

NATIONAL AVIATION POLICY WHITE PAPER: CHARTING THE WAY FORWARD?

Introduction

Minister for Infrastructure, Transport, Regional Development and Local Government, the Honourable Anthony Albanese MP says the Aviation White Paper charts the way forward and gives certainty and incentive to plan and invest for the long term¹. While this remains to be seen, it would be a wonderful achievement for the industry, even if only accomplished in part.

Does the White Paper chart the way forward? Readers, consumers and industry participants will decide with the fullness of time. It does strike us though that there may be still much to do if certainty is ever to be achieved. It also strikes us that for the current Federal Government, the White Paper represents a tangible plan; a way of being seen to effect change, for which the public appears the major beneficiary.

Excluding appendices, the White Paper is 216 pages of aviation policy discussion. While we attempt to summarise all of this by four key topics (Aviation and economic development, Safety and security, Aviation infrastructure, and the Environment), readers should feel free to enquire directly with us for any more information.

Aviation and Economic Development

Key Points:

- Continued Negotiation on an Open Skies Agreement with the EU.
- Foreign Ownership Rules for Qantas.
- Allowing foreign airlines more capacity to major gateways where services are linked to regional airports
- Ensuring access and reasonable pricing for regional airlines at Sydney Airport.
- The implementation of a suite of national consumer law enforcement powers by the end of 2010 across all jurisdictions.
- Increasing the current strict liability cap for domestic passenger travel from \$500,000 to \$725,000 and developing a scheme to make insurance for third party surface damage compulsory.

unsurprising the Government has announced that it will not remove the 49% foreign ownership restriction placed on Qantas. Perhaps in an effort to meet the airline half way, the Government has announced that the 'additional 25% and 35% limits'² on foreign ownership presently in place will be lifted so as to ensure Qantas is able to enter into "more substantial equity partnerships with foreign airlines than is presently the case"³.

In a boost for key regional airports such as Cairns, Darwin and Broome, the White Paper announces that the Government will increase capacity for foreign airlines flying to major gateway airports (such as Brisbane, Sydney and Melbourne) where those services are linked to a regional airport⁴. This policy is a step in the right direction for ensuring the ongoing viability of our key regional airports as well as ensuring access to regional Australia tourism hubs.

Commentary

Many in the industry will be aware that for some time prior to the release of the White Paper, the Government was in negotiations with the European Union over an Open Skies Agreement. The White Paper makes it clear that this continues to be a key priority for the Government, the outcome of which is likely to have ranging implications for the Australian aviation industry.

Qantas, a company considered by most as an Australian icon, is also addressed in the White Paper. Given its status in Australia, it is perhaps

The Government's White Paper also takes steps to ensure the longevity of regional airline services into Sydney Airport by confirming that the number of slots held by regional airlines will be maintained at the pre-privatisation levels. Additionally, the Government has linked airport charge increases to the consumer price index.

Expanded consumer protection policies will be implemented in the aviation industry via the introduction of the *Trade Practices Amendment (Australian Consumer Law) Bill 2009* which will provide for the prevention of misleading



advertising in respect of airfare prices, tougher rules on component pricing and the implementation of a national regulation on unfair contract terms as well as enhancement to the consumer enforcement, investigation and redress provisions⁵.

Finally, the White Paper proposes reforms to the current strict liability and insurance frameworks by reference to an increase in the current cap on domestic passenger compensation from \$500,000 to \$725,000 and the implementation of a compulsory insurance scheme for third party surface damage⁶. While there is little doubt the increased liability cap amounts to a good result for the flying public, there are no measures announced in the White Paper to offset the potentially increased costs faced by operators because of the higher liability cap and compulsory insurance regime.

Safety and Security

Key Points:

- Continued commitment to safety regulation and investigation by focussing on enhancing the operation of both CASA and the ATSB.
- Ensuring Air Traffic Management systems deliver world class safety.
- Reducing risk to air travellers through improved aviation security systems.
- Maintaining current aeronautical charges.

