National Interest Analysis [2013] ATNIA 5

with attachment on consultation

Agreement between the Government of Australia and the Government of Solomon Islands relating to Air Services (Canberra, 21 August 2012)

[2012] ATNIF 16

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between
the Government of Australia and the Government of Solomon Islands
relating to Air Services
(Canberra, 21 August 2012)
[2012] ATNIF 16

Nature and timing of proposed treaty action

1. The proposed treaty action is to bring into force the *Agreement between the Government of Australia and the Government of Solomon Islands relating to Air Services*, done at Canberra on 21 August 2012 (the proposed Agreement).

2. Pursuant to its Article 21, the proposed Agreement will enter into force when the Parties have notified each other in writing that their respective requirements for its entry into force have been satisfied. The Australian Government will provide its notification to the Government of Solomon Islands (Solomon Islands) as soon as practicable after the conclusion of the tabling process and receipt of recommendations from the Joint Standing Committee on Treaties (JSCOT).

3. The proposed Agreement will establish for the first time a treaty level air services relationship between Australia and Solomon Islands. It will allow the airlines of Australia and Solomon Islands to develop international air services between the two countries.

4. The text of the proposed Agreement was settled in February 2011. The proposed Agreement was preceded by aviation arrangements of less than treaty status, in the form of a memorandum of understanding (MOU) signed in 1998. In accordance with established Australian and international practice, the MOU applies the provisions of the proposed Agreement on a provisional, non-legally binding basis until the proposed Agreement enters into force.

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 Solomon Islands. 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 Solomon Islands aviation market and allows for the operation of air services between the two countries. The proposed Agreement will enable Australian and Solomon Islands carriers to provide services between any point in Australia and any point in Solomon Islands, based on capacity levels decided from time to time between the aeronautical authorities of both Parties.

7. Australian travellers and Australian businesses, including in the tourism and export industries, could potentially benefit from the proposed Agreement through the opening up of increased commercial opportunities.

Obligations

8. Australia and Solomon Islands are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 ([1957] ATS 5) (the Chicago Convention). 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 the aeronautical authorities of Australia and Solomon Islands to allow the 'designated airlines' of each Party to operate scheduled air services carrying passengers, 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, customs regulation, competition laws 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. Under Article 2 of the proposed Agreement, each Party may designate any number of airlines to operate the services provided for under the proposed Agreement. On receipt of such a designation, and an application from a designated airline for operating authorisations, the other Party must grant the appropriate authorisations provided that the airline being designated complies with the conditions for incorporation and principal place of business set out in the proposed Agreement, holds the necessary operating permits and meets the conditions the Party normally applies to the operation of international air transport (Article 2(2)). It is also a condition of granting an authorisation to a designated airline that the Party designating the airline complies with the safety and security provisions of the proposed Agreement. In the event of any non-compliance with the terms of Article 2(2), or if the airline otherwise fails to operate in accordance with the conditions set out in the proposed Agreement, the other Party may withhold, suspend or limit that airline's authorisations.

11. Under Article 3 of the proposed Agreement, 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). Article 3 also provides the right for designated airlines to operate on the routes specified in Annex 1 of the proposed Agreement for the purpose of taking on board and discharging passengers, cargo and mail. This Article also precludes designated airlines from carrying purely domestic traffic (cabotage) within the territory of the other Party.

12. Article 4 of the proposed Agreement confirms that each Party's domestic laws and regulations relating to the operation and navigation of aircraft apply to the designated airlines when they are entering, within or leaving the territory of that Party. Each Party's laws and regulations relating to entry and exit (for example, immigration, aviation security, customs and quarantine) must be complied with in the territory of that Party. This Article prevents either Party giving preference to any airline – including its own designated airlines – in applying any such laws. It 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, each Party is required to recognise certificates of airworthiness, competency and licences issued or rendered valid by the other Party, provided the standards under which such documents were issued conform to the standards established by the International Civil Aviation Organization (ICAO). Each Party can, however, refuse to recognise certificates and licences held by its own nationals or airlines that have been issued by the other Party. The Article also provides for consultations between aeronautical authorities if the privileges or conditions of the licences or certificates permit a difference from the minimum standards established under the Chicago Convention.

14. Under Article 6, either Party may request consultations with the other Party at any time concerning the safety standards maintained by the other Party. If required, the other Party shall be informed of the corrective action required to be undertaken to comply with the minimum standards pursuant to the Chicago Convention. Article 6 also provides that each Party may, in its territory, undertake 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 aircraft equipment and the condition of the aircraft conform to ICAO standards. Each Party can take immediate action essential to ensure the safety of an airline operation if they consider such action to be necessary. If access for the purpose of conducting an aircraft inspection is denied by an airline, the inspecting Party may infer serious concerns and shall be free to conclude that the other Party does not meet minimum ICAO safety standards.

15. Under Article 7, 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 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. A Party may require the designated airlines of the other Party to observe the first Party's aviation security provisions for entry into, departure from or while within the territory of that Party, and shall ensure that adequate measures are applied to protect the aircraft and to inspect passengers, crew, carry-on items, baggage, cargo and aircraft stores prior to and during boarding or loading. The Parties shall assist each other in the event of an incident or threat of an incident. Each aeronautical authority may request 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.

16. Article 8 provides that each Party shall encourage those responsible for airport, airport environmental, air navigation and aviation security facilities and services to not levy charges that are unreasonable, inequitable or discriminatory.

17. Article 9 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.

18. Article 10 lists the equipment and stores used in the operation of the agreed services that the Parties are required, in accordance with accepted international practice, to exempt from customs duties, excise taxes, inspection fees and other related charges. This Article also provides that the customs laws of each Party are to be observed in relation to the supervision, re-exportation and/or disposal of equipment and supplies.

