

No. 23087

**AUSTRALIA
and
FIJI**

**Agreement for air services between and beyond their
respective territories (with route schedule). Signed at
Suva on 24 March 1982**

Authentic text: English.

Registered by Australia on 18 September 1984.

**AUSTRALIE
et
FIDJI**

**Accord relatif aux services aériens entre leurs territoires
respectifs et au-delà (avec tableau de routes). Signé à
Suva le 24 mars 1982**

Texte authentique : anglais.

Enregistré par l'Australie le 18 septembre 1984.

AGREEMENT¹ BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF FIJI FOR AIR SERVICES BE- TWEEN AND BEYOND THEIR RESPECTIVE TERRITORIES

The Government of Australia and the Government of Fiji (hereinafter referred to as the Contracting Parties),

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

Desiring to conclude an Agreement, supplementary to the said Convention, for the purpose of establishing air services between and beyond their respective territories,

Have agreed as follows:

Article 1. DEFINITIONS

(1) For the purpose 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, 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 so far as those annexes and amendments have become effective for or been ratified by both Contracting Parties;

(b) The term “aeronautical authorities” means, in the case of Fiji, the Minister for the time being responsible for civil aviation and any person or body authorised to perform any functions at present exercisable by him or similar functions, and, in the case of Australia, the Secretary to the Department of Transport and any person or body authorised to perform any functions at present exercisable 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 or airlines which have been designated and authorised in accordance with article 4 of this Agreement;

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

(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, cargo or mail;

¹ Came into force on 24 March 1982 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.

(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 schedule to this Agreement.

(2) The schedule to this Agreement (hereinafter referred to as the schedule) forms an integral part of the Agreement, and all references to the “Agreement” shall be deemed to include reference to the schedule.

Article 2. CHICAGO CONVENTION AND OTHER CONVENTIONS

The provisions of this Agreement shall be subject to the provisions of the Convention and to the provisions of any other multilateral convention that is binding on both Contracting Parties in so far as those provisions are applicable to international air services.

Article 3. GRANT OF RIGHTS

(1) Each Contracting Party grants to the other Contracting Party the rights specified in this Agreement to enable its designated airline or airlines to establish and operate international air services on the routes specified in the appropriate section of the schedule.

(2) The designated airline or airlines 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) Subject to the provisions of this Agreement, 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 and cargo including mail, separately or in combination.

(3) Nothing in paragraph (2) of this article shall be deemed to confer on the designated airline or airlines of one Contracting Party the privilege of taking on board, in the territory of the other Contracting Party, passengers and cargo including mail carried for hire or reward and destined for another point in the territory of the other Contracting Party.

Article 4. DESIGNATION AND AUTHORISATION OF AIRLINES

(1) Each Contracting Party shall have the right to designate in writing through the diplomatic channel to the other Contracting Party one or more airlines for the purpose of operating the agreed services.

(2) Each Contracting Party shall have the right, on notification in writing to the other Contracting Party, to withdraw its designation of an airline and to designate another airline in its place.

(3) On receipt of a designation the other Contracting Party shall, subject to the provisions of paragraph (4) of this article, without delay grant to the airline or airlines designated the appropriate operating authorisations.

(4) Each Contracting Party shall have the right to refuse to grant the operating authorisations referred to in paragraph (3) of this article, or to impose such

conditions as it may deem necessary on the exercise by a designated airline of the rights specified in article 3 of this Agreement, in any case where it is not satisfied:

- (a) That substantial ownership and effective control of a designated airline are vested in the Contracting Party designating the airline or in its nationals; or
- (b) That a designated airline is qualified to fulfill the conditions prescribed under the laws and regulations normally and reasonably applied to the operation of international air services by such authorities in conformity with the provisions of the Convention; or
- (c) That a designated airline has complied with those laws and regulations.

(5) When an airline has been so designated and authorised it may at any time operate the agreed services, provided that both an agreement between the aeronautical authorities on capacity under article 8(4) and a tariff established in accordance with the provisions of article 10 of this Agreement are in force in respect of the service in question.

Article 5. WITHDRAWAL OR LIMITATION OF RIGHTS

(1) Each Contracting Party shall have the right to revoke an operating authorization or to suspend the exercise of the rights specified in article 3 of this Agreement by an airline designated by the other Contracting Party, or to impose such conditions as it may deem necessary on the exercise of these rights:

- (a) In any case where 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) In the case of failure by that airline to comply with the laws or regulations of the Contracting Party granting these rights; or
- (c) In any case where the airline otherwise fails to operate in accordance with the conditions prescribed under this Agreement.

(2) Unless immediate revocation, suspension or imposition of the conditions mentioned in paragraph (1) of this article is essential to prevent further infringements of laws or regulations, such right shall be exercised only after consultation with the other Contracting Party.

Article 6. CUSTOMS REGULATIONS

(1) Aircraft operated on international air services by the designated airlines of either Contracting Party, as well as the regular equipment, supplies of fuel and lubricants, and aircraft stores (including food, beverages and tobacco) on board such aircraft, shall be exempt from all customs duties, excise taxes, inspection fees, and similar duties and charges on arriving in the territory of the other Contracting Party, on the following conditions:

- (a) That such equipment and supplies remain on board the aircraft up to such time as they are re-exported or are used on the part of the journey performed over that territory; or
- (b) That such equipment and supplies may be unloaded, subject to compliance with the customs regulations of that territory, in which case they may be placed under the control of the customs authorities up to such time as they are re-exported or otherwise disposed of in accordance with those regulations.

