

No. 19622

**AUSTRALIA
and
PAPUA NEW GUINEA**

**Agreement relating to air services (with annex). Signed at
Canberra on 8 December 1980**

Authentic text: English.

Registered by Australia on 11 March 1981.

**AUSTRALIE
et
PAPOUASIE-NOUVELLE-GUINÉE**

**Accord relatif aux services aériens (avec annexe). Signé à
Canberra le 8 décembre 1980**

Texte authentique : anglais.

Enregistré par l'Australie le 11 mars 1981.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF PAPUA NEW GUINEA RELATING TO AIR SERVICES

The Government of Australia and the Government of Papua New Guinea (hereinafter referred to as the Contracting Parties)

Desiring to conclude an agreement relating to air services,

Agree as follows:

Article I. DEFINITIONS

(1) For the purposes of this Agreement, unless the context otherwise requires:

(a) The term “the Convention” means the Convention on International Civil Aviation opened for signature at Chicago on the seventh day of December, 1944,² and includes any annex adopted under article 90 of that Convention and any amendment of the annexes or Convention under articles 90 or 94 thereof;

(b) The term “aeronautical authorities” means, in the case of Papua New Guinea, the Controller of Civil Aviation and any person or body authorised to perform the functions exercised by the Controller of Civil Aviation or similar functions and, in the case of the Government of Australia, the Secretary to the Department of Transport and any person or body authorised to perform the functions exercised by the Secretary to the Department of Transport or similar functions;

(c) The term “territory” in relation to a State has the meaning assigned to it in article 2 of the Convention;

(d) 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 3;

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

(f) The term “international air service” means an air service which passes through the air space over the territory of more than one State;

(g) The term “airline” means any air transport enterprise offering or operating an international air service;

(h) The term “stop for non-traffic purposes” means a landing for any purpose other than taking on or discharging passengers, mail or cargo;

(i) The term “agreed service” means any scheduled air service operated on a specified route; and

(j) The term “specified route” means a route specified in the annex to this Agreement.

¹ Came into force on 8 December 1980 by signature, in accordance with article 16.

² United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 117; vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

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

Article 2. CHICAGO CONVENTION

To the extent to which they are applicable to the air services established under this Agreement, the provisions of 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.

Article 3. 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 annex thereto.

Article 4. NECESSARY AUTHORISATIONS

(1) Each Contracting Party shall have the right to designate in writing to the other Contracting Party one airline for the purpose of operating the agreed services.

(2) On receipt of such designation, the other Contracting Party shall, subject to the provisions of paragraphs (3) and (4) of this article, without delay grant to the airline designated the appropriate operating authorisation.

(3) The aeronautical authorities of one Contracting Party may require the airline designated by the other Contracting Party to satisfy them that it is qualified to fulfil the conditions prescribed under the laws and regulations normally applied by them, in conformity with the provisions of the Convention, to the operation of international air services.

(4) Each Contracting Party shall have the right to withhold the rights granted under article 3, or to impose such conditions as it may deem necessary on the exercise by the airline of those rights in any case where:

- (a) It is not satisfied that substantial ownership and effective control of that airline are vested in the Contracting Party designating the airline or in nationals of that Contracting Party; or
- (b) The designated airline fails to comply with the national laws and regulations referred to in paragraph (3) of this article.

(5) At any time after the provisions of paragraphs (1) and (2) of this article have been complied with, the airline so designated and authorised may begin to operate the agreed services.

Article 5. TRANSIT AND TRAFFIC RIGHTS

Subject to the provisions of this Agreement, the designated airline of each Contracting Party shall enjoy 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 while operating an agreed service on a specified route at the points specified for that route in the annex, for the purposes of putting down and of taking on international traffic in passengers, mail or cargo.

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 on flights in that territory.

