

Attachment

In order to provide some direct examples of how the legislative framework impacts on Virgin Blue we would like to bring to your attention three indicative examples of issues that we have addressed in recent years.

Cabin Crew Complement

Over the past two years Virgin Blue has worked closely with CASA to obtain approval to operate with four cabin crew on our Boeing 737-800 aircraft. This approval has now been obtained which has resulted in significant productivity benefit for our domestic operations (in the order of \$8m cost saving per annum). The background to this change and work required by us to obtain approval however demonstrates the challenges we face operating in the current legislative environment.

Civil Aviation Order 20.16.3 defines requirements for the number of Cabin Crew we need to conduct operations. The relevant section is below:

6 Cabin attendants

6.1 Subject to subsection 6A, aircraft engaged in charter or regular public transport operations shall carry cabin attendants appropriate to their passenger complement as follows:

(a) aircraft carrying more than 15 but not more than 36 passengers shall carry a cabin attendant, except that aircraft:

(i) carrying not more than 22 passengers, at least 3 of whom are infants or children; and

(ii) crewed by 2 pilots; need not carry a cabin attendant if the duties and responsibilities of the flight crew concerning the briefing and control of passengers in normal and emergency operations are specified in the operations manual;

(b) aircraft carrying more than 36 but not more than 216 passengers shall carry at least 1 cabin attendant for each unit of 36 passengers or part thereof;

(c) aircraft carrying more than 216 passengers shall carry the number of cabin attendants as prescribed by CASA which shall not be less than 1 cabin attendant for each floor level exit in any cabin with 2 aisles;

(d) notwithstanding the specifications of (a), (b) and (c) above, in an aircraft in which cabin attendants are required to be carried, there shall be not less than 1 cabin attendant in each separate compartment occupied by passengers, and, where the number of cabin attendants used in the emergency evacuation demonstration required by section 20.11 was in excess of the numbers required by (a), (b) or (c) above, the number of cabin attendants on an aircraft shall be not less than the numbers required by (a), (b) or (c) as applicable plus the excess number of attendants used in the demonstration.

The above section of legislation is typical of the style and prescriptive nature of much of the Australian Aviation legislation that exists today. Examining the origins of the legislation makes it difficult to see the connection between the legal requirements and a demonstrated safety outcome. Section 6(b) above has resulted in cabin crew to guest ratios in Australia being considerably out of step with the rest of the world for

many years without any appreciable additional safety benefit. This point is illustrated by the fact that in order for our sister company, Pacific Blue to be able operate one of our Australian registered B737-800 aircraft on their network, they were required themselves to hold a full Australian issued Air Operators Certificate and go through an entire entry control process with CASA. This is despite the fact that they were already approved to operate the identical aircraft on their New Zealand issued operating certificate. This whole process consumed many months of work and cost tens of thousands of dollars.

In order to obtain approval to operate with four cabin crew Virgin Blue had to develop a detailed safety case, to demonstrate how the safe operation of the B737 aircraft was not adversely impacted. The basis of the safety case was that the United States Federal Aviation Administration (FAA) certification criteria for the aircraft established that all essential safety considerations for the B737-800 could be satisfied with four cabin crew. In effect, this certification process provides the 'head of power' for safety based operational decisions in many jurisdictions and is accepted without question by them. CASA also accept the certification of the aircraft under Part 21 of the Civil Aviation Safety Regulations (1998) however this does not translate into all our the Australian operational rules parts as demonstrated by the previously discussed CAO 20.16.3 requirements.

Having demonstrated that safety would not be impacted the only mechanism available to CASA to provide an exemption against the strict requirements of CAO 20.16.3 to allow Virgin Blue to operate with a reduced crew complement was through a Disallowable Instrument that had to be tabled in the Senate by CASA. This process was successfully completed in March 2007 some twelve months after the safety case was submitted. The approach taken by Virgin Blue has now been adopted by almost all of the major airlines operating in Australia, continuing to occupy both the resources of CASA and the Senate and yet the legislation has not yet been amended to reflect the obvious change in safety standards established.

