the insertion of a new subsection (2) into section 28BD as per Item 33 as discussed below.

Item 33

Item 33 inserts a new subsection 28BD(2) to impose an on-going obligation on the holder of an Australian AOC with ANZA privileges to comply with applicable New Zealand civil aviation safety laws. Generally speaking holders of Australian AOCs with ANZA privileges will only have to comply with the New Zealand rules of the air applicable to flight and operation of the aircraft. This requirement is effectively the same as the condition imposed by the proposed paragraph 28B(1)(c) (Item 28) to comply with relevant New Zealand law, which will also be an on-going requirement by virtue of the proposed subsection 28BAA(2) (Item 31). Subsection 28BD(2) is inserted merely because there is already an existing requirement under section 28BD to comply with the Australian Civil Aviation Act, Regulations and Orders. For completeness, it is appropriate to also have a subsection referring to the applicable provisions in the New Zealand Civil Aviation Act, Regulations and Rules, as far as the holders of Australian AOCs with ANZA privileges are concerned.

Item 34

Item 34 inserts a number of sections generally 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

Subsection 28C(1) explains that a New Zealand AOC with ANZA privileges comes into force for purposes of mutual recognition upon the provision of certain information, including a copy of the AOC, to CASA by the holder of the New Zealand AOC with ANZA privileges. Note that operations into, out of or within Australia pursuant to a New Zealand AOC with ANZA privileges are only allowed under subsection 27(2) if the New Zealand AOC concerned is in force (see items 21 and 22). Also note that a New Zealand AOC with ANZA privileges is not considered in force when it is subject to a temporary stop notice issued by CASA under section 28D.

Subsection 28C(2) requires the holder of the New Zealand AOC with ANZA privileges to notify CASA of any changes to the AOC by giving CASA a copy of the varied AOC within the specified timeframe of 7 days.

Under subsection 28C(3), the holder is also required to notify CASA of any changes to its ANZA activities in Australia or any information previously provided to CASA under section 28C.

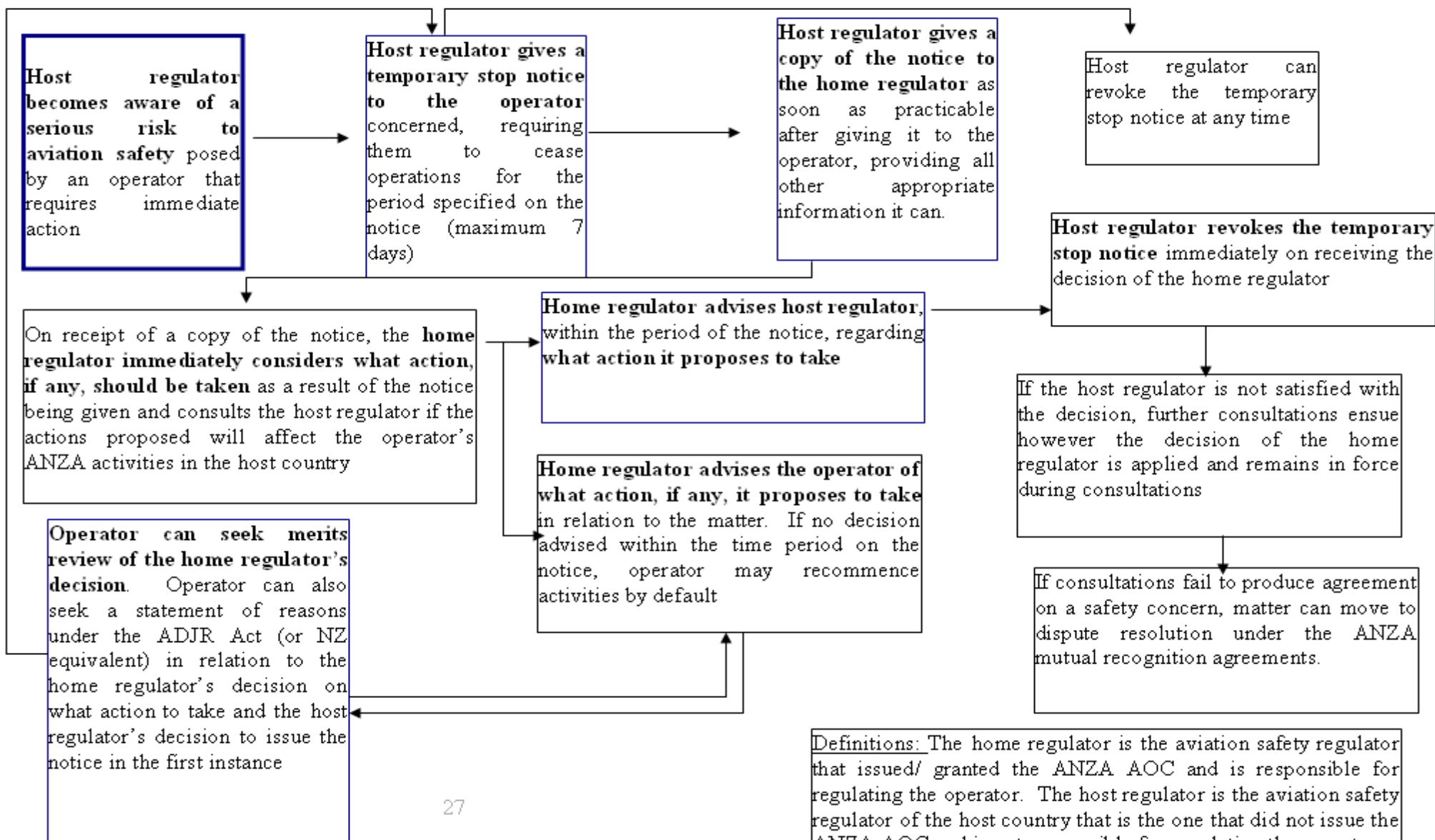
Subsection 28C(4) provides that failure to comply with subsection (2) or (3) would be an offence of strict liability. This means that there is no need to prove intention, knowledge, recklessness or negligence in order to establish that an offence under either of those subsections has been committed. However, the alleged offender may still rely on a variety of defences available under the *Criminal Code Act 1995*, eg. mistake of fact under section 9.2 of the Criminal Code provided in that Act.