(2) Each Contracting Party shall also exempt from the same duties, fees and charges the following items, whether or not they have been imported into its territory:

- (a) Aircraft stores taken on board in its territory, within limits fixed by its authorities, and for use on board an aircraft of a designated airline of the other Contracting Party engaged in an international air service;
- (b) Fuel and lubricants supplied in its territory to an aircraft of a designated airline of the other Contracting Party engaged in an international air service, even when these supplies are to be used on the part of the journey performed over the territory of the Contracting Party in which they are taken on board;
- (c) Spare parts intended for the maintenance or repair of aircraft of a designated airline of the other Contracting Party engaged in an international air service; and
- (d) Equipment intended for incorporation in or use on aircraft of a designated airline of the other Contracting Party engaged on an international air service.

The items referred to in this paragraph may be required to be kept under customs supervision or control.

Article 7. TRANSFER OF EARNINGS

Each Contracting Party grants to the designated airline of the other Contracting Party the right of free transfer of the excess of their receipts in its territory over their expenditure therein. Such transfers shall be effected on the basis of the prevailing official foreign exchange market rates for current payments.

Article 8. PRINCIPLES GOVERNING OPERATION OF AGREED SERVICES

(1) There shall be 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 or airlines of each Contracting Party shall take into account the interests of the airlines of the other Contracting Party so as not to affect unduly the services which the latter provide 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 and shall have as their primary objective the provision, at a reasonable load factor, of capacity adequate to carry the current and reasonably anticipated requirements for the carriage of passengers and cargo including mail originating from or destined for the territory of the Contracting Party which has designated the airline.

(4) The capacity that may be provided in accordance with this article by the designated airlines of the Contracting Parties on an agreed service shall be such as is agreed between the aeronautical authorities of the Contracting Parties before the commencement of the agreed service and from time to time thereafter.

Article 9. CHANGE OF GAUGE

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 on the following conditions only:

- (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 not 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 a 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; and
- (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. 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 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 ratefixing 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 by 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 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 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 11. PROVISION OF STATISTICS

The aeronautical authorities of a Contracting Party shall supply to the aeronautical authorities of the other Contracting Party at their 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 a designated airline of the Contracting Party referred to first in this article. Such statements shall include all information required to determine the amount of traffic carried by the airline on the agreed services and the origins and destinations of such traffic.

Article 12. CONSULTATION

(1) In a spirit of close co-operation, the aeronautical authorities of the Contracting Parties shall consult each other on request of either of those authorities with a view to ensuring the implementation of, and satisfactory compliance with, the provisions of this Agreement and shall consult when necessary to provide for amendments thereof.

(2) Either Contracting Party may request consultations, which may be either oral or in writing and shall begin within a period of sixty (60) days of the date of receipt of the request, unless both Contracting Parties agree to an extension of this period.

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, they may agree to refer the dispute for decision to some person or body; if they do not so agree, the dispute shall 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 (60) 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 by such a tribunal, and the third arbitrator shall be appointed within a period of sixty (60) days from the appointment of the arbitrator last nominated. 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 at the request of either Contracting Party appoint an arbitrator or arbitrators as the case requires. In such case, the third arbitrator shall be a national of a third State and shall act as President of the arbitral tribunal.

(3) The Contracting Parties shall comply with any decision given under paragraph (2) of this article.

(4) The expenses of the national arbitrators shall be borne by the respective Contracting Parties. All other expenses of the arbitral tribunal, including the fees and expenses of the third arbitrator, shall be shared equally by the Contracting Parties.

Article 14. AMENDMENT

If either of the Contracting Parties considers it desirable to amend any provision of this Agreement, such amendment, if agreed between the Contracting Parties and if necessary after consultation in accordance with article 12 of this

Agreement, shall not come into force until it has been incorporated into an agreement concluded by way of an exchange of notes through the diplomatic channel.

Article 15. TERMINATION

Either of the Contracting Parties may at any time give to the other notice of its decision 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 Organisation 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 Organisation has received its copy.

Article 16. ENTRY 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 Suva this 24th day of March in the year one thousand nine hundred and eighty-two in two originals in the English language.

[Signed]

R. J. GREET

For the Government
of Australia

[Signed]

E. BEDDOES

For the Government
of Fiji

SCHEDULE

SECTION 1

Routes to be operated in both directions by the designated airline of Fiji

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Destination</i>
1. Fiji	Tuvalu Kiribati Majuro Nauru Vanuatu The Solomons New Caledonia	Brisbane
2. Fiji	—	Sydney
3. Fiji	—	Melbourne

SECTION 2

Routes to be operated in both directions by the designated airline of Australia

<i>Points of departure</i>	<i>Intermediate points</i>	<i>Destination in Fiji</i>	<i>Beyond</i>
Australia	—	Nadi	Tahiti Honolulu Mainland U.S.A. Canada Mexico South America and beyond

NOTES: 1. 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.

2. Each of the designated airlines shall operate the agreed services under distinct published flight numbers which shall be different from those used by that airline on services operated outside this schedule.