

**National Interest Analysis [2019] ATNIA 8**

**with attachment on consultation**

**Agreement between the Government of Australia and  
the Government of Papua New Guinea relating to Air Services**

(Port Moresby, 6 October 2017)

**[2019] ATNIF 8**

# NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

## SUMMARY PAGE

### Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services

(Port Moresby, 6 October 2017)

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#### Nature and timing of treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services*, done at Port Moresby on 6 October 2017 (the proposed Agreement).
2. Pursuant to **Article 21** (Entry into Force), the proposed Agreement will enter into force when the Parties have notified each other in writing through diplomatic channels that each Party has completed its respective requirements for the entry into force of the proposed Agreement. The Australian Government will provide its notification to the Government of Papua New Guinea as soon as practicable after consideration of the proposed Agreement by the Joint Standing Committee on Treaties (JSCOT).
3. The proposed Agreement will replace the existing treaty governing air services between Australia and Papua New Guinea – the *Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services*<sup>1</sup>, done at Canberra on 8 December 1980 – with an updated text that provides a modern binding legal framework to create opportunities for the airlines of Australia and Papua New Guinea to develop international air services between the two countries.
4. The text of the proposed Agreement has been applied by the two countries on an administrative, non-legally binding basis under the auspices of a Memorandum of Understanding (MoU) signed by the aeronautical authorities of Australia and Papua New Guinea on 19 May 2010. As such, the proposed Agreement has been observed by the aeronautical authorities of Australia and Papua New Guinea pending entry into force so as to allow airlines to operate in accordance with the proposed Agreement as soon as possible.

#### Overview and national interest summary

5. The key objective of the proposed Agreement is to provide a binding legal framework to support the operation of air services between Australia and Papua New Guinea.

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1 [1980] ATS 29

The proposed Agreement will facilitate trade and tourism between the two countries and will provide greater opportunities for airlines to develop expanded air travel options for consumers.

### **Reasons for Australia to take the treaty action**

6. The proposed Agreement grants access for Australian airlines to the Papua New Guinean aviation market and allows for the establishment of air services between the two countries. The proposed Agreement will enable carriers of Australia and Papua New Guinea to provide services between any point in Australia and any point in Papua New Guinea, based on capacity levels decided from time to time between the aeronautical authorities of the Parties.
7. Australian travellers and Australian businesses, particularly in the tourism and export industries, will potentially benefit from the proposed Agreement through the opening of increased commercial opportunities.

### **Obligations**

8. Australia and Papua New Guinea are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 (the Chicago Convention)<sup>2</sup>. The proposed Agreement was made in accordance with and pursuant to the Chicago Convention, which entered into force for Australia and generally on 4 April 1947.
9. The proposed Agreement is based on Australia's model air services agreement and obliges Australia and Papua New Guinea to allow the 'designated airlines' of each country to operate scheduled air services carrying passengers, baggage, cargo and mail between the two countries on specified routes in accordance with the provisions of the proposed Agreement. To facilitate these services, the proposed Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, competition laws, customs regulation and the commercial aspects of airline operations, including the ability to establish offices in the territory of each Party and to sell fares to the public.
10. **Article 2** (Designation, Authorisation and Revocation) allows each Party to designate any number of airlines to conduct international air transportation in accordance with the proposed Agreement. Either Party may refuse authorisation of an airline's operations or impose conditions as necessary if the airline fails to meet, or operate in accordance with, the conditions prescribed in the proposed Agreement, including with respect to the airline's incorporation, principal place of business, or if the airline fails to hold the necessary operating permits or meet the conditions the Party normally applies to the operation of international air transport.
11. Under **Article 3** (Grant of Rights), each Party grants the airlines of the other Party the right to fly across its territory without landing and to make stops in its territory for non-traffic purposes (such as refuelling). This Article also provides the right for designated airlines to operate on the routes specified in the Annex and to make stops in the Parties' territories for the purpose of taking on board and discharging

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2 [1957] ATS 5

passengers, cargo and mail. The Article also expressly states that it does not authorise airlines of one Party to carry purely domestic traffic (cabotage) within the territory of the other Party. The Article also provides that, except in respect of certain specified provisions, the provisions of the proposed Agreement also apply to non-scheduled international flights performed by airlines of each Party. If designated airlines of one Party are unable to operate services on normal routes due to armed conflict, political disturbances or developments, or special and unusual circumstances, the other Party shall use its best efforts to facilitate services through temporary rearrangements mutually decided by the Parties.

