CASA REF C03/9104

April 2003

Ms Maggie Eibisch
Review of Mutual Recognition
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Ms Eibisch

I refer to my letter of 31 March 2003 regarding the current review being undertaken of the Mutual recognition Agreement and the Trans Tasman Mutual Recognition Agreement by the Productivity Commission.

The Civil Aviation Safety Authority (CASA) wishes to provide the following information for the consideration of the Productivity Commission:

Review of the application of the *Trans Tasman Mutual Recognition Act* 1997 in relation to Occupations in Civil Aviation.

Please Note: CASA's comments are confined to professional qualifications covered by the TTMRA

The Civil Aviation Safety Authority Australia (CASA) and the Civil Aviation Authority of New Zealand (CAANZ) have amended their respective civil aviation licensing procedures in order to facilitate the recognition of the other country's civil aviation qualifications under the Trans Tasman Mutual Recognition Act 1998 (TTMRA).

The application of the TTMRA has been effective and has allowed a relatively seamless exchange of qualifications for persons from the two countries where the respective country's standards were met.

Background

The legislation applies to professional pilots, flight engineers and aircraft maintenance engineers. To participate in these occupations individuals are required to hold the appropriate licence. In many situations the individual also needs to hold a rating, which allows the person to undertake more complex duties. The ratings are integral part of the licence once issued.

The requirements for obtaining licences and ratings on each side of the Tasman generally comply with the International Civil Aviation Organisation (ICAO) standards.

Despite the general commonality, there are some significant differences and these are managed by applying conditions on the new licence. These actions are contemplated in the TTMRA.

Licences in both countries are issued as permanent registrations (term used in the TTMRA.) Ratings on the other hand are sometimes issued for a fixed period and for those ratings, there is a renewal process. There are also operational recent experience and 'review' processes that have the effect of a renewal. These need to be met before the person can carry on the occupation.

There are differences in the civil aviation legislation of the two countries. Australia's Civil Aviation Act 1988 requires a pilot who flies an Australian aircraft to hold an Australian pilot licence. For the purposes of TTMRA, CASA's policy since May 1988 has been to recognise a New Zealand pilot licence and issue an equivalent Australian licence on that basis.

The New Zealand legislation permits an Australian pilot licence holder to fly a New Zealand aircraft. This difference means New Zealand has not had to implement TTMRA because there is no regulatory barrier. Nevertheless, New Zealand now issues a pilot licence based on an equivalent Australian licence.
Issues

The main concerns with the present arrangement are:

Using TTMRA to 'get around' the different standards required to obtain a licence and/or rating:

There are instances where individuals use the TTMRA to 'get around' the requirements to obtain a qualification in their home country and the individual has no intention of using the licence in the adopted country.

For example, an individual wants to obtain a higher licence in their home country. The person can obtain the higher licence in a third country, have it recognised in the adopted country and consequently have that licence recognised by the home country despite the home country not recognising the third country's licence.

There are cases of pilots obtaining a licence from the adopted country in order to qualify for a licence issued by a foreign country, which does not recognise the original country's licence.

Recognising a renewal or re-qualification process in one jurisdiction for the purposes of the other jurisdiction:

In civil aviation, the integrity of the system is supported by two essential elements – frequent competency reviews, and refresher training. A person who obtains a new licence under the TTMRA has to comply with the adopted country's system. However, the criteria for obtaining the qualification were those applying to the 'birth' country. Efficiencies could be achieved if the review and refresher training requirements were recognised in the same way as the qualifications are recognised under the registration process.

Interpretation:

Civil aviation qualifications are complicated by —

- there being several structural layers and, in some cases, requirements for the qualification to be 'current – that is, having completed reviews and refreshers; and

- having to hold certificates such as medical fitness certificates, which have limited validity.

Is the person entitled to registration if his or her licence is not current? That is, he or she is not entitled to carry on the occupation until those conditions are satisfied. In this regard, ratings present a further complication. In the case of a rating that involves a renewal process, the original rating is no longer in force after the renewal period has passed – the rating has expired.

The same problems outlined above arise with the issue of a Civil Aviation Medical Certificate under the TTMRA requirements.

Clarification on these issues would assist CASA in implementing the TTMRA by removing uncertainty over the treatment of cases involving these issues.

Medical Certification:

The civil aviation medical standards of Australia and New Zealand are generally compliant with ICAO's standards and recommended practices. Where differences exist, they have been notified to ICAO.

Under ICAO, the regulatory authority is allowed to consider each case on its merits and permit exemptions to the standards where safety is not compromised by the person's inability to meet the medical standards. The term used is 'flexibility'. For example, a person's condition that is managed under an acceptable medical regime could be exempt from a standard to some extent. There are differences in the application of flexibility and exemption when a person does not meet the medical standards.

Flexibility is a discretionary judgement that relies on the qualifications and experience of the person exercising the judgement. It is inevitable that differences will result.

It should be noted that a medical certificate is not a qualification but is needed whenever a pilot or flight engineer carries on his or her occupation. In New Zealand, the person cannot obtain a licence without first meeting the applicable medical standards.

The issue for TTMRA is whether the medical certificate should be subjected to TTMRA or not. There are instances where one country deems a person to be medically fit using flexibility described above, but the other country does not. It is unclear from TTMRA how documents such as medical certificates should be handled.

Summary:

Unfortunately, for civil aviation matters working under the TTMRA, there remain anomalies and ambiguities with its interpretation and application.

Notwithstanding the matters outlined above, there have been approximately 815 successful applications for registration under the TTMRA since May 1998.

CASA would be pleased to provide any additional information or clarification of the matters raised above for the consideration of the Productivity Commission.

Please feel free to contact me should you require any further assistance.

Yours sincerely

Rob Elder
Executive Manager
Corporate Affairs