

Agreement between the Government of Australia and the Government of Lao People's Democratic Republic relating to Air Services

Introduction

- 2.1 International commercial air travel is regulated by the International Civil Aviation Organisation (ICAO) under the auspices of the *Convention on International Civil Aviation* (1944) (the Convention).¹
- 2.2 The Convention requires a country that wishes to establish air services with another country reach an air services agreement containing agreed parameters for the number of flights, number of passengers, quantum of freight; and matters of aviation safety and security.²
- 2.3 The agreement being considered here is the *Agreement between the Government of Australia and the Government of Lao People's Democratic Republic relating to Air Services* (the proposed Agreement).³
- 2.4 The text of the proposed Agreement was settled in February 2012, along with a Memorandum of Understanding (MOU) that applied the provisions of the proposed Agreement on a non-legally binding basis. In

1 Mr Gilon Smith, Acting Director, Air Services Negotiations, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, Monday, 12 October 2015, p 9.

2 Mr Smith, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, 12 October 2015, p 9.

3 Mr Smith, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, 12 October 2015, p 9.

other words, the provisions of the proposed Agreement have been operating since February 2012.⁴

- 2.5 The purpose of the proposed Agreement is to provide a binding legal framework to support the operation of air services between Australia and Laos.⁵ The National Interest Analysis (NIA) claims:

The proposed Agreement will facilitate trade and tourism between the two countries and will provide greater opportunities for airlines to develop expanded air travel options for consumers.⁶

- 2.6 According to the NIA, Australian travellers and Australian businesses, particularly in the tourism and export industries, could potentially benefit from the Agreement through the opening of increased commercial opportunities.⁷

The Agreement

- 2.7 The proposed Agreement is based on Australia's model air services agreement.⁸

- 2.8 The preamble to the proposed Agreement states that the parties have entered into the Agreement to promote an international aviation system based on competition amongst airlines in a marketplace; and to ensure the highest degree of safety and security in international air travel.⁹

Establishing air services between Australia and Laos

- 2.9 Article 2 of the proposed Agreement states that each party shall have the right to designate as many airlines as it wishes to conduct international air transport under the Agreement.¹⁰

- 2.10 The Article also permits each Party to withdraw or alter such designations.¹¹

4 National Interest Analysis [2015] ATNIA 15, *Agreement between the Government of Australia and the Government of Lao People's Democratic Republic relating to Air Services* [2015] ATNIF 22 (hereafter referred to as the NIA), para 4.

5 NIA, para 5.

6 NIA, para 5.

7 NIA, para 7.

8 NIA, para 9.

9 *Agreement between the Government of Australia and the Government of Lao People's Democratic Republic relating to Air Services* [2015] ATNIF 22 (hereafter referred to as the Australia - Laos Air Services Agreement), preamble.

10 Australia - Laos Air Services Agreement, Article 2.1.

11 Australia - Laos Air Services Agreement, Article 2.1.

- 2.11 When a party to the proposed Agreement receives an airline designation from the other party, it must authorise the airline's operations provided that:
- the airline is incorporated and has its principal base of operations in the territory of the other party;
 - the airline is qualified to meet the conditions prescribed under the laws, regulations and rules applied to international air transportation under the Convention;
 - the airline holds the necessary operating permits; and
 - the party designating the airline is maintaining and administering the safety and aviation security standards in the Agreement.¹²
- 2.12 If at any time a party considers that a designated airline is not meeting the conditions of the Agreement, the party may withhold, suspend, revoke or limit the authorisation and technical permissions of the airline.¹³ This can be done immediately if necessary, but should normally occur after consultations with the other party.¹⁴
- 2.13 The routes and destinations a designated airline may use under the proposed Agreement are listed in Annex 1 of the Agreement. Annex 1 permits airlines from either party to fly any routes between Australia and Laos.¹⁵
- 2.14 At present, despite the MOU being in place since 2012, no airlines have availed themselves of the opportunities presented by the proposed Agreement.¹⁶
- 2.15 Given that no services are in place, the Committee asked the Department of Infrastructure and Regional Development's (the Department's) representative whether Austrade had formed a view as to the benefits to be obtained from the proposed Agreement. The Department responded that, while Austrade was provided with the opportunity to give its views on the Agreement, it had not provided any.¹⁷

12 Australia – Laos Air Services Agreement, Article 2.2.

13 Australia – Laos Air Services Agreement, Article 2.4.

14 Australia – Laos Air Services Agreement, Article 2.5.

15 Australia – Laos Air Services Agreement, Annex 1.

16 Mr Smith, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, 12 October 2015, p 10.

17 Department of Infrastructure and Regional Development, *Submission 2*, Attachment A, p 2.

Rights granted to authorised airlines

- 2.16 The proposed Agreement permits airlines from either party to:
- fly across the territory of a party without landing;
 - make stops in the party's territory for non-traffic purposes;
 - operate services on specified routes and make stops in the territory of the parties for the purpose of taking on and discharging passengers and freight.¹⁸
- 2.17 Authorised airlines are not permitted to undertake domestic services within the territory of the other party.¹⁹

