

VII. Aviation and Space Law

International civil aviation – Air service agreements

On 25 February 1992 the Minister for Transport and Communications, Mr Kim Beazley, answered a question upon notice from Mr Peter Morris (HR Deb 1992, Vol 182, p 176). The question and part of the answer were as follows:

(Q1) Which countries have concluded air service agreements with Australia since 30 June 1987?

(Q2) Which airlines have commenced services to Australia since the agreements referred to in part (1) were concluded?

(Q3) With respect to each of the services referred to in part (2): (a) when did the service commence, and (b) what annual passenger traffic to Australia (i) was projected for and (ii) achieved in each year since the service commenced?

MR BEAZLEY: The Minister for Shipping and Aviation has provided the following answer to the honourable member's question:

(A1) Arrangements enabling air services between Australia and the following countries have been concluded since 30 June 1987:

Argentina	Egypt	Switzerland
Bahrain	Hong Kong	Taiwan
Brunei	Korea, Republic of	Zimbabwe

Prior to November 1990, air services between Australia and Brunei operated under a 1984 Exchange of Letters between the two Governments.

Prior to the separate arrangements with Hong Kong, air services between Australia and Hong Kong were operated under the Australia–United Kingdom Air Services Agreement.

Prior to the arrangements being concluded with Bahrain, air services were operated under a commercial agreement between the airlines.

On 19 August 1992 the Minister for Transport and Communications, Mr Kim Beazley, provided an answer to the following question upon notice from Mr Peter Morris (HR Deb 1992, Vol 185, p 276):

(Q1) Which international airlines are operating air services to Australia?

(Q2) Which (a) countries and (b) international airlines have rights to operate air services to Australia and have not yet commenced operating?

(Q3) How many passengers (a) arrived in and (b) departed from Australia on each airline identified in part (1) in (i) 1989–90, (ii) 1990–91 and (iii) 1991–92?

The Minister for Transport and Communications responded to questions without notice about negotiations and agreements on air services in relation to: New Zealand on 3 June 1992 (Sen Deb 1992, Vol 153 p 3384), South America

on 14 September 1992 (Sen Deb 1992, Vol 154, p 714), Indonesia on 12 October 1992 (Sen Deb 1992, Vol 155, p 1540), Singapore on 9 November 1992 (Sen Deb 1992, Vol 156, p 2472) and Japan on 10 December 1992 (Sen Deb 1992, Vol 157, p 4672).

International civil aviation – Air service agreements – Russia

On 7 December 1992 the Minister for Transport and Communications, Mr Bob Collins, issued a news release which read in part:

Australia and the Russian Federation have reached an historic agreement to introduce scheduled air services between the two countries, Transport and Communications Minister, Senator Bob Collins, announced today.

"This is the first time we have ever signed an agreement for scheduled air services between the two countries", Senator Collins said today.

The agreement resulted from talks between Australian and Russian officials in Canberra last week.

Under the agreement the Russian Federation's airline, Aeroflot, will be able to fly two services a week to two Australian cities of its choice.

Australians airlines have gained the right to operate three services a week to any two cities in Russia, with the added opportunity of flying onto other European destinations.

"The introduction of scheduled services will further enhance tourism, trade and cultural contacts between the two countries", Senator Collins said.

International civil aviation – Possibility of direct air links with Malta

At a press conference in Malta on 17 October 1992 the Minister for Foreign Affairs and Trade, Senator Gareth Evans, said the following in response to a question regarding the possibility of direct air links between Australia and Malta:

Well that's the subject of active negotiation between the two countries, at the moment. There was an agreement for links to be established on a conditional basis, with particular conditions about the number of passengers actually originating here and in Australia. Those services haven't been established within the framework that has already been agreed. There's an attempt been made to re-negotiate that under different conditions. We have an open mind about that. That's all I can say. We are becoming increasingly more relaxed about air service agreements with a number of countries. In the present day international environment I think we'll come to the view that it's not so much a matter of worrying just about your own international airline. It's a matter of maximising the number of flights that are coming in from whoever it is. That's one of the best ways of increasing the flow of tourism and visits which is increasingly coming to be our life blood as much as it has been Malta's. ...

Aviation law – Protocols to Chicago Convention – Amendments to Australian legislation

In the course of the second reading speech on the Transport and Communication Legislation Amendment Bill (No 2) 1992 on 7 May 1992, the Parliamentary Secretary to the Minister for Transport and Communications, Mr Snowdon, said (HR Deb 1992, Vol 183, p 2675):

The Bill amends the Air Navigation Act 1920 to enable ratification of two new protocols to the Chicago Convention on International Civil Aviation. These protocols increase the membership size of both the Council of the International Civil Aviation Organisation and its navigation commission.