Commentary

It comes as no surprise that safety and security continue to remain a priority for the Government in aviation. By ensuring Australia's safety regulation and investigation agencies remain world leading, the White Paper focuses on ensuring CASA, the ATSB and other key players work together in the interests of safety. This year we will see CASA open new work-bases for air safety inspectors in Gove, Kununurra, Broome and Horne Island. CASA will also complete its regulations on licensing and flight operations by the end of 2010.

The Government will maintain AirServices as a full government-owned statutory authority and set policy directions to ensure a proactive response to Air Traffic Management. It is hoped the Air Traffic Management policy directions will be complete by early 2010 and those policies will offer guidance to government agencies and industry participants in future Air Traffic Management planning and investment. The Government's first project will be the

implementation of Approach with Vertical Guidelines, APV, which will ensure a safer means of managing flight approach paths. In addition, enhanced air traffic management technologies will be implemented. It is intended that by 2020 Australia will have moved to a national ground and satellite based network of Air Traffic Management. Finally given AirServices and Defence are charged with the provision of air navigation services, the Government's White Paper is committed to achieving greater harmonisation amongst these players.

To further enhance Australia's aviation security systems, the Government has identified key areas to improve Australia's current aviation security. The Government has committed itself to enhancing the current layered aviation security system by further improving intelligence, border and airport security measures and aircraft on-board physical security. In terms of aircraft security, Hardened Cockpit Doors will be installed in aircraft with seating of 30 or more. In terms of land-based security the government will enforce more stringent guidelines on ASIC holders, security officers and screening authorities. The Government also recognises that an inconsistency in boarder protection has, in the past, created much confusion amongst travellers and by reforming the Prohibited Items list, hopes to focus on 'real' security risks.

The Government confirms it will retain aeronautical charges at current levels until 2011. It is intended that this will provide some relief to the industry in recognition of the global economic crisis and its impact on the airline industry.

Aviation Infrastructure

Key Points

- Compulsory establishment of planning coordination forums and community aviation consultation groups.
- Strengthened Master Plans.
- Introduction of a second-tier price monitoring regime.
- Second Sydney Airport.

Commentary

The Government has announced that it will require airports to establish two extra layers of community consultation and involvement to the already detailed and complex system of airport development and planning.

The first group to be established is a Planning Coordination Forum, to be implemented at each main capital city airport⁷ with a view to

disseminating information relevant to all major airport planning initiatives and proposals including ground transport connections. The second group to be established is a Community Aviation Consultation Group ('CACG'). The CACGs are to be established for Adelaide, Alice Springs, Archerfield, Bankstown, Brisbane, Camden, Canberra, Darwin, Essendon, Gold Coast, Hobart, Launceston, Melbourne, Moorabbin, Parafield, Perth, Sydney and Townsville Airports and are to be funded by the airports⁸. The purpose of the CACG is to "enhance public consultation activities and to encourage the adoption of best standard practices".

There is little doubt the establishment of these groups has been driven by (real or perceived) public demand for greater consultation on airport development, particularly given the often divergent interests of airport owner/operators and the local residents living near to the airport or under its flight path. Practically, whether these groups will cause significant impact for airport owner/operators or whether they are simply a means for government to placate voter concern remains to be seen.



To further support its increased community consultation initiatives, the Government has indicated that it will introduce amendments to the *Airports Act* to require "additional detail on the proposed use of land in the first five years of a Master Plan, including information on planning for each non-aviation precinct, the number of jobs likely to be created, anticipated traffic flows, and the airport's assessment of the potential impacts on the local and regional economy and community"⁹. In addition, the Master Plan will also be required to include details for a 'Ground Transport Plan'¹⁰ and a "detailed analysis of how the Master Plan aligns with State/Territory and local government planning laws"¹¹.

