

# Air Service Agreements with Serbia and Vanuatu

## Introduction

- 2.1 This Chapter discusses two bilateral Air Services Agreements:
- the *Air Services Agreement between the Government of Australia and the Government of the Republic of Serbia* (the Serbia Agreement);<sup>1</sup> and
  - the *Agreement between the Government of Australia and the Government of the Republic of Vanuatu relating to Air Services* (the Vanuatu Agreement).<sup>2</sup>
- 2.2 Air Service Agreements permit the operation and development of international air services between countries. Under the *Convention on International Civil Aviation* of 1944 (the Chicago Convention), which provides the overarching framework for international civil aviation, international airlines cannot operate between two countries without those countries having negotiated a bilateral Air Services Agreement.<sup>3</sup>
- 2.3 The Air Service Agreements under consideration here are based on an Australian model Air Services Agreement.<sup>4</sup> The Australian model Air Services Agreement was developed by a predecessor of the Commonwealth Department of Infrastructure and Regional Development

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1 National Interest Analysis [2013] ATNIA 15 *Air Services Agreement between the Government of Australia and the Government of the Republic of Serbia done at Belgrade, 14 May 2013* [2013] ATNIF 13 (hereafter referred to as the 'Serbia NIA'), para 1.

2 National Interest Analysis [2013] ATNIA 20 *Agreement between the Government of Australia and the Government of Vanuatu relating to Air Services done at Port Vila, 2 July 2013*, [2013]ATNIF 20 (hereafter referred to as the 'Vanuatu NIA'), para 1.

3 Joint Standing Committee on Treaties, *Report 133*, Tabled 27 May 2013, p. 6.

4 See for example Serbia NIA, para 10.

- in consultation with the aviation industry and other Government Agencies.<sup>5</sup>
- 2.4 Treaty level Air Services Agreements are supplemented by arrangements of less than treaty status between aeronautical authorities. These arrangements relate to the scope of airlines' operations under an Agreement.<sup>6</sup>
- 2.5 As is standard practice with Air Service Agreements made by Australia, the arrangements contained in these proposed Agreements are being applied through non-legally binding Memoranda of Understanding (MOU) until the proposed Agreements are given force. This means that the arrangements in the Agreements have already been in place for some time.<sup>7</sup>
- 2.6 The two Agreements are being considered together because, with some minor exceptions, the Agreements contain the same provisions.
- 2.7 The proposed Serbian Agreement replaces an earlier Agreement with the Republic of Yugoslavia that was terminated following the breakup of Yugoslavia.<sup>8</sup> The preceding MOU was signed in September 2011, and applied the provisions of the proposed Agreement on an administrative, non-legally binding basis until the Agreement enters into force.<sup>9</sup>
- 2.8 The proposed Vanuatu Agreement replaces a 1993 Agreement.<sup>10</sup>

## Overview and national interest summary

- 2.9 The objective of the proposed Air Services Agreements is to provide a binding legal framework to support the operation of air services between Australia and Serbia and Australia and Vanuatu. According to the National Interest Analyses (NIAs), they will facilitate trade and tourism between the Parties and will provide greater opportunities for airlines to develop expanded air travel options for consumers.<sup>11</sup>

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5 Mr Gilon Smith, Acting Director, Air Services Negotiation Section, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Regional Development, *Committee Hansard*, 10 February 2014, p. 1.

6 Mr Smith, Department of Infrastructure and Regional Development, *Committee Hansard*, 10 February 2014, p. 1.

7 Joint Standing Committee on Treaties, *Report 133*, Tabled 27 May 2013, p. 6.

8 Serbia NIA, para 3.

9 Serbia NIA, para 4.

10 Serbia NIA, para 3.

11 Serbia NIA, para 6 and Vanuatu NIA, para 5.

## Reasons for Australia to take the proposed treaty action

- 2.10 Both proposed Agreements grant access for Australian airlines to the respective aviation markets of Serbia and Vanuatu and grant access to Australia for Serbian and Vanuatu based airlines. The proposed Agreements will enable carriers to provide services between any point in Australia and any point in Serbia or Vanuatu, based on capacity levels decided from time to time between the aeronautical authorities of the Parties.<sup>12</sup>
- 2.11 According to the NIAs, Australian travellers and Australian businesses, particularly in the tourism and export industries, could potentially benefit from the proposed Agreements through the opening of increased commercial opportunities.<sup>13</sup>