28D Temporary Stop Notices

A new section 28D will govern CASA's power to issue a temporary stop notice to a holder of a New Zealand AOC with ANZA privileges. A similar provision has been made in the corresponding New Zealand legislation permitting the CAANZ to issue such notices in respect of holders of Australian AOCs with ANZA privileges. A chart explaining the application of Temporary Stop Notices is on page 26.

Subsection 28D(1) provides the Director of CASA with a non-delegable power to issue such a notice. This power is necessary because, from time to time, CASA may become aware of a serious risk to aviation safety in relation to a particular operator flying in Australian territory using a New Zealand AOC with ANZA privileges issued by the CAANZ. At such times, the Director of CASA must be able to act swiftly in the interests of safety, even though it is not the regulator responsible for overseeing the operator and did not issue the operator's AOC.

Chart Showing the Application of Temporary Stop Notices under the Mutual Recognition of Aviation-related Safety Certification Provisions of the Australian and New Zealand Civil Aviation Legislation.



Such a notice takes effect immediately and can require the operator to cease conducting all or any of the ANZA activities that the AOC authorises in Australian territory for the period of the notice (up to 7 days). Failure to comply with the notice means the operator is operating in breach of section 27 of the Australian *Civil Aviation Act*, which is an offence under section 29. It is important to note, however, that the operator can keep operating in New Zealand if CAANZ permit it to – it is only its Australian operations that are affected by the temporary stop notice. In a similar way, if the CAANZ issues a temporary stop notice to the holder of an Australian AOC with ANZA privileges and the holder fails to comply with it, then the holder commits an offence under New Zealand law.

In reality it is expected that the temporary stop notice would be used only rarely, for example if CASA received information about an operator that had to be acted upon swiftly to prevent aviation safety being compromised. Under normal conditions, CASA would be expected to become aware of safety concerns in enough time to discuss the matter with the CAANZ with effect that any action to resolve the matter would usually be taken by CAANZ. Even when a temporary stop notice is required, discussion between the two regulators will occur at the time it is issued in accordance with the ANZA mutual recognition agreements.

A temporary stop notice expires at the end of the period specified in the notice (see paragraph below) with or without action having been taken by CAANZ. It is anticipated a temporary stop notice will be issued only once in relation to the same circumstances. The provision was deliberately drafted in this way as both safety regulators are capable of deciding quickly what is the appropriate action to take to preserve safety without unnecessary hardship to the operator concerned. The intention behind this provision is therefore to maintain safety at all times but to take only such action as is considered necessary for that purpose.

Subsection 28D(1) also stipulates that a temporary stop notice must state the length of time the notice is in force; this cannot be longer than seven calendar days (as opposed to seven working days). Seven days is considered sufficient time for the matter to be referred to the CAANZ for action and for that organisation to decide what action, if any, it should take. This does not mean that the CAANZ has to have the safety concern resolved within the seven-day period (or less, depending on the time of the notice), only that it must take a decision on what should be done immediately, that is before the notice expires. This may include suspending the operator while further investigations are undertaken. Or the matter may be one that can be easily settled so that CASA feels confident in the operator recommencing its activities.