Application of laws

- 2.18 Authorised airlines must comply with the laws, regulations and rules relating to the operation and navigation of aircraft of Australia and Laos.²⁰
In addition:
- While entering, within, or leaving the territory of one Party, its laws, regulations and rules... shall apply to such passengers and crew and in relation to such cargo of the other party's airlines.²¹
- 2.19 Neither party can preference its own nor any other airline over an airline of the other party engaged in similar international air transport in relation to its entry, clearance, aviation security, immigration, passports, advance passenger information, customs and quarantine, postal and similar regulations.²²
- 2.20 Passengers and baggage in transit through the territory of one of the parties may be subject to examination in respect of aviation security, narcotics control and immigration requirements, or in other special cases where such examination is required under the laws of the relevant party.²³
- 2.21 Baggage in transit shall be exempt from customs and duty and other similar taxes.²⁴

18 Australia - Laos Air Services Agreement, Article 3.1.

19 Australia - Laos Air Services Agreement, Article 3.2.

20 Australia - Laos Air Services Agreement, Article 4.1.

21 Australia - Laos Air Services Agreement, Article 4.2.

22 Australia - Laos Air Services Agreement, Article 4.3.

23 Australia - Laos Air Services Agreement, Article 4.4.

24 Australia - Laos Air Services Agreement, Article 4.4.

Recognition of certificates

- 2.22 Under the proposed Agreement, certificates of airworthiness, certificates of competency and licences issued by one party must be recognised as valid by the other party for agreed services provided that standards required to obtain the certificates and licences are equal to or above the minimum standards under the Convention.²⁵
- 2.23 If the certificates of air worthiness and other certificates issued by a party should allow a deviation from the standards set by the ICAO, and that deviation has been advised to the ICAO in writing, the other party may request consultations to clarify the differences in questions.²⁶

Safety

- 2.24 Under Article 6 of the proposed Agreement, each party may request consultations about the safety standards maintained by the other party. Such consultations must take place within 30 days of that request.²⁷
- 2.25 If after the consultations, one party is still concerned that the other party does not maintain adequate safety standards; the proposed Agreement permits the first party to notify the other party. When this occurs, the other party must take appropriate corrective action.²⁸
- 2.26 An aircraft operated by or under a lease arrangement with an airline of one party can be subject to a 'ramp inspection' while in the territory of the other party. A 'ramp inspection' is a physical examination of the aircraft to check the validity of the aircraft documentation.²⁹
- 2.27 If a ramp inspection reveals that the aircraft does not comply with the minimum standards, the aircraft can be prevented from operating further until the safety issues identified are addressed.³⁰
- 2.28 If the airline refuses to allow a ramp inspection, the proposed Agreement permits the relevant safety authority to infer that there are safety issues relating to the aircraft and act accordingly.³¹

25 Australia - Laos Air Services Agreement, Article 5.1.

26 Australia - Laos Air Services Agreement, Article 5.2.

27 Australia - Laos Air Services Agreement, Article 6.1.

28 Australia - Laos Air Services Agreement, Article 6.2.

29 Australia - Laos Air Services Agreement, Article 6.4.

30 Australia - Laos Air Services Agreement, Article 6.5.

31 Australia - Laos Air Services Agreement, Article 6.6.

Aviation security

- 2.29 Article 7 of the proposed Agreement addresses security issues. Under article 7.1, the parties reaffirm their obligations to protect the security of civil aviation against acts of unlawful interference.³²
- 2.30 On request, the parties are to provide all necessary assistance to each other to prevent acts of unlawful seizure of civil aircraft and other unlawful acts against the safety of such aircraft, their passengers and crew, airports and air navigation facilities, and other threats to the security of civilian aviation.³³
- 2.31 Parties must advise each other if there is any difference between their national regulations and international aviation security standard. Either party may request consultations at any time to discuss such differences.³⁴
- 2.32 To address security threats, each party must apply adequate measures within its territory to protect aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading.³⁵
- 2.33 When an aviation security incident occurs, the parties will assist each other by facilitating communications and other appropriate measures.³⁶
- 2.34 The proposed Agreement permits each party, on 60 days' notice, to conduct an assessment in the territory of the other party of the security measures being carried out.³⁷
- 2.35 A party is permitted to take unilateral interim action in an emergency, or to prevent further non-compliance with security requirements.³⁸

User charges

- 2.36 The proposed Agreement permits parties to levy charges on airlines of the other party for the provision of airport, airport environment, air navigation and aviation security facilities. However, these charges must be reasonable, non-discriminatory, and equitably apportioned.³⁹