In addition to increasing community consultation at airports, the Government is taking steps to enlarge consumer protection via the introduction

of a second-tier price monitoring regime for those airports with significant passenger numbers but which fall outside of the five major airports, for example Gold Coast, Canberra, Darwin and Hobart.¹² Cairns Airport will be invited to participate as it is not a Federally owned airport.¹³ This system will be a self-monitored regime whereby the airports will be required to publically disclose on their website the price of public car parking services, aeronautical services, quality service outcomes and complaint handling processes and outcomes¹⁴. Finally, the much debated location of a second airport site for Sydney is addressed by the Government but only to the extent that the Badgerys Creek Site is no longer an option and that the Federal and New South Wales Governments will work together to resolve a new site in the future¹⁵.

Environment

Key Points:

- Carbon Pollution Reduction Scheme to apply to civil aviation with new legislation this year.
- Noise regulation remains a focus with a new Ombudsman, a renewed focus on off-airport State and Territory land development, and the control of old and noisy aircraft.

Commentary

Despite more advanced and 'greener' aviation technology, aviation is said to contribute some 2% of global carbon emissions, with this set to increase by 3% per year. Aviation is therefore by no means off the radar in both the international and domestic efforts to reduce global emissions by 50% come 2050.

The Government's Carbon Pollution Reduction Scheme will apply to aviation and information gathering is already in place to facilitate this plan. Legislation is set to follow to introduce this scheme in 2010. Those providing the fuel or directly responsible for emissions (such as airlines) will pay for carbon costs. The Government is developing a tool for assessing the carbon footprint of domestic aviation which builds on the current ICAO Carbon Calculator. This will no doubt ultimately be part of a worldwide ICAO based effort to determine a reduction in emissions.

The Government does not otherwise forecast new regulations on wider disclosure requirements for key aviation participants (such as airlines, air

navigation service providers or airports) to publicly report on carbon management. With this said, those airports already including carbon management information in their Environment Strategies will be ahead of the Government's general expectations on this.

As touched on briefly, noise and the regulation of it, continues to impact on operators and airports. Curfews remain a central control mechanism, with both AirServices and the Federal Minister committed to examining their application, including to the Brisbane airport. A formal review in this regard has been flagged to coincide with Brisbane Airport's 2014 Master Plan. Operators of adventure flights and historic aircraft activities should also prepare for heightened regulation to engage with the community on possible noise impact.

AirServices is set to establish an Aircraft Noise Ombudsman as a centralised office to respond and undertake independent reviews of aircraft noise enquiries and complaints. This will co-exist alongside the pre-existing Noise and Flight Path Monitoring System at major airports.

With the impetus on Local, State and Territory Governments to focus on off-airport land management and planning, the Australian Noise Exposure Forecast (ANEF) will be retained with the expectation that all jurisdictions reflect the ANEF system in local planning regimes. In response to like industry comment following the Green Paper, the Government says it is committed to improving the technical processes and independence associated with ANEF assessment and scrutiny. What specifically this means seems unclear.

New regulation will also follow in respect to old and/or noisy aircraft either by restricting flight times, limiting operations to certain runways or preventing operations altogether.

Conclusion

The Government's long awaited National Aviation Policy White Paper; what it lacked in brevity was perhaps not entirely made up in detail. It is after all only a *policy* paper and much is to come in terms of the minutia of regulation, new legislation and real progress. While the Green and White Papers were an enormous effort and like commitment of taxpayer dollars, this office as with many commentators, anticipates considerable ongoing debate on the basis for change in aviation in Australia.

¹ Commonwealth of Australia, *National Aviation Policy White Paper: Flight Path to the future* (2009)
² Ibid 46 Foreign individual and total ownership by foreign airlines respectively:
³ Ibid 47.
⁴ Ibid 45.
⁵ Ibid 85 – 87.
⁶ Ibid 88 – 89.
⁷ Ibid 158.
⁸ Ibid 163.
⁹ Ibid 160.
¹⁰ Ibid 160.
¹¹ Ibid 160.
¹² Page 179.
¹³ Ibid 179.
¹⁴ Ibid 179.
¹⁵ Ibid 193.

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