

No. 7561

**NEW ZEALAND
and
AUSTRALIA**

**Agreement (with schedule) relating to air services. Signed
at Wellington, on 25 July 1961**

Official text: English.

Registered by the International Civil Aviation Organization on 3 February 1965.

**NOUVELLE-ZÉLANDE
et
AUSTRALIE**

**Accord (avec annexe) relatif aux services aériens. Signé
à Wellington, le 25 juillet 1961**

Texte officiel anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 3 février 1965.

No. 7561. AGREEMENT¹ BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA RELATING TO AIR SERVICES. SIGNED AT WELLINGTON, ON 25 JULY 1961

The Government of New Zealand and the Government of the Commonwealth of Australia,

Being parties to the Convention on International Civil Aviation opened for signature at Chicago on the 7th day of December, 1944,² and

Recognising the great advantages which have accrued to both countries from co-operative arrangements for air services over many years on the route between Australia and New Zealand, and

Noting that such co-operative arrangements are consistent with the said Convention and in particular with Chapter XVI thereof, and

Desiring to maintain this high degree of co-operation and to extend it in such ways as might be considered mutually advantageous in the future, and

Having in mind the vital importance of air communications to countries of the Commonwealth and in particular the need to maintain and develop air routes between Australia and New Zealand, and

Desiring also to foster development of air travel, particularly in the South Pacific, as a means of promoting international understanding and good will, and

Desiring to conclude an agreement, supplementary to the said Convention, for the purpose of promoting the development of air services between and through their respective territories,

Have agreed as follows :

Article 1

- (1) For the purposes of this Agreement, unless the context otherwise requires :
- (a) the term "aeronautical authorities" means, in the case of the Commonwealth of Australia, the Director-General of Civil Aviation and any person or body authorised to perform the functions exercised by the Director-General of Civil Aviation or

¹ Came into force on 25 July 1961, upon signature, in accordance with article 16.

² United Nations, *Treaty Series*, Vol. 15, p. 295 ; for subsequent actions relating to this Convention, see references in Cumulative Indexes Nos. 1 to 4, as well as Annex B in volumes 409 and 472.

similar functions, and in the case of New Zealand, the Minister in Charge of Civil Aviation and any person or body authorised to perform the functions exercised by the Minister or similar functions ;

- (b) the term “territory” in relation to a State means the land areas and territorial waters adjacent thereto under the sovereignty, suzerainty, protection or trusteeship of that State, provided however that in relation to New Zealand the term shall not include the land area of the Trust Territory of Western Samoa and the territorial waters adjacent thereto ;
- (c) the term “designated airline” means an airline or airlines which one Contracting Party has designated in writing to the other Contracting Party in accordance with Article 4 of this Agreement as being the airline or airlines authorised to operate international air services in accordance with the provisions of Article 3 of this Agreement ;
- (d) the term “air service” means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail ;
- (e) the term “international air service” means an air service which passes through the air space over the territory of more than one State ;
- (f) the term “airline” means any air transport enterprise offering or operating an international air service ; and
- (g) the term “stop for non-traffic purposes” means a landing for any purpose other than taking on or discharging passengers, cargo or mail.

(2) The Schedule¹ to this Agreement forms an integral part of the Agreement, and all references to the “Agreement” shall be deemed to include reference to the Schedule except where otherwise provided.

Article 2

To the extent to which they are applicable to the air services established under this Agreement, the provisions of the Convention on International Civil Aviation opened for signature at Chicago on the 7th day of December, 1944, (hereinafter called “the Convention”) shall remain in force in their present form as between the Contracting Parties for the duration of this Agreement as if they were incorporated herein, unless both Contracting Parties ratify any amendment to the Convention which shall have come into force, in which case the Convention as amended shall remain in force as aforesaid.

¹ See p. 286 of this volume.

Article 3

Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airline to establish and operate international air services on the routes specified in the Schedule (hereinafter called "agreed services" and "specified routes" respectively).

Article 4

(1) The agreed services on any specified route may be inaugurated immediately or at a later date at the option of the Contracting Party to which the rights are granted under Article 3 of this Agreement, but not before :

- (a) the Contracting Party to which the rights have been granted has designated an airline for that route ; and
- (b) the Contracting Party granting the rights has given the appropriate operating permission to the airline concerned. Operating permission shall, subject to the provisions of paragraph (2) of this Article and of paragraph (1) of Article 7 of this Agreement be given without delay.