32 Australia – Laos Air Services Agreement, Article 7.1.

33 Australia – Laos Air Services Agreement, Article 7.2.

34 Australia – Laos Air Services Agreement, Article 7.3.

35 Australia – Laos Air Services Agreement, Article 7.4.

36 Australia – Laos Air Services Agreement, Article 7.5.

37 Australia – Laos Air Services Agreement, Article 7.6.

38 Australia – Laos Air Services Agreement, Article 7.7.

39 Australia – Laos Air Services Agreement, Article 8.1.

- 2.37 Reasonable charges reflect, but do not exceed the full cost to the competent charging authority of providing the facilities and services. This may include a reasonable return on assets after depreciation.⁴⁰
- 2.38 For charges to be non-discriminatory, they must be levied at the same rate applied to a party's own airlines operating similar international services.⁴¹
- 2.39 Increased or new charges can only be implemented following adequate consultations with the airlines.⁴²

Customs duties

- 2.40 Aircraft from each party are exempt from import restrictions, customs duties, excise taxes and similar fees and charges imposed by national authorities.⁴³ This includes:
- components intended solely for the service of the aircraft; and
 - items intended for use on an aircraft, such as aircraft stores (like food), fuel, lubricants and spare parts.⁴⁴

Air fares and capacity

- 2.41 Airlines covered by the proposed Agreement are allowed to determine their own air fares.⁴⁵
- 2.42 If an aeronautical authority is unsatisfied with the tariff being charged by an airline, it can attempt to settle the matter through consultations.⁴⁶
- 2.43 An aeronautical authority cannot take unilateral action to prevent the coming into effect or continuation of a tariff of an airline of the other party.⁴⁷
- 2.44 Article 12 relates to the quantum of service (such as the number of seats, or the volume of freight) offered by an airline. This is called the 'capacity' offered by an airline.

The designated airlines of each Party shall enjoy fair and equal opportunities to operate the agreed services in accordance with this Agreement.⁴⁸

40 Australia - Laos Air Services Agreement, Article 8.2.
41 Australia - Laos Air Services Agreement, Article 8.2.
42 Australia - Laos Air Services Agreement, Article 8.4.
43 Australia - Laos Air Services Agreement, Article 10.1.
44 Australia - Laos Air Services Agreement, Article 10.3.
45 Australia - Laos Air Services Agreement, Article 11.1.
46 Australia - Laos Air Services Agreement, Article 11.3.
47 Australia - Laos Air Services Agreement, Article 11.4.
48 Australia - Laos Air Services Agreement, Article 12.1.

- 2.45 The capacity an airline can provide is decided between the aeronautical authorities of the parties before the commencement of such services by the airlines concerned, and from time to time thereafter.⁴⁹

Commercial opportunities

- 2.46 Article 13 permits the airlines of each party the right to sell air transportation to any person in local or freely convertible currencies.⁵⁰
- 2.47 In practical terms, the airlines of each party have the following rights in the territories of the other party:
- the right to establish offices, including off-line offices, for the promotion, sale and management of air transportation;
 - the right to engage in sale and marketing of air transportation to any person directly and, at its discretion, through its agents or intermediaries, using its own transportation documents;
 - the right to use the services and personnel of any organisation, company or airline operating in the territory of the other party;⁵¹
 - the right to bring its own managerial, sales, technical, operational and other specialist staff;⁵²
 - the right to convert its funds into any freely available currency and to transfer them from the territory of the other party at will;⁵³
 - the right to transfer funds at the foreign exchange market rates for payments prevailing at the time of the transaction;⁵⁴
 - the right to perform its own ground handling in the territory of the other party, or to contract the ground handling out to another entity;⁵⁵ and
 - the right to offer ground handling services to other airlines in the territory of the other party.⁵⁶
- 2.48 Airlines also are permitted to enter into code share, shared marketing and cooperative marketing arrangements over part or the entire route between the parties, provided the organisations with which they cooperate have

49 Australia - Laos Air Services Agreement, Article 12.2.

50 Australia - Laos Air Services Agreement, Article 13.3.

51 Australia - Laos Air Services Agreement, Article 13.1.

52 Australia - Laos Air Services Agreement, Article 13.2.

53 Australia - Laos Air Services Agreement, Article 13.3.

54 Australia - Laos Air Services Agreement, Article 13.3.

55 Australia - Laos Air Services Agreement, Article 13.6.

56 Australia - Laos Air Services Agreement, Article 13.6.

the authority to operate over the routes to which this cooperation applies.⁵⁷

- 2.49 Such cooperative arrangements can include domestic flights to link up with international flights operated by the airline,⁵⁸ and surface transportation to or from any destination in the territory of the other party or third countries to permit connection with its international air transport services.⁵⁹
- 2.50 Where cooperation is occurring, the airline must make it clear to the purchaser which airline will be providing the service the purchaser will use.⁶⁰
- 2.51 The airlines of each party are permitted to use aircraft or aircrew leased from another company, provided the aircraft and crew meet the applicable operating and safety standards and requirements.⁶¹