Article 7. SUSPENSION AND REVOCATION

(1) Each Contracting Party shall have the right to suspend or revoke the rights granted under article 3 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 specified 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. PRINCIPLES GOVERNING OPERATION
OF AGREED SERVICES*

(1) There shall be a fair and equal opportunity for the designated airline of each Contracting Party 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 capacity to be operated from time to time by the designated airlines of the Contracting Parties for the conveyance of traffic on agreed services on the specified routes between their respective territories shall be maintained in close relationship with the traffic originating in Papua New Guinea and destined for Australia and vice versa. Unless otherwise agreed the total capacity operated by the designated airlines of the two Contracting Parties between Papua New Guinea

and Australia shall be shared equally between those airlines. The total capacity to be provided by the designated airline of each Contracting Party for the traffic referred to in this paragraph shall be agreed from time to time between the aeronautical authorities of the Contracting Parties.

(4) Insofar as one Contracting Party may not wish, permanently or temporarily, to operate in full or in part, the capacity to which it is entitled under paragraph (3) of this article that Contracting Party may arrange with the other Contracting Party under terms and conditions to be agreed between them for the designated airline of such other Contracting Party to operate additional capacity so as to maintain the full capacity agreed upon between them in accordance with paragraph (3) of this article. It shall, however, be a condition of any such arrangement that if the first Contracting Party should at any time desire to commence to operate or to increase the capacity of its services within the total capacity to which it is entitled under paragraph (3) of this article, the airline of the other Contracting Party shall withdraw correspondingly some or all of the additional capacity which it had been operating.

(5) In order to meet seasonal fluctuations or unexpected demands of a temporary character the designated airlines may, notwithstanding the provisions of paragraph (3) of this article agree between them to such temporary increases of capacity for either airline or both airlines as are necessary to meet the traffic demand, and may recommend such increases to the aeronautical authorities of the Contracting Parties for their approval.

Article 9. TRANSPORT TARIFFS

(1) In this article "tariffs" means the prices to be paid for the carriage of passengers and cargo and the conditions under which those prices apply, including prices and conditions for agency and other auxiliary services, but excluding remuneration and conditions for the carriage of mail.

(2) 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 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.

(3) Agreement on the tariffs shall, if both designated airlines are members of the International Air Transport Association, be reached whenever possible through the rate-making machinery of that 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.

(4) 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 (3) of this article, the aeronautical authorities of the Contracting Parties shall endeavour to reach agreement on those tariffs.

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

(6) No new or amended tariffs shall come into effect unless they are approved by the aeronautical authorities of both Contracting Parties or are 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 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. TRANSFER OF EARNINGS

Each Contracting Party will grant to the designated airline of the other Contracting Party the right of transfer (in any freely convertible currency nominated by the airline of the other Contracting Party) of excess of receipts over expenditure earned by that airline in the territory of the first Contracting Party in connection with the carriage of passengers, baggage, mail and cargo in accordance with the foreign exchange regulations in force (if any) at the official bank rate of exchange.

Article 12. REGISTRATION

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

Article 13. CONSULTATIONS AND AMENDMENT

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

(2) If either of the Contracting Parties considers it desirable to amend any provision of the present Agreement including the annex, 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 receipt of the request. Any amendments so negotiated shall not come into force until they have been incorporated into an agreement concluded by way of an exchange of notes through the diplomatic channel.

(3) If a multilateral convention 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 convention.

Article 14. 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 note through the diplomatic channel requesting arbitration of the dispute and the third arbitrator shall be appointed within a 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 15. TERMINATION

Either of the Contracting Parties may at any time give to the other notice of its intention to terminate this Agreement. Such notice shall be given in writing through the diplomatic channel and 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 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 Organization has received its copy.

Article 16. COMING INTO FORCE

This 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 eighth day of December in the year one thousand nine hundred and eighty in two originals in the English language.

[Signed — Signé]¹

For the Government
of Australia

[Signed — Signé]²

For the Government
of Papua New Guinea

ANNEX

(1) The route to be operated in both directions by the designated airline of Australia:—Australia—Port Moresby and one other point in Papua New Guinea to be nominated by the Australian aeronautical authorities and agreed by the Papua New Guinea aeronautical authorities.

(2) The routes to be operated in both directions by the designated airline of Papua New Guinea:

(a) Papua New Guinea—Cairns;

(b) Papua New Guinea—Brisbane—Sydney.

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.

¹ Signed by Ralph J. Hunt — Signé par Ralph J. Hunt.

² Signed by Noel Levi — Signé par Noel Levi.