12. **Article 4** (Application of Laws) requires that a Party's airlines comply with the other Party's laws, regulations and rules relating to the operation and navigation of aircraft when they are entering, within or leaving the territory of that Party. Each Party's laws, regulations and rules relating to entry and exit of passengers, crew, baggage, cargo and aircraft (for example, regulations and rules on immigration, aviation security, customs and quarantine measures) apply when entering, within or leaving the territory of that Party. In applying their laws, the Parties are prevented from giving preference to their own or any other airline involved in similar international air transportation. This Article also provides that passengers, baggage and cargo in direct transit may be subject to aviation security, narcotics control and immigration checks. Baggage and cargo in direct transit shall be exempt from customs duties and other similar taxes.
13. Under **Article 5** (Recognition of Certificates) each Party is required to recognise certificates of airworthiness, competency and licences issued or rendered valid by the other Party, provided they are still in force and the requirements under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO).
14. Under **Article 6** (Safety), each Party may request consultations at any time concerning safety standards maintained by the other Party. Following such consultations, if one Party finds that the other does not effectively maintain and administer safety standards that are at least equal to the minimum standards established pursuant to the Chicago Convention, that Party shall notify the other of the corrective action required to be undertaken to conform with those minimum standards. The other Party shall then take appropriate corrective action. Each Party may, in its territory, arrange inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents and those of its crew and ensure that the condition of the aircraft and its equipment conform to ICAO standards. Each Party can also take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.
15. Under **Article 7** (Aviation Security), both Parties are required to protect the security of civil aviation against acts of unlawful interference and, in particular, to act in conformity with multilateral conventions relating to aviation security. Each Party shall upon request provide the other Party all necessary assistance to prevent unlawful acts against civil aircraft and threats to the security of civil aviation. Each Party shall require that operators of aircraft registered or having their principal place of business or permanent residence in their territory, and airport operators in their territory, act in conformity with aviation security provisions established by ICAO. Each Party must advise the other Party of any differences between its national regulations and the standards established by ICAO, and either Party may request consultations at any time

to discuss any differences. Parties shall ensure adequate measures are applied to protecting aircraft and inspecting passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. Each Party shall give positive consideration to any request from the other Party for reasonable special security measures to meet a particular threat. The Parties shall assist each other in the event of an incident or threat of an incident. Each Party's aeronautical authority may request, on sixty days' notice, to conduct a security assessment in the other Party's territory. Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay. This Article also provides that a Party may request immediate consultations if it has reasonable grounds to believe that the other Party has departed from the provisions of the Article. Failure to reach a satisfactory outcome through consultations can give rise to withholding, revoking, suspending or imposing conditions on airlines of the other Party. In an emergency interim measures can also be taken, which must be discontinued upon compliance.

16. **Article 8** (User Charges) requires each Party to use its best efforts to encourage those responsible for the provision of airport, airport environmental, air navigation, and aviation security facilities and services to levy charges on the designated airlines that are reasonable, non-discriminatory and equitably apportioned. Reasonable charges are those that reflect, but do not exceed, the full costs to the competent charging authorities of providing the facilities and services. For charges to be non-discriminatory, they should be levied on foreign airlines at a rate no higher than the rate imposed on a Party's own airlines operating similar international services. This Article also contain provisions addressing the exchange of information and consultations between charging bodies and airlines in relation to user charges imposed on airlines, and requires that reasonable notice be given of any proposal for changes in user charges.
17. **Article 9** (Statistics) provides that the aeronautical authorities of one Party may require a designated airline of the other Party to provide statistics related to the traffic carried on services performed under the proposed Agreement. The aeronautical authorities of each Party may determine the nature of the statistics required to be provided, and those requirements shall be applied on a non-discriminatory basis.
18. **Article 10** (Customs Duties and Other Charges) lists the equipment and stores used in the operation of international air transportation that the Parties are required to exempt from import restrictions, customs duties, excise taxes and similar fees and charges. This Article also provides for the customs laws of each Party to be observed in relation to the supervision, re-exportation and/or disposal of equipment and supplies.
19. **Article 11** (Tariffs) provides that each Party shall allow each airline to determine its own airfares. This Article also provides that if either aeronautical authority is dissatisfied with a tariff proposed or in effect for an airline of the other Party, either aeronautical authority may request to settle the matter through consultations.
20. Under **Article 12** (Capacity), both Parties are obliged to ensure that the designated airlines of each Party enjoy fair and equal opportunities to operate services in accordance with the proposed Agreement. The passenger and cargo capacity which may be provided by the designated airlines of each Party will be determined by the aeronautical authorities of the Parties before the commencement of such services, and