(2) An airline designated by one Contracting Party may be required to satisfy the aeronautical authorities of the other Contracting Party that it is qualified to fulfil the conditions prescribed by the laws and regulations normally applied by those authorities to the operation of international air services.

Article 5

Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy, while operating an agreed service on a specified route, the following rights :

- (a) the right to fly without landing across the territory of the other Contracting Party ;
- (b) the right to make stops in that territory for non-traffic purposes ; and
- (c) the right to make stops in that territory, at the points specified for that route in the Schedule, for the purposes of putting down and of taking on international traffic in passengers, cargo or mail.

Article 6

Fuel, lubricating oils, spare parts, regular equipment and aircraft stores on board aircraft of the designated airline of one Contracting Party on arrival in the territory of the other Contracting Party or taken on board those aircraft in that territory, and not unloaded from the aircraft without the consent of the customs authorities, if intended solely for use by or in aircraft of that airline in the operation of the agreed services shall, subject to compliance in other respects with the customs requirements

of the latter Contracting Party, be exempted from customs duties, inspection fees and similar national or local duties and charges imposed in the territory of the latter Contracting Party, even though the supplies are used in or consumed by the aircraft on flights in that territory.

Article 7

(1) Each Contracting Party reserves the right to withhold or revoke the rights granted under Article 3 of this Agreement in respect of an airline designated by the other Contracting Party, or to impose such conditions as it deems necessary on the exercise of those rights, in any case where it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party.

(2) Each Contracting Party reserves the right to suspend the exercise by a designated airline of the other Contracting Party of the rights granted under Article 3 of this Agreement, or to impose such conditions as it deems necessary on the exercise of those rights, in any case where the airline fails to comply with the laws and regulations of the Contracting Party granting those privileges or otherwise fails to operate in accordance with the conditions specified in this Agreement.

(3) The rights reserved in paragraphs (1) and (2) of this Article shall be exercised by a Contracting Party only after consultation with the other Contracting Party unless the immediate suspension of the rights or the imposition of conditions is necessary to prevent further infringements of the laws and regulations of the first mentioned Contracting Party.

Article 8

(1) There shall be a fair and equal opportunity for the designated airlines of both Contracting Parties to operate the agreed services on the specified routes between their respective territories.

(2) In operating the agreed services the designated airline of each Contracting Party shall take into consideration the interests of the designated airline of the other Contracting Party so as not to affect unduly the services which the latter provides on the whole or part of the same routes.

(3) The agreed services provided by the designated airlines of the Contracting Parties shall bear a close relationship to the requirements of the public for transportation on the specified routes. The agreed services provided by the designated airline shall have as their primary objective the provision of capacity adequate for the requirements of traffic originating in or destined for the territory of the Contracting Party which has designated that airline. Provision for the carriage on the agreed services

of traffic both originating in and destined for the territories of States other than that designating the airline shall be made in accordance with the general principles that capacity shall be related to :

- (a) the requirements of traffic originating in or destined for the territory of the Contracting Party which has designated the airline ;
- (b) the traffic requirements of the area through which the airline passes, after taking account of local and regional services ; and
- (c) the requirements of through airline operations.

Article 9

In operating any agreed service on any specified route a designated airline of one Contracting Party may substitute one aircraft for another at a point in the territory of the other Contracting Party only on the following conditions :

- (a) that it is justified by reason of economy of operation ;
- (b) that the aircraft used on the section of the route more distant from the terminal in the territory of the first Contracting Party is no larger in capacity than that used on the nearer section ;
- (c) that the aircraft used on the more distant section shall operate only in connection with and as an extension of the service provided by the aircraft used on the nearer section and shall be scheduled so to do; the former shall arrive at the point of change for the purpose of carrying traffic transferred from, or to be transferred into, the aircraft used on the nearer section ; and its capacity shall be determined with primary reference to this purpose ;
- (d) that there is an adequate volume of through traffic ;
- (e) that the airline shall not hold itself out to the public by advertisement or otherwise as providing a service which originates at the point where the change of aircraft is made ;
- (f) that the provisions of Article 8 of this Agreement shall govern all arrangements made with regard to change of aircraft ;
- (g) that in connection with any one aircraft flight into the territory in which the change of aircraft is made, only one flight may be made out of that territory.

