



ALAANZ Aviation Briefs

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Australia releases its Aviation Policy White Paper: ‘National Aviation Policy White Paper: Flight Path to the Future’, Minister’s Speech, Department of Infrastructure Briefing (Dec 16th 2009)

Does not make radical changes

With the festive and holiday season fast bearing down upon us, it is not possible, given editorial deadlines, to do justice to the content of the 238 page Australian Government’s ‘National Aviation Policy White Paper : Flight Path to the Future’ released in Canberra on Wednesday 16th December. This note therefore reflects *impressions* resulting from a brief skimming of its contents, the Minister’s speech accompanying its release and the Department of Infrastructure’s industry briefing. At the outset, it should be said that the paper does not, in your editor’s opinion, radically alter the relationship between industry and government; to use a metaphor with which I hope readers are comfortable, it rather nudges the edges of the envelope than creates a new envelope

Comments on the white paper overall

Five further comments appear pertinent:

-the Paper was approved by Cabinet; this means that it has whole of government approval and involvement; thus for instance it discusses progress towards national consumer protection laws and constructively relates the aviation industry’s situation with respect to skilled personnel to government policies ‘at large’ in this regard

-for the first time it deals with many policy issues, previously dealt with separately; this is strength of the White Paper process and outcome

-apparently for the first time, Defence was formally involved in the formulation of policy ‘in the broad’; this is reflected in a number of the decisions

-there are some areas not covered or finally resolved; for instance, there do not appear to be references to the single Australasian air services market (which is arguably being dealt with on a fast track following the recent Prime Minister’s meeting); carrier liability issues, including ‘damage by aircraft’ are identified but not resolved (apart from increased passenger liability limits for Australian airlines carrying domestic passengers from \$500,000 to \$725,000 per passenger); it does not deal with the Cape Town Convention and Personal Property Securities Bill as providing assistance to aircraft purchasers but at the briefing the importance of the Cape Town Convention was spontaneously acknowledged.

-the paper follows a Discussion Paper, a Green Paper and two separate papers on Carrier Liability and Safeguarding of airports. The thoroughness of the process, the commitment of the departmental and agency officers involved and the opportunity for industry to participate are seen as having led to a relatively high-quality product

Some highlights

What then were the announcements in the White Paper that caught your editor's attention?

Here is his list:

-changes to the foreign ownership rules applicable to Qantas: the 49% limit in foreign shareholdings is to remain intact but the 25% limit on any one foreign shareholder and 35% limit on foreign ownership by airlines overall are proposed to be removed by amendments to the Qantas Sale Act 1992; this would place Qantas in a similar position to other Australian international airlines required to comply with the Air Navigation Act 1920

-Australia's approach to the negotiation of international air services agreements will remain liberal, and place of business requirements are open for consideration, with scope for cabotage, seventh freedoms and ownership and ownership and control rules to be traded in exceptional circumstances

-the introduction of extensive consultative arrangements for the privatised airports with their communities and State and local governments (it would appear that while these are 'institutionalised' for the first time in the White Paper, they are not dissimilar to outcomes of recent Ministerial approvals of airport master plans

-the Paper is relatively positive about the safeguarding of airports and looks for cooperation from the States in the protection of OLS and PAN-OPS surfaces and the development of appropriate planning regimes for airport-adjacent areas

-strengthening airport master plan and major development plan processes to include, inter alia, ground transport plans, to ensure that the impact of airport developments on local traffic patterns is sufficiently identified

-'harmonisation' of civil and military air traffic services, reduction in the extent of military airspace closed for 24 hours and review next year of capacity, cost recovery and so forth at military airports in the context of their importance to both military and civil aviation

-the Minister in his speech referred to the need for CASA to focus ‘on the core job of airline safety’ and the Paper specifies the ‘first priority in airspace administration to be ‘the safety of public transport services’; CASA is to structure itself so that it deals adequately with the growth of sport and recreational aviation

-the Minister in his speech was emphatic that Sydney needs a second airport; the White paper sets out a process for site selection involving both the NSW and Australian governments (given the government’s view that the Badgerys Creek site is no longer appropriate); it is recognised that, once chosen, the site should be developed quickly for airport use

-Airservices retains its prime role with respect to aircraft noise issues; a ‘noise ombudsman’ is to be appointed within Airservices to deal with concerns about noise issues, including transparency of information

-airlines are to be encouraged to enter into Company Charters with the ACCC with a view to ensuring that consumer issues are adequately anticipated and dealt with; this is seen as having greater importance given the diversity of service offerings by an industry including both full service and low cost carriers; an ‘airline industry ombudsman’ scheme is to be established to deal with unresolved consumer complaints

-with regard to environmental issues, the White Paper identifies practical steps that can be taken by air traffic services and operators to reduce CO2 emissions; domestic aviation is to be subject to the ETS to be again placed before Parliament in 2010 and Australia will continue to work in ICAO for a scheme that will not adversely affect the competitive position of Australia’s international airlines

-airport security requirements are to be based on MTOW of aircraft serving them, not whether they are turbo-prop or jet; this change is to be progressively phased-in (this appears to be consistent with amendments to the Aviation transport security Act, currently being considered by Parliament, discussed elsewhere in this edition).