from time to time thereafter. That capacity was mutually decided in a non-legally binding MoU with Papua New Guinea signed on 19 May 2010.

21. **Article 13** (Commercial Opportunities) provides a framework for airlines of one Party to conduct business in the territory of the other Party. There are provisions for airlines to establish offices, sell and market air transport to the public, use the services and personnel of any organisation, convert and remit currency, and introduce their own staff for these purposes. This Article also provides that airlines are to receive equal and non-discriminatory access to airports and slots (aircraft movements at an airport).
22. **Article 14** (Intermodal Services) permits the designated airlines of each Party to use, in connection with the operation of the agreed services, any surface transport (for example, road or rail transport), making it possible for airlines to provide intermodal connections.
23. Under **Article 15** (Competition) the competition laws of each Party shall apply to the operation of airlines within the jurisdiction of each respective Party. The aeronautical authorities of either Party may give notice to enter consultations with the aeronautical authorities of the other Party if they believe that the airlines of either Party are being subjected to unfair competition practices in the territory of either Party. This Article also places obligations on the Parties as to how the consultations are to be conducted.
24. Under **Article 16** (Consultations), either Party may request consultations with the other Party at any time on the implementation, interpretation, application or amendment of the proposed Agreement.
25. **Article 18** (Settlement of Disputes) provides a process for dispute resolution on matters, other than those relating to tariffs or the application of domestic competition laws, which cannot be settled by consultation or negotiation. If the Parties fail to resolve any dispute by negotiation or (where agreed) mediation, then, at the request of either Party, the dispute will be submitted to arbitration. A three-person arbitral tribunal shall make a decision on the dispute, which is final and binding upon both Parties. Failure to comply with the award is grounds for one Party to limit, suspend or revoke the rights or privileges granted under the proposed Agreement to the other Party for the duration of the non-compliance.
26. Once the proposed Agreement and any subsequent amendment enters into force, it will be registered with ICAO, under **Article 20** (Registration with ICAO).
27. **Annex 1** of the proposed Agreement contains a **Route Schedule** which specifies the routes that may be operated by designated airlines, as well as operational provisions.
28. **Annex 2** contains a non-binding dispute settlement option for mediation, which is without prejudice to the continuing use of the consultation process, the subsequent use of arbitration, or termination of the proposed Agreement under Article 19.

## **Implementation**

29. The proposed Agreement will be implemented through existing legislation, including the *Air Navigation Act 1920* and the *Civil Aviation Act 1988*. The *International Air*

*Services Commission Act 1992* provides for the allocation of capacity to Australian airlines. No amendments to these Acts or any other legislation are required for the implementation of the proposed Agreement.

### **Costs**

30. No direct financial costs to the Australian Government are anticipated in the implementation of the proposed Agreement. There are no financial implications for State or Territory Governments.

### **Regulation Impact Statement**

31. The Office of Best Practice Regulation has advised the Department of Infrastructure, Regional Development and Cities that a Regulation Impact Statement is not required for bilateral air services agreements.