Dispute settlement

- 2.52 Disputes under the proposed Agreement are handled by referral to an arbitration panel by either party.⁶²

Implementation

- 2.53 Australia's obligations under the proposed Agreement can be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. These Acts will not need to be amended to implement the proposed Agreement.⁶³

Consultations with CASA

- 2.54 In 2014, the Committee reviewed air services agreements between Australia and Serbia and Vanuatu.⁶⁴
- 2.55 In Report 139, the Committee stated:

57 Australia - Laos Air Services Agreement, Article 13.5.

58 Australia - Laos Air Services Agreement, Article 13.5.

59 Australia - Laos Air Services Agreement, Article 14.

60 Australia - Laos Air Services Agreement, Article 13.5.

61 Australia - Laos Air Services Agreement, Article 13.7.

62 Australia - Laos Air Services Agreement, Article 17.

63 NIA, para 27.

64 Joint Standing Committee on Treaties (JSCT), 13 May 2014, *Report 139*, Chapter 2.

Article 38 of the Chicago Convention requires a Party to notify the ICAO when it finds it impractical to comply in all respects with international standards and practices, and when it is unable to change its standards and practices to comply with standards and practices revised by the ICAO.⁶⁵

2.56 The Committee found that both Serbia and Vanuatu had lodged notices of difference with the ICAO.⁶⁶

2.57 At the time, the Department advised the Committee that relevant notices to the ICAO were not considered as part of the process of negotiating air services agreements because air services agreements were essentially economic agreements.⁶⁷

Air services arrangements provide an economic framework in which airlines can consider serving a market. Differences lodged by States, among other more pertinent kinds of safety-related information, may be taken into account by the Civil Aviation Safety Authority [CASA] in the assessment of applications for the operation of foreign aircraft into and out of Australia.⁶⁸

2.58 The Committee's conclusion was that:

... it would be imprudent if the Department's negotiators did not at least make themselves aware of the differences notified to the ICAO by States with which they are negotiating. The Committee suggests that, as part of the negotiation process of future Air Services Agreements, the Department's negotiators consult with CASA in order to determine if any of the differences notified by the State with which they are negotiating may pose a safety risk for Australian travellers.⁶⁹

2.59 Bearing in mind that the proposed Agreement was negotiated in 2012, before the Committee's views on the matter were made clear in Report 139, the Committee asked the Department's representative whether the Department had attempted to consult with CASA and other relevant agencies regarding the proposed Agreement since the tabling of Report 139 in May 2014. The Department responded that:

Since the Committee's hearing on 12 October 2015, CASA was again consulted, and was asked whether Laos is meeting the

65 JSCT, 13 May 2014, *Report 139*, p 10.

66 JSCT, 13 May 2014, *Report 139*, p 10.

67 JSCT, 13 May 2014, *Report 139*, p 11.

68 JSCT, 13 May 2014, *Report 139*, p 11.

69 JSCT, 13 May 2014, *Report 139*, p 12.

International Civil Aviation Organization (ICAO) standards or whether there are any concerns.

CASA noted that Lao-registered aircraft do not currently operate to Australia, and that before a Foreign Aircraft Air Operator's Certificate (FAAOC) is issued to a foreign airline operator, and as part of CASA's ongoing oversight of the holder, CASA assesses the application against ICAO Annex 6 criteria, as well as the relevant provisions of the Australian civil aviation legislation.

CASA advised that, in the absence of an application for an FAAOC or a similar permission, it would not actively monitor a foreign operator or the regulatory authority responsible for the safety oversight of the prospective operator. CASA confirmed that the safety article in the proposed agreement with Laos provides it with the regulatory authority it requires to deal with any future applications from Lao-registered aircraft operators.⁷⁰

Conclusion

- 2.60 The Committee reiterates its view that consultation between CASA and the Department should be taking place on safety issues pertaining to a country with which Australia is negotiating an air services agreement.
- 2.61 Where such agreements have already been negotiated, the Committee considers that it would be prudent for the Department to ensure that such consultation takes place before the relevant treaty is tabled in Parliament.
- 2.62 Nevertheless, the Committee supports the proposed Agreement and recommends that binding treaty action be taken.

Recommendation 1

- 2.63 **The Committee supports Australia's ratification of the Agreement between the Government of Australia and the Government of Lao People's Democratic Republic relating to Air Services and recommends that binding treaty action be taken.**

⁷⁰ Department of Infrastructure and Regional Development, *Submission 2*, Attachment A, p 1.