19. Article 11 allows the designated airlines of each Party to set their own fares.

20. Under Article 12, both Parties are obliged to ensure that the designated airlines of each Party receive fair and equal opportunity 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 from time to time. That capacity was settled in an MOU signed in February 2011. These capacity arrangements are intended to remain in effect once the proposed Agreement enters into force.

21. Article 13 provides a framework for airlines of one Party to conduct business in the territory of the other Party. There are provisions for designated 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 the purposes of the above. This Article also provides designated airlines with such commercial entitlements as the right to enter into cooperative marketing arrangements, operate with leased aircraft and crew, and to receive equal and non-discriminatory access to airports and slots (aircraft movements at an airport).

22. Article 14 permits the designated airlines of each Party to use, in connection with international air transport, any surface transport (for example, road or rail transport) within the territories of each Party or third countries, making it possible for airlines to provide ‘intermodal’ connections.

23. Article 15 confirms that each Party’s competition laws apply to the operations of designated airlines within their respective jurisdictions. Either Party may request consultations with the other Party in the event of alleged discrimination or unfair practices in the territory of either Party. When undertaking consultations, both Parties are required to coordinate their actions with the relevant authorities, consider alternative options and take into account the views and international obligations of the other Party. This Article does not preclude unilateral action by the airlines or the competition authorities of either Party.

24. Under Article 16, 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 provides a process for dispute resolution on matters, other than those relating to air fares or the application of domestic competition laws, which cannot be settled by consultation, negotiations or mediation. A three-person arbitral tribunal shall hear the dispute and provide a written award which is final and binding upon both Parties. Failure to

comply with the award is grounds for one Party to suspend or revoke the rights granted under the proposed Agreement to the other Party for the duration of the non-compliance.

26. Annex 1 contains a route schedule which specifies the routes that may be operated by designated airlines, as well as operational provisions.

27. Annex 2 contains a non-binding option for mediation, as an alternative to undertaking dispute resolution procedures. The mediation process is without prejudice to the continuing use of the mechanism for consultations, arbitration and termination.

Implementation

28. 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

29. 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

30. The Office of Best Practice Regulation has been consulted and confirmed that a Regulation Impact Statement is not required.

Future treaty action

31. Article 17 provides that the proposed Agreement may be amended or revised by agreement in writing between the Parties. It provides that any amendment to the proposed Agreement shall enter into force when the two Parties have notified each other in writing that they have completed their domestic procedures for entry into force of the amendments. Article 17 also provides that the proposed Agreement will be deemed to be amended so far as is necessary to comply with any multilateral agreement relating to air transportation entering into force for both Parties.

32. Any amendment to the proposed Agreement would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT.

Withdrawal or denunciation

33. Article 19 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 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.

34. Any termination of the proposed Agreement by Australia would be subject to Australia's domestic treaty-making process, including tabling in Parliament and consideration by JSCOT.

Contact details

Aviation Industry Policy Branch
Aviation and Airports Business Division
Department of Infrastructure and Transport

ATTACHMENT ON CONSULTATION

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CONSULTATION

35. It is the practice ahead of negotiation of an air services agreement for the Department of Infrastructure and Transport 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.

36. Prior to the negotiation of the proposed Agreement, extensive consultations were held with industry and Commonwealth 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 Solomon Islands and invited to comment on issues of importance to them:

Commonwealth Government Agencies

- Attorney-General's Department
- Australian Quarantine and Inspection Service
- Austrade
- Civil Aviation Safety Authority
- Australian Customs and Border Protection Service
- Department of Foreign Affairs and Trade
- Department of Immigration and Citizenship
- Department of Resources, Energy and Tourism
- Department of Industry, Innovation, Science and Research
- Department of Prime Minister and Cabinet
- International Air Services Commission
- Treasury

State/Local Government Agencies

- NSW Department of Premier and Cabinet
- NSW Transport and Infrastructure
- South Australian Government Department for Transport, Energy & Infrastructure
- South Australian Government Department of Trade and Economic Development
- Victorian Government Department of Innovation, Industry and Regional Development
- Victorian Government Department of Transport
- Tourism New South Wales
- Tourism North Queensland
- Tourism NT

- Tourism Queensland
- Tourism Tasmania
- Tourism Victoria
- Tourism Western Australia

Industry

- Adelaide Airport Limited
- Australian Airports Association
- Australian Capital Tourism
- Australian Tourism Export Council
- Aviation Australia
- Board of Airline Representatives of Australia
- Brisbane Airport Corporation Ltd
- Cairns Airport
- Canberra International Airport
- Chamber of Commerce Northern Territory
- Flinders Ports
- Melbourne Airport
- Newcastle Airport Ltd
- Northern Territory Airports Pty Ltd
- Perth Airport
- Qantas Airways Ltd
- Queensland Airports Ltd
- Sydney Airport Corporation Ltd
- Tasmanian Chamber of Commerce and Industry
- Tourism and Transport Forum
- Tourism Top End
- Transport Workers Union
- Tropical Tourism North Queensland
- Virgin Blue
- Westralia Airports Corporation Pty Ltd

37. Comments were received from Qantas, Virgin Blue, the Department of Resources, Energy and Tourism, and the South Australian Government.

38. Stakeholders who provided comments supported the negotiation of new air services arrangements with Solomon Islands to liberalise market access for airlines of both countries.

39. Comments regarding technical details of the proposed Agreement were received from a number of Commonwealth agencies. These agencies cleared the text of the proposed Agreement prior to its approval by the Federal Executive Council.

40. The proposed Agreement was foreshadowed in the schedule of treaties provided to the Commonwealth-State/Territory Standing Committee on Treaties in September 2010 and in subsequent years.

41. The proposed Agreement was approved for signature by the Federal Executive Council on 30 June 2011.