### **Future treaty action**

32. **Article 17** (Amendment of Agreement) provides that the proposed Agreement may be amended or revised by agreement in writing between the Parties. Any amendment to the proposed Agreement, including the Annexes, shall enter into force when the Parties have notified each other in writing that their requirements for entry into force of an amendment or revision have been met. This Article also provides that the proposed Agreement will be deemed to be amended so far as is necessary to comply with any multilateral air transportation convention that may come into force for both Parties.
33. Any amendment to the proposed Agreement would be subject to Australia's domestic treaty-making process, including consideration by JSCOT.

### **Withdrawal or denunciation**

34. **Article 19** (Termination) provides for termination of the proposed Agreement. Either Party may give notice in writing at any time to the other Party of its decision to terminate the proposed Agreement and must also simultaneously lodge a notice of termination with ICAO. The proposed Agreement shall terminate one year after the date of receipt of the notice of termination by the other Party, unless the notice is withdrawn by mutual decision of the Parties before the end of the termination period.
35. Termination of the proposed Agreement by Australia would be subject to Australia's domestic treaty-making process, including consideration by JSCOT.

### **Contact details**

Aviation Industry Policy Branch  
Aviation and Airports Division  
Department of Infrastructure, Regional Development and Cities

## **ATTACHMENT ON CONSULTATION**

### **Agreement between the Government of Australia and the Government of Papua New Guinea relating to Air Services**

(Port Moresby, 6 October 2017)

**[2019] ATNIA 4**

**[2019] ATNIF 8**

#### **CONSULTATION**

36. It is the practice ahead of negotiations of an air services agreement for the Department of Infrastructure, Regional Development and Cities to consult government and non-government bodies that may have an interest in the outcome of the negotiations and to take into account their views in developing a negotiating position for the Minister's approval.
37. Prior to the negotiation of the proposed Agreement, extensive consultations were held with industry and State and Territory Government agencies. The following stakeholders were advised by letter and/or email of the proposal to negotiate an agreement between Australia and Papua New Guinea and invited to comment on issues of importance to them (agency names are given as at the time of consultation):

#### **State Government Agencies**

- ACT Chief Minister's Department
- NSW Department of State and Regional Development
- NSW Department of Transport and Infrastructure
- South Australian Government Department for Transport, Energy and Infrastructure
- Victorian Government Department of Innovation, Industry and Regional Development
- Victorian Government Department of Infrastructure
- Victorian Government Department of Innovation, Industry and Regional Development
- Queensland Government Aviation Secretariat
- Queensland Transport
- Tasmania Government Department of Infrastructure, Energy and Resources
- Tourism New South Wales
- Tourism NT
- Tourism Queensland
- Tourism Tasmania
- Tourism Top End
- Tourism Western Australia
- Western Australian Government Department of Transport



## **Industry**

- Adelaide Airport Limited
  - Air Freight Council of NSW Inc
  - Australian Airports Association
  - Australian and International Pilots Association
  - Australian Capital Tourism
  - Australian Federation of Travel Agents
  - Australian Tourism Export Council
  - Australia's North West Tourism
  - Avalon Airport
  - Aviation Australia
  - Board of Airline Representatives of Australia
  - Brisbane Airport Corporation Ltd
  - Broom International Airport Holdings
  - Cairns Airport Pty Ltd
  - Canberra Airport
  - Chamber of Commerce Northern Territory
  - Melbourne Airport
  - National Jet Systems Pty Ltd
  - National Tourism Alliance
  - Newcastle Airport Ltd
  - Northern Territory Airports Pty Ltd
  - Overnight Airfreight Operators Association
  - Perth Airport
  - Qantas Airways Ltd
  - Queensland Airports Ltd
  - South Australian Freight Council
  - South Australian Tourism Commission
  - Sydney Airport Corporation Ltd
  - Tasmanian Freight Logistics Council
  - Tourism and Transport Forum
  - Townsville Airport
  - Townsville Enterprise
  - Tropical Tourism North Queensland
  - Virgin Blue
38. Comments were received from Qantas, Melbourne Airport, Southern Australia's Department for Transport, Energy and Infrastructure, and Tourism NT.
39. Stakeholders who provided comments supported the negotiation of a new air services agreement with Papua New Guinea to open market access for airlines in both countries.
40. The proposed Agreement was also included in the schedule of treaties provided to the Commonwealth-State-Territory Standing Committee on Treaties.