

Air Services Agreements with Brunei Darussalam, Spain, Switzerland and the United Kingdom

Introduction

3.1 This chapter considers four air services agreements:

- *An Exchange of Notes amending the Agreement between the Government of Australia and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam relating to Air Services;*
- *Agreement between Australia and the Kingdom of Spain relating to Air Services;*
- *Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services; and*
- *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services.*

3.2 Air services agreements permit and facilitate the operation of international air services within the overarching civil aviation framework provided by the *Convention on International Civil Aviation* (the Chicago Convention). Without an air services agreement, international airlines cannot operate between countries.¹

¹ Mr Samuel Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 1.

- 3.3 The four agreements under consideration will open new markets for Australian airlines in Spain, the United Kingdom, Switzerland and Brunei and increase opportunities for tourism and export industries to access these markets.²

The agreements

- 3.4 Each agreement imposes obligations upon both countries to allow the designated airlines of each country to operate services in accordance with:
- ...the limitations settled between aeronautical authorities and subject to compliance with applicable laws, including safety, aviation security, border security including customs and quarantine, and trade practices.³
- 3.5 The agreements are supported by Memoranda of Understanding that address commercial entitlements.

Brunei

- 3.6 Royal Brunei Airlines currently operates 12 services per week between Australia and Brunei.⁴ The Exchange of Notes with Brunei will implement three amendments to an existing 1992 agreement and are intended to provide further commercial flexibility for airlines operating between Australia and Brunei.
- 3.7 The amendments:
- expand the scope of agreed services to include cargo-only services;
 - liberalise the nationality test for designated airlines; and
 - replace the current Annex, which specifies particular routes that may be operated by the designated airline, with an open route structure. This entitles designated airlines to operate on any route between any point

2 Mr Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 3.

3 Mr Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 2.

4 Mr Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 2.

in Australia and Brunei, via any intermediate point, subject to the entitlements determined by the aeronautical authorities.⁵

- 3.8 With the amendments to the nationality test, airlines can be designated based on the location of their incorporation and principal place of business, allowing airlines to increase foreign investment opportunities and access to capital. This change reflects Australian policy and has been included in 32 other air services agreements.⁶

Spain

- 3.9 This agreement is the first treaty level air services arrangement between Australia and Spain. Spain is the last major European country with which Australia has established an air services agreement. There are no airlines operating between Australia and Spain using their own aircraft, although Qantas and Iberia provide joint codesharing services on routes between Australia and Spain over London and Frankfurt.⁷
- 3.10 The agreement will allow the designated airlines of both countries to operate scheduled air services carrying passengers and cargo between the two countries on specified routes, subject to capacity levels. The agreement includes provisions relating to:
- designating the number of airlines to operate agreed services;
 - rights to overfly territory and make stops for non-traffic purposes;
 - the application of domestic laws, regulations and rules in a Party's territory, including competition laws;
 - safety standards and aviation security;
 - exemptions from customs and excise duties;
 - fares; and
 - conduct of an airline's business.⁸

5 *National Interest Analysis* [2010] ATNIA 18, Amendments to the Agreement between the Government of Australia and the Government of His Majesty the Sultan of Yang Di-Pertuan of Brunei Darussalam relating to Air Services Canberra 30 April 1992 [1992] ATS 20 [2010] ATNIF 21 (Brunei NIA), para. 5.

6 Brunei NIA, paras 6 and 11.

7 Mr Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 2.

8 *National Interest Analysis* [2010] ATNIA 14, Agreement between Australia and the Kingdom of Spain relating to Air Services Canberra, 24 June 2009 [2009] ATNIF 16 (Spain NIA) paras 9 to

- 3.11 The annex to the agreement includes a route schedule that specifies the routes that can be operated by designated airlines.⁹

Switzerland

- 3.12 The agreement with Switzerland replaces an existing 1993 agreement. No airlines currently operate services with their own aircraft between Australia and Switzerland, although Qantas utilises the agreement to codeshare on British Airways services into Geneva and Zurich.¹⁰
- 3.13 The provisions of this agreement are consistent with those in the Spanish and United Kingdom agreements.

