

No. 11307

**AUSTRALIA
and
NAURU**

**Agreement relating to air services (with route schedule). Signed
at Canberra on 17 September 1969**

Authentic text: English.

Registered by the International Civil Aviation Organization on 28 August 1971.

**AUSTRALIE
et
NAURU**

**Accord relatif aux services aériens (avec tableau des routes).
Signé à Canberra le 17 septembre 1969**

Texte authentique: anglais.

Enregistré par l'Organisation de l'aviation civile internationale le 28 août 1971.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF THE
COMMONWEALTH OF AUSTRALIA AND THE GOV-
ERNMENT OF THE REPUBLIC OF NAURU RELATING
TO AIR SERVICES

The Government of the Commonwealth of Australia and the Government of the Republic of Nauru (hereinafter referred to as the Contracting Parties),

Desiring to conclude an agreement relating to air services,
agree as follows:

Article 1

DEFINITIONS

(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 similar functions; and in the case of the Government of the Republic of Nauru, the President and any other authority legally empowered to perform the functions exercised by the President in relation to air services or similar functions;

(b) the term “territory” in relation to a State means the land areas and territorial waters adjacent thereto of territories for the international relations of which that State is responsible;

(c) the term “designated airline” means an airline which one Contracting Party has designated in writing to the other Contracting Party in accordance with Article 4 as being the airline authorised to operate international air services in accordance with the provisions of Article 2;

(d) the term “air service” means any scheduled air service performed by aircraft for the public transport of passengers, cargo or mail;

¹ Came into force on 17 September 1969 by signature, in accordance with article 15.

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

Article 2

GRANT OF RIGHTS

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 Route Schedule (hereinafter called “ agreed services ” and “ specified routes ” respectively).

Article 3

SAFE AND EFFECTIVE OPERATIONS

(1) The Contracting Parties shall take all necessary measures to ensure safe and effective operation of the agreed services. Detailed provisions to this end shall be set out in a Memorandum of Understanding between the aeronautical authorities of the two countries which shall be annexed to letters exchanged between the aeronautical authorities of the Contracting Parties on the date of this Agreement.

(2) If the aeronautical authorities of either Contracting Party or its designated airline should at any time fail to conform to the provisions of the Memorandum of Understanding, referred to in Paragraph (1) of this Article, the other Contracting Party shall have the right to withhold the rights granted under Article 2 or to suspend the operation of the agreed services.

Article 4

NECESSARY AUTHORISATIONS

(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 2 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 necessary operating permission to the airline concerned. Such permission shall, subject to the provisions of Article 3 and of paragraphs (2) and (3) of this Article, 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 national laws and regulations normally applied by those authorities to the operation of international air services.

(3) Each Contracting Party reserves the right to withhold the rights granted under Article 2 or to impose conditions on the exercise of those rights in any case where:

- (a) it is not satisfied that substantial ownership and effective control of the airline are vested in the Contracting Party designating the airline or in any nationals of that Contracting Party; or
- (b) the designated airline fails to comply with the national laws and regulations referred to in paragraph (2) of this Article.

Article 5

TRANSIT AND TRAFFIC RIGHTS

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 Route Schedule, for the purposes of putting down and of taking on international traffic in passengers, cargo or mail.

Article 6

EXEMPTION FROM CUSTOMS AND OTHER DUTIES

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

Article 7

SUSPENSION AND REVOCATION

(1) Each Contracting Party reserves the right to suspend or revoke the rights granted under Article 2 in respect of an airline designated by the other Contracting Party, or to impose conditions on the exercise of those rights in any case where:

- (a) 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; or
- (b) the airline fails to operate in accordance with the conditions specified in this Agreement or fails to comply with the national laws and regulations of the Contracting Party granting the rights.

(2) The rights reserved in paragraph (1) 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 immediate imposition of conditions is necessary to prevent further infringements of the national laws and regulations of the first mentioned Contracting Party.

Article 8

CAPACITY REGULATION

(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 interest 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.

(4) The capacity which might be provided in accordance with this Article by the designated airline of each of the Contracting Parties on the agreed services shall be such as is agreed between the aeronautical authorities of the Contracting Parties before the commencement by the designated airline concerned of an agreed service and from time to time thereafter.

Article 9

TRANSPORT TARIFFS

(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 13 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 13 of this Agreement. Pending determination of the tariffs in accordance with the provisions of this Article, the tariffs already in force shall apply.

Article 10

STATISTICS

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 11

REGISTRATION

This Agreement and amendments thereto shall be registered with the International Civil Aviation Organization.

Article 12

CONSULTATIONS

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

(2) If either of the Contracting Parties considers it desirable to modify any provision of the present Agreement, it may request consultation with the other Contracting Party. Such consultation, which may be between aeronautical authorities and which may be through discussion or by correspondence, shall begin within a period of sixty days from the date of the receipt of the request. Any modifications so negotiated shall come into force when they have been incorporated in an exchange of notes through the diplomatic channel.

Modifications to the Route Schedule of this Agreement may be negotiated between the aeronautical authorities of the Contracting Parties and shall come into force when they have been incorporated in an exchange of notes through the diplomatic channel.

(3) If a general multilateral convention concerning air transport comes into force in respect of both Contracting Parties, this Agreement shall be read subject to the provisions of that convention.

Article 13

SETTLEMENT OF DISPUTES

(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 from the appointment of the arbitrator last appointed. 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 Organization 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 of the tribunal given under paragraph (2) of this Article.

Article 14

TERMINATION

Either of the Contracting Parties may at any time give to the other in writing through the diplomatic channel notice of its intention to terminate this Agreement. A copy of the notice shall be sent simultaneously to the International Civil Aviation Organization by the Contracting Party giving notice. This Agreement shall terminate six months 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 Organization has received its copy.

Article 15

COMING INTO FORCE

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

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

DONE at Canberra this Seventeenth day of September in the year one thousand nine hundred and sixty nine in two originals in the English language both of which shall be equally authentic.

For the Government
of the Commonwealth of Australia:

R. W. C. SWARTZ

For the Government
of the Republic of Nauru:

HAMMER DE ROBNUT

ROUTE SCHEDULE

(1) The route to be operated in both directions by the designated airline of Australia:

Australia including Papua and the Trust Territory of New Guinea –
Honiara – Noumea – Nauru.

(2) The route to be operated in both directions by the designated airline of the Republic of Nauru:

Nauru – Brisbane.

Points on any of the above routes may at the option of the designated airline concerned be omitted on any or all flights, provided that an agreed service shall have its starting point or terminal in the territory of the Contracting Party designating the airline.