Conclusion

As this note says, the above list reflects items that ‘caught the editor’s eye’ after a relatively brief opportunity to review the paper. It is, at best, a mere sample of the Paper’s contents. Different perspectives and more time to reflect on the Paper’s content might produce a different list. The paper is available on the Department’s web site: www.infrastructure.gov.au and perusal of its contents by those interested is recommended.

Amendments to Australia’s Aviation Transport Security Act intended streamline operation of Australia’s aviation security arrangements: Hon Anthony Albanese, Minister for Infrastructure: *Minister’s Second Reading Speech Aviation Transport Security Amendment (2009 Measures) Bill 2009 (9/9/09): Minister’s Second Reading Speech Aviation transport Security Amendment (2009 Measures No 2) Bill 2009 (29/10/09)*

There are two sets of amendments to the Aviation Transport Security Act before parliament.

The first, contained in the Aviation Transport Security Amendment (2009 Measures No 1) Bill 2009, propose changes to the overall framework of security regulation provided by the Act.

Thus they contemplate:

-the Secretary of the Department of Infrastructure being able to designate a security controlled airport as being in a particular category of airports. There will be different security requirements for each category of airport

-aviation security inspectors being able to enter off-airport premises of an aviation industry participant or accredited air cargo agent without notice

-the Secretary of the Department of Infrastructure being able to enter into enforceable undertakings in relation to all matters dealt with in the Act

-expansion of the scope of Compliance Control Directions to allow aviation security inspectors to direct operators of security controlled airports, screening authorities or screening officers to take specified action in relation to the airport or screening points at the airport

The second, contained in the Aviation Transport Security Amendment Bill (2009 Measures No2) Bill are intended to provide, in relation to cargo, that where it might be transported by road or rail, it should, where possible, be certified for security purposes early in the supply chain.

Thus it allows for the certification of cargo at the appropriate point in the supply chain and expands the classes of industry participants who may certify cargo for carriage on an aircraft. Thus the person who examines the cargo could also certify it at the same time.

These amendments, once passed, should assist the overall administration of the aviation security regime and are thus welcome. The amendment for the categorisation of airports will be important in enabling the balancing of security requirements with risk to an extent not currently possible, particularly at regional, rural and remote airports, thus avoiding unnecessary costs.

Australian Competition and Consumer Commission authorises cooperation, coordination and joint venture arrangements between the Virgin Blue group and Delta Air Lines on the trans-Pacific air services route between Australia and the US (ACCC Authorisations A91151,A91152,A91172 and A91173;10/12/09)

The ACCC has granted Authorisation pursuant to Sec 90 of the *Trade Practices Act 1974* to proposed arrangements between the Virgin Blue group of carriers and Delta airlines on the trans-Pacific route.

The arrangements for which authorisation was sought are comprehensive. The ACCC describes them as contemplating coordination and agreement between the applicants with regard to schedules, capacity and routes flown, passenger sales and marketing activities, pricing and revenue management, enhancement of frequent flyer and lounge program offerings and purchasing and procurement. Revenue pooling is also part of the arrangements, on the basis that it will be irrelevant which upon which airline a passenger travels.

As described the arrangements go very close to establishing the two airlines as a virtual single operator on the route.

The period of the authorisation is five and a half years. This reflects an increase from the three year authorisation originally proposed in the draft grant of authorisation. The coming into effect of the authorisation is conditional upon the grant of equivalent approval by the US Department of Transport. The increase from three years in the draft determination to five years in the final determination reflects the ACCC's view, on the basis of additional information provided by the carriers, that the promised benefits of the arrangements will be achieved and the likely timeframe of the US Department of Transport approval processes.

In granting authorisation on this occasion the ACCC is at pains to draw attention to the newness of both carriers' entry to the trans-Pacific air services market. It thus differentiates this application from the Air New Zealand and Air Canada application for the joint promotion and sale of flights between Sydney and Vancouver and Auckland and Vancouver which was recently refused, where 'one of the carriers' was an 'established carrier on the route'.

Amongst the benefits that the ACCC see as resulting from the grant of authorisation are:

New Zealand applies passenger safety levy to Australian airlines operating in New Zealand with ANZA AOC privileges. NZ Minister for Transport (Hon Steven Joyce) Press Release 3//11/09

The integration of the Australian and New Zealand domestic air services markets continues. That integration is substantially achieved via provisions in each country's Civil Aviation Act for the mutual recognition of Air Operator's Certificates (AOCs) issued with Australia New Zealand Aviation (ANZA) privileges.

