

Air Services Agreement with India

- 7.1 *The Agreement between the Government of Australia and the Government of India relating to Air Services, done at New Delhi on 6 March 2006 (the Air Services Agreement with India) provides a framework for the operation of scheduled air services by designated airlines between Australia and India.*¹
- 7.2 The Air Services Agreement with India improves access for Australian airlines to the international Indian aviation market and for Indian airlines to the international Australian aviation market.²
- 7.3 The Air Services Agreement with India also includes reciprocal provisions on safety, security, customs regulations and commercial matters, including the ability to establish offices in the territory of the other Party and to sell fares to the public.³

Background

- 7.4 The Air Services Agreement with India used Australia's standard draft air services agreement as the basis of negotiations.⁴ The

1 National Interest Analysis (NIA), para. 6.

2 NIA, para. 7.

3 NIA, para. 10.

4 NIA, para. 9.

Committee was informed that the Air Services Agreement with India does not differ substantially from the draft agreement.⁵

- 7.5 When the Air Services Agreement with India enters into force it will supersede the *Agreement between the Government of Australia and the Government of India relating to Air Services done at New Delhi on 11 July 1949*, as amended.

The previous air services agreement...was originally negotiated in 1949 and, while it had been amended over the years, was outdated and in need of modernisation. The new agreement, in contrast, is a modern agreement that will facilitate the development of air links between Australia and India for years to come.⁶

- 7.6 The Committee was informed that travel between Australia and India is growing.

The Indian market is also growing strongly with average annual growth between 2000 and 2005 of 13.5 per cent. In more recent times, however, growth has begun to accelerate markedly. In 2004, annual growth passed the 30 per cent mark, although it has subsequently dropped back to a little below 25 per cent.⁷

Obligations

- 7.7 Australia and India can designate as many airlines as they wish to operate the agreed services.⁸ The other Party must grant authorisation to designated airlines without delay provided that:

- the airline is incorporated and has its principal place of business in the territory of the Party designating the airline;
- the Government or nationals of the territory of the Party have the ownership of the major part of the equity of the airline;
- the airline is qualified to meet the conditions prescribed under the laws, regulations and rules normally and reasonably applied to the operation of international air transportation by the Party

5 Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 17.

6 Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 18.

7 Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 18.

8 Article 2 Air Services Agreement with India.

considering the application or applications, in conformity with the provisions of the Convention;

- the airline holds the necessary operating permits; and
- the Party designating the airline is maintaining and administering the standards set forth in Article 5 (Safety) and Article 6 (Aviation Security) of the Air Services Agreement with India.⁹

7.8 Either Party may withhold, revoke, suspend or limit the operating authorisations or technical permissions of an airline designated by the other Party at any time if the conditions specified above are not met, or if the airline fails to operate in accordance with the conditions prescribed under the Air Services Agreement with India.¹⁰

7.9 In addition to the rights otherwise specified in the Air Services Agreement with India, designated airlines have the right to:

- fly across its territory without landing;
- make stops in its territory for non-traffic purposes; and
- operate services on the route specified in the Annex and to make stops in its territory for the purpose of taking on board and discharging passengers, cargo and mail.¹¹

7.10 Each Party's domestic laws, regulations and rules relating to the operation and navigation of aircraft apply to the designated airlines when they are entering, within or leaving the territory of that Party.¹²

7.11 Each Party is obliged to act in conformity with the aviation safety provisions established by the International Civil Aviation Organization and designated as Annexes to the Chicago Convention on International Civil Aviation.¹³

Consultation

7.12 The Department of Transport and Regional Services holds regular formal consultations with stakeholders on a wide range of issues. The

9 Article 2(2) Air Services Agreement with India.

10 Article 2(3) Air Services Agreement with India.

11 Article 3 Air Services Agreement with India.

12 Article 4 Air Services Agreement with India; NIA, para. 13.

13 Article 5 Air Services Agreement with India; NIA, para. 14.

proposed negotiations with India were first raised at stakeholder consultation forums in 2004.¹⁴

- 7.13 Prior to September 2004, when the draft text was settled, an extensive list of stakeholders from the aviation and tourism industries were advised that an Air Services Agreement with India was proposed and invited to comment on issues important to them.¹⁵
- 7.14 All stakeholders who commented supported the negotiation of a modernised air services agreement. Comments were received from a small number of stakeholders: Qantas Airways, Sydney Airport Corporation, the Department of Industry, Tourism and Resources, the Australian Tourism Commission and the South Australian Department of Transport and Urban Planning.¹⁶
- 7.15 Qantas supported updating the Agreement, including the liberalisation of routes, multiple designation of airlines and the inclusion of code sharing arrangements in the Agreement. Sydney Airport Corporation supported liberalised air services but requested that its comments be kept confidential.¹⁷
- 7.16 Both the Department of Industry, Tourism and Resources and the Australian Tourist Commission welcomed the opportunity to modernise the text of the air services agreement and supported route arrangements that would provide an opportunity for carriers of both sides to operate expanded services.¹⁸
- 7.17 Information on the Air Services Agreement with India was also provided to the Commonwealth-State/Territory Standing Committee on Treaties.¹⁹

Implementation

- 7.18 The Air Services Agreement with India will be implemented through existing legislation, including the *Air Navigation Act 1920* (Cth), the

14 NIA, Consultation Annex, para. 1.

15 NIA, Consultation Annex, para. 2.

16 NIA, Consultation Annex, paras 4 and 8.

17 NIA, Consultation Annex, para. 5.

18 NIA, Consultation Annex, para. 7.

19 NIA, Consultation Annex, para. 3.

*Civil Aviation Act 1988 (Cth) and the International Air Services Commission Act 1992 (Cth).*²⁰

Costs

- 7.19 No direct financial costs to the Australian government are anticipated in the implementation of these agreements.²¹

Conclusion and recommendation

- 7.20 The Committee supports the modernisation of Australia's bilateral air services agreements and the provision of greater commercial flexibility for airlines to undertake their operations.

Recommendation 8

The Committee supports the *Agreement between the Government of Australia and the Government of India relating to Air Services, done at New Delhi on 6 March 2006* and recommends that binding treaty action be taken.

20 NIA, para. 26; Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 17.

21 NIA, para. 27; Mr Stephen Borthwick, *Transcript of Evidence*, 11 September 2006, p. 17.