Article 10

(1) The tariffs on any agreed service shall be established at reasonable levels, due regard being paid to all relevant factors including cost of operation, reasonable profit, characteristics of the service (such as standards of speed and accommodation) and the tariffs of other airlines for any part of the specified route. These tariffs shall be fixed in accordance with the provisions of this Article.

(2) Agreement on the tariffs shall, whenever possible, be reached by the designated airlines concerned through the rate-fixing machinery of the International Air Transport Association. When this is not possible, tariffs in respect of each of the specified routes shall be agreed upon between the designated airlines concerned. In any case the tariffs shall be subject to the approval of the aeronautical authorities of both Contracting Parties.

(3) If the designated airlines concerned cannot agree on the tariffs, or if the aeronautical authorities of either Contracting Party do not approve the tariffs submitted to them in accordance with the provisions of paragraph (2) of this Article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on those tariffs.

(4) If agreement under paragraph (3) of this Article cannot be reached, the dispute shall be settled in accordance with the provisions of Article 14 of this Agreement.

(5) No new or amended tariff shall come into effect unless it is approved by the aeronautical authorities of both Contracting Parties or is determined by a tribunal of arbitrators under Article 14 of this Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall apply.

Article 11

The aeronautical authorities of each Contracting Party shall supply to the aeronautical authorities of the other Contracting Party upon request such periodic or other statements of statistics as may be reasonably required for the purpose of reviewing the capacity provided on the agreed services by the designated airlines. These statements shall include information relating to the amount of traffic carried by those airlines on the agreed services to and from the territory of the other Contracting Party, including the origin and destination of the traffic.

Article 12

This Agreement shall be registered with the International Civil Aviation Organisation.

Article 13

(1) In order to ensure close collaboration in all matters affecting the performance of this Agreement the aeronautical authorities of the Contracting Parties shall consult on request of either of the authorities.

(2) If either of the Contracting Parties considers it desirable to modify the terms of this Agreement, it may request consultation between the aeronautical authorities of both Contracting Parties in relation to the proposed modification. Consultation

shall begin within a period of sixty days from the date of the request. When these authorities agree on modifications to this Agreement, the modifications shall come into effect when they have been confirmed by an exchange of notes through the diplomatic channel.

(3) If a general multilateral agreement concerning air transport comes into force in respect of both Contracting Parties, this Agreement shall be amended so as to conform with the provisions of that agreement.

Article 14

(1) If any dispute arises between the Contracting Parties relating to the interpretation or application of this Agreement, the Contracting Parties shall in the first place endeavour to settle it by negotiation.

(2) If the Contracting Parties fail to reach a settlement by negotiation, the dispute may at the request of either Contracting Party be submitted for decision to a tribunal of three arbitrators, one to be nominated by each Contracting Party and the third to be appointed by the two so nominated. Each of the Contracting Parties shall nominate an arbitrator within a period of sixty days from the date of receipt by either Contracting Party from the other of a diplomatic note requesting arbitration of the dispute and the third arbitrator shall be appointed within a further period of sixty days. If either of the Contracting Parties fails to nominate an arbitrator within the period specified or if the third arbitrator is not appointed within the period specified, the President of the Council of the International Civil Aviation Organisation may be requested by either Contracting Party to appoint an arbitrator or arbitrators as the case requires.

(3) The Contracting Parties undertake to comply with any decision given under paragraph (2) of this Article.

Article 15

Either of the Contracting Parties may at any time give to the other notice of its intention to terminate this Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organisation. This Agreement shall terminate one year after the date of receipt by the other Contracting Party of the said notice unless by agreement between the Contracting Parties the notice is withdrawn before the expiration of that period. If the other Contracting Party fails to acknowledge receipt of the notice the notice shall be deemed to have been received fourteen days after the International Civil Aviation Organisation has received its copy.

Article 16

This Agreement shall enter into force on the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Wellington this twenty-fifth day of July in the year one thousand nine hundred and sixty-one in duplicate in the English language.

For the Government
of New Zealand :

Keith HOLYOAKE

For the Government
of the Commonwealth of Australia :

Shane PALTRIDGE

SCHEDULE

(1) Australian Route :

The air services to be operated in both directions by the designated airline of Australia shall be Australia via separate routes to Auckland, Wellington, and Christchurch and optionally beyond.

(2) New Zealand Route :

The air services to be operated in both directions by the designated airline of New Zealand shall be New Zealand via separate routes to Sydney, Melbourne, Brisbane, Norfolk Island and optionally beyond.
