

Tonga Air Services Agreement

Introduction

- 5.1 The Tonga Air Services Agreement¹ (the Agreement) will allow direct air services to operate between Australia and Tonga and is based on Australia's standard air services agreement. Pacific Blue, a subsidiary of Australia's Virgin Blue Airlines, currently provides a service between Australia and Tonga. The Agreement will provide a binding legal framework to support the operation of these services.

Background

- 5.2 A memorandum of understanding, signed by Tonga and Australia in 2002 preceded the Agreement. In accordance with established Australian practice, the provisions of the Agreement are applied pending the completion of domestic requirements which will bring the Agreement into force.² The Committee was informed by

1 Full title: *Agreement between the Government of Australia and the Government of the Kingdom of Tonga relating to Air Services, done at Neiafu, Tonga on 23 August 2003* [2003] ATNIF 16.

2 National Interest Analysis (NIA), para. 4.

representatives from the then Department of Transport and Regional Services (DOTARS)³ that:

The air services arrangements between Australia and Tonga take place in line with the arrangements that we are putting before you today. The aeronautical authorities of the respective countries observed these arrangements. They have interim administrative effect, pending the completion of the formal treaty processes.⁴

- 5.3 DOTARS also informed the Committee that there are a number of outstanding air services agreements which had been signed by Australia but had not been brought into force.

Between 35 and 40 are awaiting the completion of treaty processes. Some of those are quite dated. We have endeavoured to prioritise the ones that are to be brought forward. We are currently focusing on between eight and 10 that are priority treaties. For the moment, we have deferred the remainder for a variety of reasons. Some are outdated and include model clauses that are no longer accepted international practice. We will be seeking to renegotiate those treaties, update them and bring them forward at that time.⁵

The Agreement

- 5.4 The key provisions of the Agreement include:

- Australia and Tonga must allow the designated airlines of the other country to operate scheduled air services on specified routes between the two countries.⁶ To facilitate this, the Agreement includes reciprocal provisions on a range of aviation related matters, such as safety, customs, regulation, and the commercial aspects of airline operation, including the ability to establish offices in the territory of the other party and to sell fares to the public;

3 The name of the Department changed to the Department of Infrastructure, Transport, Regional Development and Local Government following the Administrative Arrangements Order dated 25 January 2008.

4 Mr Stephen Borthwick, *Transcript of Evidence*, 17 September 2007, p. 19.

5 Mr Stephen Borthwick, *Transcript of Evidence*, 17 September 2007, p. 19.

6 Article 2 of the Agreement; NIA, para. 10.

- Australia and Tonga may designate as many airlines as it wishes to operate the agreed services. Either party may revoke or limit authorisation of an airline's operations if the airlines fails to meet agreed conditions⁷;
- Designated airlines have the right to overfly the territory of the other party and to make stops in its territory for non-traffic purposes⁸;
- The designated airlines of the other Party must comply with the domestic laws, regulations and rules of the other Party relating to matters such as entry, clearance, aviation security, immigration, passports, customs, quarantine and postal services⁹; and
- Australia and Tonga are required to recognise certificates of airworthiness, competency and licences issued by each other.¹⁰

5.5 The Agreement adopts a liberal approach to code sharing, giving the airlines the flexibility to serve the market through selling seats on other airlines, as well as through its own aircraft operations.¹¹

5.6 The NIA states that the aviation market between Australia and Tonga is small and unlikely to grow substantially in the near future.¹²

The Australian airline Pacific Blue, part of the Virgin Blue group, operates two weekly flights using Boeing 737 aircraft between Sydney and Tonga, utilising 360 seats each way each week. The capacity entitlement of 600 seats each way each week is therefore well in advance of the actual operations currently underway.

Following the bankruptcy of Royal Tongan Airlines in 2004, there were no Tongan airlines operating services to Australia. In the year ending June 2007, a total of almost 27,000 passengers travelled between Australia and Tonga.¹³

7 Article 2 of the Agreement; NIA, para. 11.

8 Article 3 of the Agreement; NIA, para. 12.

9 Article 4 of the Agreement; NIA, para. 13.

10 Article 5 of the Agreement; NIA, para 14.

11 NIA, para. 7.

12 NIA, para. 7.

13 Mr Stephen Borthwick, *Transcript of Evidence*, 17 September 2007, p. 18.

Costs and implementation

- 5.7 The Agreement will be implemented through the *Air Navigation Act 1920* (Cth) and the *Civil Aviation Act 1988* (Cth). The *International Air Services Commission Act 1992* (Cth) provides for the allocation of capacity to Australian airlines. No amendments to these Acts are required for the implementation of the Agreement.¹⁴ Similarly, the Agreement is not expected to result in any additional costs for Commonwealth or State and Territory governments.¹⁵

Consultation

- 5.8 Consultation was undertaken prior to negotiation with Tonga in 2002, when the draft text of the air services agreement was settled. Stakeholders, including the State and Territory governments, were advised by letter and/or email of the proposal to negotiate a new air services agreement between Australia and Tonga and invited to comment.¹⁶
- 5.9 The only response received was from Qantas, in support of the formalisation of air services arrangements through the negotiation of an air services agreement.¹⁷

Conclusion and recommendation

- 5.10 The Committee supports the formalisation of air services arrangements through treaty status agreements. It is therefore concerned by the number of air services agreements that have not completed the domestic treaty process. The Committee expects the Department of Infrastructure, Transport, Regional Development and Local Government to table any air services agreement which have not
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14 NIA, para. 25.

15 NIA, para. 26.

16 NIA, 'Consultation', para. 2. Other stakeholders include: the Commonwealth Department of Industry, Tourism and Resources, the Commonwealth Department of Foreign Affairs and Trade, the Australian Tourist Commission, the South Australian Tourist Commission, Sydney Airport Corporation, Tourism Queensland, Melbourne Airport, Australian Capital Territory Government, Northern Territory Airports, Qantas, Tourism New South Wales, Adelaide Airport, Tourism Tasmania and Perth Airport.

17 NIA, 'Consultation', para. 3.

been brought into force promptly and to ensure that any future air services agreements are tabled in Parliament within a reasonable period of signing.

Recommendation 4

The Committee supports the *Tonga Air Services Agreement* and recommends that binding treaty action be taken.