International civil aviation – Smoking on international air services

On 9 November 1992 the Minister for Transport and Communications, Senator Bob Collins, said in the course of an answer to a question without notice (Sen Deb 1992, Vol 156, p 2481):

A resolution, which was co-sponsored by Australia and Canada, on restricting smoking on international air services was agreed at the International Civil Aviation Organisation (ICAO) assembly held last month in Montreal. The resolution urges all ICAO countries to take necessary measures as soon as possible to restrict smoking progressively on all international passenger flights, with the objective of implementing complete smoking bans on these flights by 1 July 1996. This initiative is a forward looking and responsible approach to protect all operating crews and passengers travelling on international services from the hazards of tobacco smoke.

The ICAO assembly vote vindicates Australian and global concern that the need for smoking bans on international flights be addressed as a multilateral aviation public health issue. ICAO has indicated it will play an important ongoing role with the World Health Organisation in promoting a smoke-free environment for all crews and passengers on international air services.

It is to be hoped that the 173 member states of ICAO will encourage the implementation of this resolution by the carriers of their respective countries.

On 13 October 1992 the Minister for Aged, Family and Health Services, Mr Peter Staples, issued a news release which read as follows:

The Federal Minister for Aged, Family and Health Services, Peter Staples, today congratulated the International Civil Aviation Organisation (ICAO) on its move to make international flights smoke-free.

As the organisation responsible for setting standards on international airlines, the ICAO has recommended to its members that smoking be banned on all flights.

Its decision was made in response to a resolution sponsored by Australia, Canada, the United States and Pakistan.

Mr Staples said that not only would international flights be more comfortable, but that both passengers and cabin crew would be protected from the potentially devastating effects of passive smoking.

"Australia has led the world in introducing smoking bans in domestic air and land transport", he said.

"Our representation on the ICAO, through my colleague Senator Bob Collins, the Federal Minister for Transport and Communications has reinforced that international action must be taken to limit the appalling toll exacted by smoking wherever it occurs."

Mr Staples urged Qantas to extend its current smoking bans to all of its flights, so that not only would it be regarded as the world's safest airline but also the world's healthiest.

The Federal Government has banned smoking on domestic flights from 1990.

Space law – International agreements – Liability as a "Launch State" – Parliamentary Report on Developing Satellite Launching Facilities in Australia

Following are extracts from a report of the Senate Standing Committee on Transport, Communications and Infrastructure entitled *Developing Satellite Launching Facilities in Australia and the Role of Government*, which was published in April 1992:

International Treaties and Conventions

5.20 As a result of increasing activity in space during the 1960s and 1970s, United Nations multilateral agreements were developed setting the rights and duties of countries in relation to exploration and activity in outer space. Australia is a signatory to the following treaties and conventions that form the basis of the law of outer space:

- the Treaty on Principles Governing the Activities of States in Exploration and the Use of Outer Space (The Outer Space Treaty) (1967);
- the Convention on International Liability for Damage Caused by Space Objects (The Liability Convention) (1972);
- the Convention on Registration of Objects Launched into Outer Space (The Registration Treaty) (1975);
- the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space (The Rescue Agreement) (1968); and
- the Agreement Governing the Activities of States on the Moon and other Celestial Bodies (The Moon Treaty) (1979).

5.21 The Committee was informed by the Department of Foreign Affairs and Trade that as Australia is a signatory to these treaties and conventions certain obligations, rights and duties are imposed upon Australia in relation to exploration and activity in outer space. These obligations, rights and duties include:

- that participating nations ensure that space activities are carried out in conformity with the treaties (The Outer Space Treaty);

- that space activities of non-government entities are authorised and supervised by the State concerned (The Outer Space Treaty);
- the imposition of liability for damage caused to other State Parties and their nationals as a result of launching activities from Australia (The Liability Convention);
- the supply of vehicles or payloads for a launch operation in claims for liability or searches for lost equipment in the event of a launch failure (The Rescue Agreement); and
- the maintenance of a register which would enable ready identification of the origin of objects which might give rise to action or cause claims under one or other of the Treaties or Conventions (The Registration Convention). ...