Other legislation provides for the mutual recognition of professional qualifications, such as licences and certificates held by pilots and engineers. The latest move towards closer integration is the announcement on 3rd November by the New Zealand Minister for Transport (Hon Steven Joyce) that Australian airlines operating in New Zealand pursuant to ANZA privileges will pay the passenger safety levy. New Zealand covers the costs of safety regulatory oversight of airlines by their Civil Aviation Authority by means of a passenger levy.

The levy to be applicable to Australian airlines is set at 83% of the \$2.00 currently payable per passenger by New Zealand airlines, reflecting the fact that the issue of the carrier's AOC is undertaken by the Australian aviation safety regulator, the Civil Aviation Safety Authority (CASA). Thus passengers on such airlines will pay \$1.66 per sector in New Zealand from 4th December. CASA's costs are funded via fuel excise and direct appropriations in the government's budget

At this stage, only Jetstar is affected.

The announcement goes on to say that there is a possibility of similar issues arising in relation to international operations of ANZA airlines and that officials will advise if any further action is required in relation to those operators. Readers will recall that, as result of the meeting recently of the Australian and New Zealand Prime Ministers, it is expected that further changes with regard to passenger facilitation are expected to be announced in 2010 to assist the ongoing integration of the two countries' domestic markets.

Air NZ Pilot grievances resulting from their treatment in response to US Bans on pilots aged 60, since repealed, to be heard by NZ Employment Court: *New Zealand Employment Relations Authority: Decision (4/12/09)*

When FAA rules prohibited pilots aged over 60 flying in US airspace, Air New Zealand sought to rearrange their employment arrangements with pilots over that age to avoid them infringing the US rules. This effectively resulted in them no longer captaining B747 aircraft. This action, the airline believed, was within the scope of their pilot contract. The FAA revised its rule in 2006, once again allowing pilots aged over age 60 (but under 65) to operate in US air space.

Not surprisingly, the pilots thought differently about the operation of the contract, took the matter to the NZ Supreme Court and found their view upheld by the Employment Court, only to have it overturned by the Court of Appeal.

A number of pilots wish to continue to pursue this matter, with a view to challenging Air New Zealand's approach to this issue and have sought to again take it before the NZ Employment Court. The basis for the proceedings is that they are of the view that Air NZ should have found ways of enabling them to fly without entering US air space, and thus allowed them to retain their captaincies, and/or expeditiously returned them to their original status once the US rules were changed.

On 4th December the Employment Relations Authority decided that, given the questions of law involved, the matter could be heard by the NZ Employment Court.

WINE COLUMN

By David Were

The Christmas Season (or, if you must, the “Festive Season”) is a time of celebration, conviviality and recuperation. To me, apart from the observance of Christmas itself, this means a welcome break from an exhausting year and relaxation with family and friends, some of whom I will not have seen for a while. This creates lots of opportunities (if I needed any excuse) to open and enjoy some good “Champagne” and other summer wines.

First, there are the pre-Christmas celebrations – often a chance to catch up with friends; what better occasion for opening a bottle of Champagne or sparkling white? If your budget runs to vintage Champagne, that is, the true Champagne from the Champagne area of northern France, then good luck to you. But if your budget dictates a non-vintage Champagne (one that does not carry a specific vintage year and is sometimes a blend of several years), then I would strongly suggest purchasing a vintage Australian Champagne-style. These are the local sparkling wines which we used to call Champagne until the French prevented us from doing so. Some of the best of these come from Tasmania – Jansz, Arras, Bay of Fires and Clover Hill come to mind. Clover Hill Vintage Brut is one of my favourites, a beautiful wine with class and finesse. The base wine is aged in French oak, leading to bread and nutty characters; it is rich and full and supple, a beautiful blend of complex fruit flavours and a nice acidity, with a long refined finish. It is worth every cent of its \$38 – \$40 purchase price.

From the Yarra Valley, Domain Chandon makes an outstanding range of sparkling wines. Their top vintage wines are not cheap (\$26 - \$40), but they are outstanding. Try the Vintage Brut (always reliable), the Vintage Brut Rose, the Cuvee Tasmania (a new one and magnificent) or, if you like a slightly sweeter taste, the Cuvee Riche. My favourite is the Chandon ZD (which stands for zero dosage, meaning that none of the traditional dosage liqueur has been added during the process). The ZD Vintage Blanc de Blanc 2005 is a superb sparkling wine with a luscious creaminess on the palate and a very dry elegant finish. The ZD is now bottled with a crown seal rather than a Champagne cork, to eliminate any risk of cork taint; in spite of the crown seal, its silver and grey livery is truly elegant.