Introduction of New Aircraft

In 2007 Virgin Blue commenced a project to induct Embraer E170 and E190 aircraft into our fleet. Although these are mature aircraft in operation in many countries with FAA and EASA (European Aviation Safety Agency) Type certification approval the direct cost to Virgin Blue from the regulator to obtain the necessary approval under the cost recovery model was in excess of AUS\$120,000.

For a more complex task like the launch of V-Australia the costs are more significant. In total the direct charges to the regulator to obtain approvals for V-Australia approached \$700,000 in direct costs and very considerable additional internal costs. The genesis of these costs is related to the complex nature of the aircraft and the proposed operations that relied on the application of relatively new operational safety standards dealing with Extended Diversion Time Operations (EDTO). While this was understood and accepted as part of the overall process, CASA had no documented standards under which such an application was to be managed and as a result cost overruns were experienced.

Although we recognise the level of work involved in introducing new aircraft types the experience of other regulatory agencies around the world could reasonably be taken into consideration by Australian regulators to reduce the considerable certification complexity and cost burden on Australian industry. In circumstances where the aviation sector is required to fund regulatory oversight, greater transparency is required where the regulator can independently determine the complexity of the project, the approach to be taken, and the regulatory framework in which decisions are taken.

In such circumstances it is often difficult to reasonably anticipate regulatory interpretation and oversight requirements particularly where there can be a disconnect between sometimes ambiguous and outdated regulations and the capability of new generation aircraft. Management of multi-million dollar investment projects require a much higher degree of certainty and predictability than the current arrangements provide.

Aviation legislative framework

One of the key drivers of compliance cost for an airline is the complexity of the current Australian aviation regulations. Since 1990 Australia has been in the process of revising its aviation law, particularly at regulation level where they deal with technical and operational standards.

There have been several ‘starts’ at this but as yet the regulatory system has not been finalised. The regulations and associated tertiary requirements are very detailed and in many instances require the intervention from the regulator in the form of permissions, approvals and various other forms of certification. The extent of permissions required due to changing circumstances in the airline and changing technical requirements or new technology, is generally considerable, and the regulator only guarantees to process complete and correct applications in a 90 day timeframe. To exacerbate this situation, CASA’s own staff frequently differ among themselves over interpretation of the technical requirements resulting in one officer refuting the work of another. This often arises when audits are undertaken.

This produces considerable re-work, and frequently produces no obvious safety benefit.

Not only airline staff, but CASA staff also, find the regulations and requirements to be a complex arrangement requiring considerable research in often obscure documents. Often these requirements are not reflective of modern developments – aviation technology is still developing quickly.

Ronald I C Bartsch has published an authoritative reference about aviation law in Australia. His text, *Aviation Law in Australia*, Second Edition, Thompson Lawbook Co, ISBN 0 455 21978 8, has several sections that convey the history and proposed future development of aviation law in Australia. Para 2.43, page 29 quotes, *“Australia’s civil aviation regulations are a mess. They have been added to and tinkered with over decades to the point where they are seen by many in industry as a near impenetrable labyrinth.”*

The sections following that are worth consideration too, as they set out clearly the many concerns about the said regulations. Para 2.49 reflects the many attempts at modernisation and with the information available at publication, 8th of April 2004, and it was then the view that the regulations would be completed in 2004.

In 2009 they are still incomplete. While many regulations have been finalised since 2004, the major regulations such as airline operation and maintenance certification requirements, still remain unfinished.

Instead of repeating what is in Mr Bartsch's book, simply stated, the text is worth reviewing and, in our view no real change has taken place despite the efforts of industry and CASA itself. We would encourage the Commission to acquaint itself with this authoritative work written by one of the industries leading experts on the subject matter. The reason why insufficient progress has been made in this area is frequently discussed in industry. Much of the debate focuses in on the availability and priorities for legislative drafting resources. Additionally there is debate about which international model to adopt and changes in strategic direction for the regulatory framework. Fundamentally there is a disconnect between the needs of the legal drafter for legislation that is enforceable and the needs of industry for useability and clarity. This tension remains unresolved.