Comments on the RIA Issues Paper

One element of current RIA processes at the Commonwealth level that concerns the Department is the principle of applying RIA processes to activities that are fundamentally about opening up and removing regulatory burdens. In particular, this is evidenced by the application of RIA processes to the negotiation and implementation of international air services agreements. The negotiation and maintenance of air services arrangements, whether of treaty status or not, is a necessary activity of Government in order to facilitate the continuing operation of international air services within the framework of the Chicago Convention of 1944. As such, air services agreements are fundamentally enabling and facilitating in nature, creating new markets and permitting Australian businesses to operate and compete in the global environment.

Between 1999 and 2006, the Department implemented the Government's bilateral aviation agenda under a waiver from RIA processes provided by the then Office of Regulation Review (ORR) for this work. The then ORR had noted the negotiation of air services agreements was:

- conducted under a policy framework endorsed by Government,
- based (wherever possible) on standard template texts, and
- conducted with an extensive program of stakeholder engagement.

In 2006, the then ORR decided RIA was required at all stages of the negotiation and implementation of international air services agreements, thereby removing the previous waiver.

Since then, the Department has undertaken the necessary RIA, whenever required by OBPR processes. In the Department's view, the RIA activity undertaken has confirmed the minimal regulatory impost of bilateral air services agreements, as most initiatives have not progressed beyond preliminary impact assessment.

The 2009 Aviation White Paper, including the international policy settings that now set out the approach for Australia's international air services negotiation program, was subject to RIA processes. As a result, the benefits of the RIA process have been applied to the policy framework within which individual bilateral negotiations are conducted.

In the Department's view, given the enabling nature of air services arrangements, and given the endorsed policy framework, standardised texts and extensive stakeholder engagement utilised in undertaking this activity, subjecting the international air services negotiation process to RIA is unnecessary.

The Government's liberalisation policies have ensured capacity entitlements have remained well ahead of demand on most international routes, allowing airlines to make commercial decisions free from Government constraints. In addition, alterations to international air services arrangements do not change the regulatory requirements applied under Australian law by the Australian Government to international airline operations.

It is an important principle of such negotiations that any new arrangements concluded are always more liberal and more open than those they replace, and do not introduce additional constraints or regulatory burdens upon industry. Indeed, in recent years the Australian Government has achieved significant liberalisation of the international aviation environment. 'Open skies' agreements with New Zealand in 2002 and the United States of America in 2008, 'open capacity' arrangements with Singapore in 2003 and the United Kingdom in 2006, an 'open skies'-style agreement with Japan in 2011, ongoing progressive liberalisation with China on a path towards 'open skies', and significant opening-up of arrangements with numerous other markets have significantly increased the opportunities available to airlines and reduced the impact regulatory constraints on airlines' operations.