These Champagne-style wines are towards the more expensive end of Australian sparkling wines. Between \$15 and \$25, you should look for vintage bruts from Taltarni or Yarra Burn or the excellent non vintage sparklings from Brown Brothers of Milawa (the Pinot Noir/Chardonnay/Pinot Meunier blend) or Domain Chandon. Under \$15, the Seppelt Fleur de Lys and Hardy’s Sir James (the vintage edition of both) provide good value and enjoyable drinking.

On Christmas Day, if you indulge as I do in some good food and good wines, your aperitif will probably be one of the Champagne-style wines I have mentioned. With the main course, you might serve a red, depending on the weather, but think about some of the lighter styles of red. A magnificent rich Heathcote Shiraz may not be the best wine for a warm day, but consider a lighter Merlot or a Sangiovese or Tempranillo from Brown Brothers Milawa or Tahbilk or a number of vineyards in McLaren Vale. Wines made from those Spanish and Italian grape varieties offer a lighter style, often with some spicy flavours, more suited to an Australian summer than our traditional reds.

I like to offer a choice of red or white on Christmas Day, and I will be looking to Australian Rieslings. I have previously written of the magnificent aromatic Rieslings from South Australia, particularly from the Clare Valley and the Eden Valley (above the Barossa). From the Clare Valley, look for names like Skillogalee, Polish Hill River, Mitchell, Pike's, and many others. In the lower price bracket, and from the Barossa and Eden Valleys, Heggie's and Pewsey Vale are always good, reliable and good value.

Still in the aromatic style of white wine, Sauvignon Blanc can be a delight with the right food. I have written of my favourites from the Marlborough region of New Zealand – Lawson's Dry Hills, Huia, Isabel, Wither Hills and Oyster Bay. Most of these are flowery, fruit-filled drops which put some people off Sauvignon Blanc, though I love them. A more restrained, less flowery example of Marlborough Sauvignon Blanc is the Seresin, a truly wonderful white wine.

If you are feeling adventurous, and want an alternative to Riesling and Sauvignon Blanc, there is so much scope in some of the new varieties – Pinot Gris (the Alsace-style), Pinot Grigio (the same grape but the Italian style – less honey-flavoured and more austere) Verdelho, particularly from Western Australia, and so on. And then there are those three marvellous varieties from the Rhone Valley – Marsanne, Rousanne and Viognier (pronounced Vee-on-yay) which have done so well here. Tahbilk at Nagambie produces very pleasant white wines from all three of these, at fairly modest prices.

If your main course on Christmas Day is turkey (or any other poultry or indeed ham) an excellent wine to accompany that main course is a chilled sparkling red. Australia is making some magnificent dry sparkling red wines and these are far removed from some of the wines we used (in the 60s and 70s) to call Sparkling Burgundy. My particular favourite is the Methode Champenoise (sparkling) Shiraz from Anderson in Rutherglen. This magnificent sparkling red is big, rich, ripe and creamy, but quite dry. At \$29 a bottle from the winery, it is in fact excellent value. But you are unlikely to see it in the shops, and so you have to buy it from the vineyard.

Other excellent sparkling reds which are available in the shops include the very good Domain Chandon and Seppelt Original Sparkling Shiraz at around \$20. These are excellent, reliable and enjoyable wines which will enhance your Christmas turkey no end. They also drink very well on other occasions, and match very well a cold “market lunch” or similar over the Christmas and holiday season.

I will be sampling some of these styles over Christmas and January and I encourage you to experiment somewhat. Merry Christmas and happy drinking!

David Were is a Solicitor and a Consultant to the Practical Training Course at the Leo Cussen Institute in Melbourne.

NOTE OF APPRECIATION

On behalf of the Association I would like to thank James Kimpton for his work as editor of Aviation Briefs. James commenced as editor of Aviation Briefs in 2004 and for the last 5 years has provided editorial and content for Aviation Briefs ensuring that it has remained as the pre-eminent journal on developments in relation to aviation law in Australasia.

James will be attending the Association Conference in Canberra next year as a guest of the Association and I urge members attending the Conference to thank James personally for his efforts.

From 2010 Aviation Briefs will be edited by Dr Vernon Nase with assistance from Nick Humphrey from Norton White. Dr Vernon Nase is one of the leading aviation law academics in the region and is currently a senior lecturer at City University in Hong Kong. I am sure Vernon and Nick will maintain the high editorial standards for Aviation Briefs and I wish them all the best in their new roles.

All members are welcome to submit works for publication in Aviation briefs. It is an excellent forum and the Association very much relies on its members for its contents. Continued support from the members will ensure Aviation Briefs retains its pre-eminent position.

Ben Martin

President

Aviation Law Association of Australia and New Zealand