It is open to the Director of CASA to give a period of less than seven days on the notice, if it feels a lesser time is sufficient. This is in recognition that the operator should not be disadvantaged beyond that necessary to maintain safety. On the other hand, in setting a period of less than seven days, the Director will need to be confident that it will be enough time for CAANZ to consider the problem and come to a decision, particularly given that an operator automatically has the right to recommence operations at the end of the period.

Subsection 28D(2) restricts the Director's power to issue a temporary stop notice, stipulating that there must be a serious risk to aviation safety, in its opinion, in order to exercise that power. The nature of what constitutes a serious risk must remain within the discretion of the Director. However it is expected that the matter would be regarded to be important enough, and of enough concern, in terms of aviation safety to warrant immediate action to ensure that the operations are halted without delay.

Subsection 28D(3) provides that the temporary stop notice comes into effect at the time it is given to the operator in question and remains in force for the period determined on the notice. This reflects the gravity of the situation that required a temporary stop notice to be issued. Nonetheless, the Director may revoke the temporary stop notice under section 28E.

Subsection 28D(4) requires the Director to state the facts and circumstances, which, in his/her opinion, give rise to the serious risk to civil aviation safety in Australian territory. This provision recognises that in issuing a temporary stop notice, the safety authority has a responsibility to the operator to advise of the reasons for it. The reasons for the notice also become available to the CAANZ when the Director gives them a copy of the notice. Additionally, CASA is expected to provide any further information to the CAANZ that it is appropriately able to provide in relation to the matter, to assist CAANZ in deciding what action it should take.

Subsection 28D(5) requires the Director of CASA to provide the Director of CAANZ with a copy of the temporary stop notice as soon as practicable after it has been given to the operator. Given that the CAANZ only has seven days (or possibly less) to consider what action, if any, to take in relation to the safety concern, it is important for CASA to bring the matter to the CAANZ's attention as soon as practicable.

As soon as CAANZ receives a copy of the Australian temporary stop notice, it must take certain actions under its own Act. It must immediately consider the circumstances that gave rise to the giving of the notice and decide whether to suspend, revoke, impose conditions on, or take any other action in relation to the AOC with ANZA privileges, whether in whole or part.

Subsection 28D(6) provides that the notice is not invalidated even if the Director of CASA fails to state the facts and circumstances in the notice, and/ or fails to provide a copy of the notice as soon as practicable to CAANZ.

The power to issue a temporary stop notice must be exercised personally by the Director of Aviation Safety (subsection 28D(7)). He cannot delegate this power to an officer, nor to CAANZ,

The Bill does not provide the opportunity for merit review of the decision to issue a temporary stop notice. This is because such a notice will only be issued in extreme and urgent circumstances with the matter then being referred almost immediately to the home regulator. Further, since the maximum time that a notice will be in force, is for seven calendar days, the opportunity for merits review would be pointless. Decisions of the home regulator will generally be open to merits review. Another reason is that review by the Administrative Appeals Tribunal should only be available in relation to AOCs issued under the Australian *Civil Aviation Act*. New Zealand AOC's with ANZA privileges do not fall into this category. New Zealand operators will, however, be able to make application to the Australian Federal Court for a statement of reasons under the *Administrative Decisions (Judicial Review) Act 1977*.

28E Revocation of an Australian temporary stop notices

Even though a temporary stop notice is in force for a set time period, the Act does provide that it can be revoked before that period expires. The Director can revoke the notice for any reason, for example if the safety concern was resolved or was found not to exist after all. In addition, the Director of CASA must revoke the notice upon receiving written advice from the home regulator that it has made a decision regarding the matter, whether or not the decision is to take action. The power to revoke a temporary stop notice is also non-delegable.

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

Subsection 28F(1) requires that, upon receiving a copy of a temporary stop notice issued by CAANZ to the holder of an Australian AOC with ANZA privileges, CASA must consider it immediately and decide as soon as practicable what action it should take under the Act or Regulations. This provision reflects the fact that the notice is only issued for a maximum of seven calendar days, so it is important there be no delay in CASA's consideration of the situation. The clause mirrors that found in corresponding New Zealand mutual recognition provisions. It has the secondary intention of ensuring that the seven day (or less) period not be allowed to lapse without the matter being considered such that an unsafe operator might, by default, be permitted to resume operations without the original concern of CAANZ being addressed.

Subsection 28F(2) provides that CASA must comply with the provisions of the ANZA mutual recognition agreements. It is anticipated that these 'agreements' will set out agreed procedures to be followed when a temporary stop notice is received.