United Kingdom

- 3.14 The United Kingdom agreement replaces a 1958 agreement that has been amended numerous times with 'an updated text that provides a flexible and modern framework'.¹¹
- 3.15 Under the agreement at present, three airlines operate direct passenger services with their own aircraft between Australia and the United Kingdom: Qantas (28 services per week), British Airways (14 services per week) and Virgin Atlantic (7 services per week).¹²
- 3.16 The agreement improves access for Australian airlines to the UK aviation market and allows for the expansion of services between the two countries. Under the agreement, Australian and UK carriers can operate between any point in Australia and any point in the UK. The agreement also improves the capability of Qantas and other Australian air carriers to compete with 'hub-based carriers', such as those based in Asia and the Middle East that previously had significantly greater access to the UK.¹³
- 3.17 The amendments to the agreement also remove limitations upon fares in the previous agreement, allowing each airline to determine its own fares.¹⁴

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9 Spain NIA, para. 26.

10 Mr Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 2.

11 *National Interest Analysis* [2010] ATNIA 15, Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services London, 10 July 2008 [2008] ATNIF 13 (UK NIA), para. 4.

12 Mr Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 3.

13 UK NIA, para. 8.

14 UK NIA, para. 8.

Memoranda of Understanding

3.18 The Committee notes that Memoranda of Understanding and Exchanges of Letters have provisionally applied the provisions of each agreement, pending completion of domestic process and the agreements coming into force.¹⁵ Mr Samuel Lucas of the Department of Infrastructure, Transport, Regional Development and Local Government explained to the Committee:

When we negotiate the agreements, they are given interim administrative effect between aeronautical authorities so that airlines can access the rights available under the agreement immediately. Once the agreements have been negotiated, we commence the domestic processes to have them signed and subsequently brought into legal force.¹⁶

The practice that we follow.... is the standard international practice in the negotiation of air services agreements.¹⁷

Consultation and implementation

3.19 Consultation in the development of each agreement included airlines, airports, Australian government departments, state and territory government departments and industry groups.¹⁸

3.20 The agreements will be implemented through existing legislation, including the *Air Navigation Act 1920*, *Civil Aviation Act 1988* and *International Air Services Commission Act 1992*. Amendments to this legislation are not required.¹⁹

15 *National Interest Analysis [2010] ATNIA 16*, Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services Canberra, 28 November 2008 [2008] ATNIF 22, (Switzerland NIA), para. 4; Brunei NIA, para. 4; Spain NIA, para. 5, UK NIA, para. 5.

16 *Transcript of Evidence*, 21 June 2010, p. 3.

17 *Transcript of Evidence*, 21 June 2010, p. 4.

18 Mr Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 2.

19 Mr Lucas, Department of Infrastructure, Transport, Regional Development and Local Government, *Transcript of Evidence*, 21 June 2010, p. 1.

Conclusion

- 3.21 The Committee notes that these agreements are expected to improve access to each of these markets for Australian airlines and increase opportunities for Australian business interests, including tourism and export industries. The Committee supports binding treaty action being taken.

Recommendation 2

The Committee supports the *Exchange of Notes amending the Agreement between the Government of Australia and the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam relating to Air Services* and recommends that binding treaty action be taken.

Recommendation 3

The Committee supports the *Agreement between Australia and the Kingdom of Spain relating to Air Services* and recommends that binding treaty action be taken.

Recommendation 4

The Committee supports the *Agreement between the Government of Australia and the Swiss Federal Council relating to Air Services* and recommends that binding treaty action be taken.

Recommendation 5

The Committee supports the *Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland concerning Air Services* and recommends that binding treaty action be taken.