

## Agreement with Poland relating to Air Services

- 2.1 The *Agreement between the Government of Australia and the Government of the Republic of Poland relating to Air Services (Warsaw, 28 April 2004)* (the Agreement) establishes an air services agreement between Australia and Poland.
- 2.2 The Agreement provides a legal framework for the operation of scheduled air services between Australia and Poland, thereby facilitating trade and tourism between the two countries through freight and passenger transportation and providing greater air travel options for Australian consumers.<sup>1</sup> The Agreement includes reciprocal provisions on a range of aviation related matters such as safety, aviation security, customs regulations, and 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.<sup>2</sup>

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1 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 2.

2 National Interest Analysis (NIA), para. 9.

## Background

- 2.3 By way of background, Mr Nicholas Bogiatzis from the Department of Transport and Regional Services advised the Committee:

Over the past 10 years the Australia-Poland yearly origin-destination passenger market has grown from a base of just over 20,000, in 1994, to just over 31,000, 10 years later in 2004 – an average annual growth rate of 4.4 per cent. Australian residents made up 57 per cent of the total in 2004.<sup>3</sup>

- 2.4 Furthermore, Mr Bogiatzis advised the Committee in relation to airfreight:

To the year ended September 2004 exports from Australia were valued at around \$11 million, and the main categories were medicinal and pharmaceutical products and professional scientific apparatus. The value of exports has increased significantly from \$6.6 million in the year ended September 2003, nearly doubling. The total airfreight imports from Poland to the end of September 2004 were valued at \$20.3 million. The main categories, by value, were electrical machines and appliances, telecommunications and miscellaneous manufactured goods. There was an increase from \$17 million in the previous year.<sup>4</sup>

- 2.5 Aviation agreements of less than treaty status, dating from March 2003, have preceded the Agreement. These have permitted Qantas to operate in cooperation with British Airways between Australia and Poland, and have provided similar opportunities for Polish carriers.<sup>5</sup>

- 2.6 Mr Bogiatzis noted that Australia has a standard draft air services agreement which has been developed in consultation with aviation stakeholders and that the Agreement does not differ in substance from the standard Australian draft at the time the Agreement was negotiated.<sup>6</sup>

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3 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 3.

4 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 4.

5 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 2.

6 Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 3.

## Features of the Agreement

2.7 The Agreement obliges Australia and Poland to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on the specified routes.

2.8 Key provisions of the Agreement are:<sup>7</sup>

- the right to designate an airline or airlines to operate the agreed services (Article 2)
- either Party may revoke or limit authorisation of an airline's operations if the airline does not comply with certain laws and regulations that are consistent with the *Chicago Convention on International Civil Aviation* [1957] ATS 05 (Article 2)
- each Party grants to the designated airlines of the other Party the aviation rights necessary to establish and operate agreed services, including the right to overfly its territory and make stops in its territory for non-traffic purposes (Article 3)
- recognition of certificates of airworthiness, competency and licences issued by the other party (Article 5)
- provisions for a Party to request consultations on safety standards. If after the consultations a Party remains concerned about safety, then that Party may set out steps required for the other Party to comply with the minimum standards deemed acceptable by the *Chicago Convention on International Civil Aviation*. A failure to take the necessary steps to meet those minimum standards will allow the Party concerned about safety to withhold, revoke, suspend or limit authorisations for the air services (Article 5)
- both parties are required to protect the security of civil aviation against acts of unlawful interference and to act in conformity with multilateral conventions relating to aviation security (Article 6)
- provision of fair and equal opportunity for the designated airlines to operate the agreed services on the specified routes (Article 11)
- ability for airlines to establish tariffs for international air transportation based on commercial considerations in the marketplace and general competition and consumer law in each Party (Article 10)

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<sup>7</sup> NIA, paras 12-20.

- a framework enabling airlines to establish themselves in the territory of the other Party (Article 12)
- the Agreement may be amended or revised by agreement of the Parties. Any amendment to the Agreement, including the annex, will be subject to Australia's domestic treaty action procedures. If a multilateral convention concerning air transport comes into force, the Agreement is deemed to be amended as far as is necessary to conform with the provisions of that multilateral convention. Any future amendments to the Agreement are likely to involve further deregulation of air service arrangements between the Parties. (Article 14).<sup>8</sup>

## Implementation and costs

2.9 The Agreement is to be implemented through existing legislation, including the *Air Navigation Act 1920* (Cth) and the *Civil Aviation Act 1988* (Cth). No amendment to these Acts is required for the implementation of the Agreement.<sup>9</sup> No financial costs to the Australian Government are anticipated as a result of the Agreement.<sup>10</sup>

## Entry into force

2.10 Pursuant to Article 18, the Agreement will enter into force when the parties have notified each other in writing that their respective requirements for its entry into force have been fulfilled.

2.11 According to international and established Australian practice, the aviation arrangements of less than treaty status, mentioned in paragraph 2.5, apply the Agreement provisions before it enters into force, pending the completion of domestic requirements.<sup>11</sup>

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8 NIA, paras 27-31, see also Mr Nicholas Bogiatzis, *Transcript of Evidence*, 7 March 2005, p. 3.

9 NIA, para. 21.

10 NIA, para. 22.

11 NIA, para. 5.

## Consultation

2.12 Consultations were undertaken with relevant State, Territory and Australian Government Departments and agencies, and with members of the Australia aviation and tourism industries prior to the negotiations with the aeronautical authorities of Poland on the Agreement.<sup>12</sup> All major stakeholders supported the Agreement.<sup>13</sup>

## Conclusion and recommendation

2.13 The Committee appreciates the benefit the Agreement will generate by providing legal certainty for air services operating between Australia and Poland. The Committee agrees that the Agreement will increase the opportunities for the Australian community to access Poland, while facilitating tourism and trade.

### Recommendation 1

**The Committee supports the *Agreement between the Government of Australia and the Government of the Republic of Poland relating to Air Services (Warsaw 28 April 2004)* and recommends that binding treaty action be taken.**

<sup>12</sup> NIA, para. 23. See Annex 1 of the NIA for more information on consultation.

<sup>13</sup> NIA, para. 24.