Subsection 28F(3) provides that CASA must advise the Director of CAANZ of its decision in relation to the safety concern raised in the New Zealand temporary stop notice and advise what action it intends to take, if any. CASA is also obliged to consult the Director of CAANZ under the new section 26C (see Item 21), before formally notifying its decision, if the action would affect ANZA activities in New Zealand. Having considered there to have been a safety concern serious enough to issue a temporary stop notice, CAANZ will naturally wish to be advised of the decision and proposed action, particularly given that it may result in the operator recommencing its activities. This does not mean that CAANZ has a power of veto over the decision or action; mutual recognition is built on an acceptance of each other's standards, and that

includes decisions. This said, CAANZ must be consulted before the decision is made if the action affects ANZA activities in New Zealand in recognition of their knowledge of their jurisdiction.

28G Exemption of Specified ANZA activities in Australian territory

Subsection 28G (1) provides for regulations to be made to exempt all or specified ANZA activities in Australian territory from the application of the regulations identified in the exemption. It is intended that some exemptions may apply to ANZA activities in Australia only to the extent that the activities are carried out using New Zealand registered aircraft. In such a case, the ‘disapplied’ regulations will still apply to ANZA activities in Australia when Australian aircraft are used.

Subsection 28G(2) clarifies that the exemptions may refer to the aircraft that engage in activities authorized by a New Zealand AOC with ANZA privileges. This subsection is not intended to limit the scope of subsection 28G(1) and merely provides an example of how the exemptions may be prescribed.

Items 35 and 36

Item 35 amends section 32AC so that a CASA investigator may exercise monitoring powers (including inspection powers as defined under section 3) under this section at the request of CAANZ to help CAANZ ensure that the New Zealand Civil Aviation Act, Regulations or Rules are being complied with. Consequently, under section 32AK, a CASA investigator may stop or detain an aircraft or ensure the aircraft remain undisturbed for a reasonable period when conducting an investigation on behalf of CAANZ. The cooperative arrangements between CASA and CAANZ regarding mutual enforcement, including how a request may be made by the requesting authority, and how the request should be dealt with by the requested authority, will be provided in the ANZA mutual recognition agreements. Under section 32AM, anything done by a CASA investigator under section 32AC on behalf of CAANZ which constitutes acquisition of property from a person otherwise than on just terms would require CASA to pay reasonable compensation.

Item 37

Item 37 amends section 32AD so that a CASA investigator may apply for a monitoring warrant under this section at the request of CAANZ in respect of premises in Australia, to help CAANZ ensure that the New Zealand Civil Aviation Act, Regulations or Rules are being complied with. The cooperative arrangements between CASA and CAANZ regarding mutual enforcement, including how a request may be made by the requesting authority, and how the request should be dealt with by the requested authority, will be provided in the ANZA mutual recognition agreement. Once on the premises, the CASA investigator may require a person to answer questions or produce documents under section 32AJ for the purpose of an investigation conducted on behalf of CAANZ. In addition, under section 32AK, the CASA investigator may stop or detain an aircraft or ensure the aircraft remain undisturbed for a reasonable period when conducting an investigation on behalf of CAANZ. Under section 32AM, anything done by CASA investigators under section 32AD on behalf of CAANZ which constitutes acquisition of

property from a person other than on just terms would require CASA to pay reasonable compensation.

Item 38

This item inserts a paragraph into section 98 of the Act to ensure that future extension of mutual recognition with New Zealand in respect of certifications that are not AOCs will not occur through regulations alone. Consequently, any such extension will only be possible if the Act is further amended through the normal Parliamentary process for primary legislation.

This item also ensures that there are no unintended affect on regulations that are made for the purposes connected with the *Trans-Tasman Mutual Recognition Act 1997*.

Amendments to the Civil Aviation (Carriers' Liability) Act 1959

It is Australian government policy that all carriers that operate within Australia are subject to the Australian rules that govern carrier's liability have mandatory non-voidable insurance to meet their obligations under the *Civil Aviation (Carriers' Liability) Act 1959* (the Liability Act). Carriage within Australia is governed by Part IV of the Liability Act. Sections 28 and 29 of that Act impose liability under Part IV on holders of international licences and holders of AOCs issued by CASA. The following items amend the Liability Act to ensure that airlines operating under a New Zealand issued AOC with ANZA privileges are subject to this liability. The mandatory non-voidable insurance provisions of Part IVA of the Liability Act will then apply to these operations.

Item 39

This item inserts a new paragraph to the definition of airline licence in section 26 of the Liability Act. This means that any carrier operating with a New Zealand issued AOC with ANZA privileges has the same liability and requirement to carry insurance as a carrier operating under an AOC authorising airline operations issued under the *Civil Aviation Act 1988*.

Item 40

This item inserts a new paragraph to the definition of charter licence in section 26 of the Liability Act. This means that any carrier operating with a New Zealand issued AOC with ANZA privileges has the same liability and requirement to carry insurance as a carrier operating under an AOC authorising charter operations issued under the *Civil Aviation Act 1988*.