5.23 The Department of Foreign Affairs and Trade also informed the Committee that:

It is not envisaged that these multilateral agreements should be the beginning and the end of it. These simply provide an international framework of principles and practices. Then it is up to individual countries to conclude particular agreements as it suits them, and these would supplement these multilateral arrangements. (*Evidence*, p 909)

The Department believes that specific, bilateral agreements will be concluded as a result of increased space activity. The Commonwealth has already entered into bilateral agreements with Russia on co-operation in space research and the use of space for peaceful purposes and on the development of trade and economic relations. Mr I. Forsyth of the Department of Foreign Affairs and Trade, informed the Committee that to make an Australian spaceport effective from an international perspective an agreement with Russia would need to be concluded:

That would basically be a facilitation-type agreement that would cover issues such as import and export of goods and services and personnel related to the project. It would probably include obligations with respect to protection of sensitive technologies, consultation rights and that type of thing. (*Evidence*, pp 901-02)

The Bureau of Meteorology has an agreement with the State Meteorological Authority of China to provide ground support for China's next geostationary meteorological satellite. In return, Australia will receive access to data from the satellite. ...

Conclusion and Recommendation

5.41 The Committee concludes that the proposals for indigenous space launch operations are still in the preliminary stages and may involve long lead times. It is therefore difficult to anticipate all the legislative and regulatory requirements for such ventures. However, in anticipation it is necessary that the legislative and regulatory issues for prospective developments be addressed by the Commonwealth. The Commonwealth must not only address these issues in respect of Australian industry but also for proposal from overseas companies wanting to undertake space activities in Australia, for example, the German MBB-ERNO project.

5.42 The Committee is aware that at present there is no Australian licensing authority responsible for launching services. Therefore, the Committee RECOMMENDS that the Australian Space Office should initiate and co-ordinate action by the relevant Government authorities, in consultation with commercial entities, to formulate a basic legislative and regulatory framework which will ensure that space-related activities are not delayed or impeded by a lack of appropriate legislation. When the need arises the framework can be adapted to meet specific requirements. ...

Third Party Liability

5.44 As Australia is a signatory to the Outer Space Treaty and the Liability Convention, Australia would become a "Launch State", as defined in the Liability Convention, when launch activities commence. Thus Australia will be strictly liable, *inter alia*, without limitation for damage caused to other State Parties and their nationals (though not to Australian nationals) as a result of launching activities from Australian territory, whether carried out by the Commonwealth or non-government entities.

5.45 The Department of Foreign Affairs and Trade informed the Committee that there is nothing in either the Treaty or the Convention which would prevent the Australian Government from allocating liability in domestic law to any private organisation involved in space launching activity. The Outer Space Treaty provides that the activities of non-governmental entities in outer space shall require the authorisation and continuing supervision of responsible State Parties.

5.46 Two other agreements, The Rescue Agreement and The Registration Convention, involve the countries supplying vehicles or payloads for a launch operation in claims for liability or searches for lost equipment in the event of a launch failure. There is also a requirement that countries launching objects into space should maintain a register which would enable ready identification of the origin of objects which might give rise to action or cause claims under one or other of the treaties or conventions.

5.47 The Commonwealth's liability for certain types of damage occurring as a result of a launch was described to the Committee by the [Australian Space Office] as being "absolute". (Briefing, p 23) The liability could arise in a number of ways:

- the malfunction of a launch vehicle or satellite which results in death or physical injury to third-party persons or damage to or destruction of third-party property or environmental damage on the earth's surface or in the air;
- damage to or destruction of other satellites in space or injury to astronauts in space; and
- death, injury or destruction or damage caused by re-entry of a spent satellite into the atmosphere with fragmental descent to earth.

5.48 Overseas governments require the launch service providers to undertake commercial insurance for part of the risk up to prescribed limits with the risk above these limits remaining a national responsibility. ...

5.51 The treaties and conventions subscribed to by Australia do not require a launch operator to insure launch activities for third party liability. This question is left to each signatory state. The Commonwealth has not decided if a launch service provider will carry total responsibility for third party liability or if the Commonwealth will take responsibility for third party liability. However, Mr W.D. Jones, of the Australian Space Insurance Group (ASIG), indicated that the Government required liability cover of \$10 million for the proposed launch of the test rocket, Ausroc II.

5.52 Where a service is provided on behalf of a foreign State, the Commonwealth may require that State to assume the liability by means of a bilateral agreement indemnifying Australia against any liability it incurs as a Launch State. The treaties and conventions do not limit arrangements for allocation of liability between parties.