## Obligations

- 2.12 The proposed Agreements allow the ‘designated airlines’<sup>14</sup> of each Party to operate scheduled air services carrying passengers, baggage, cargo and mail between the Parties on specified routes in accordance with the provisions of the Agreement. To facilitate these services, the proposed Agreements also include 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.<sup>15</sup>
- 2.13 The proposed Agreements contain a number of similar provisions. In relation to airline traffic between the Parties:
- the designated airlines of each Party have the right to fly across each Party’s territory without landing and to make stops in its territory for non-traffic reasons (such as refuelling);
  - designated airlines have the right to operate on the routes specified for the purpose of taking on board and discharging passengers, cargo and mail;

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12 Serbia NIA, para 7 and Vanuatu NIA, para 6.

13 Serbia NIA, para 8 and Vanuatu NIA, para 7.

14 The airlines authorised to operate under an Agreement by Parties to the Agreement.

15 Serbia NIA, para 10.

- designated airlines are precluded from carrying purely domestic traffic within the territory of the other Party;<sup>16</sup>
  - a Party's designated airlines can be required to provide statistics related to the traffic carried on services performed under the proposed Agreement;<sup>17</sup> and
  - both Parties are to ensure that the designated airlines of each Party receive fair and equal opportunity to operate services in accordance with the proposed Agreement.<sup>18</sup>
- 2.14 Each Party can designate any number of airlines to operate the agreed services. 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.<sup>19</sup>
- 2.15 The aeronautical authorities of either Party may revoke authorisation of an airline's operations or suspend an airline's rights if the airline fails to operate in accordance with the proposed Agreement. Circumstances under which an airline might have its authorisation revoked or its operations suspended include changes to its principal place of business, its establishment, ownership or control.<sup>20</sup>
- 2.16 Each Party's domestic laws and regulations concerning aviation and competition apply to the designated airlines while their aircraft are in the territory of that Party.<sup>21</sup>
- 2.17 In addition, each Party must ensure the security of civil aviation against acts of unlawful interference. In particular, each Party must comply with multilateral conventions on aviation security.<sup>22</sup>
- 2.18 Certificates of airworthiness, certificates of competency and licences issued or rendered valid by a Party must be recognised by the other Party, provided the standards under which such documents were issued conforms to the standards established by the International Civil Aviation Organisation (ICAO).<sup>23</sup>

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16 Serbia NIA, paras 11 and 12; and Vanuatu NIA, paras 10 and 11.

17 Serbia NIA, para 19, and Vanuatu NIA, para 17.

18 Serbia NIA, para 22 and Vanuatu NIA, para 16.

19 Serbia NIA, para 12.

20 Serbia NIA, para 13.

21 Serbia NIA, paras 14 and 21; and Vanuatu NIA, paras 12 and 23.

22 Serbia NIA, para 17 and Vanuatu NIA, para 15.

23 Serbia NIA, para 15 and Vanuatu NIA, para 13.

- 2.19 The ICAO was formed under the Chicago Convention to develop international standards and recommended practices which are used by States when negotiating bilateral air services agreements.<sup>24</sup>
- 2.20 In relation to the operation of designated airlines, the proposed Agreements:
- provide a framework for airlines of one Party to conduct business in the territory of the other Party;<sup>25</sup>
  - exempt from import restrictions, customs duties, excise taxes and similar fees and charges the equipment and stores used in the operation of the agreed services;<sup>26</sup> and
  - permits the designated airlines of each Party to use any surface transport within the territories of each Party or third countries to provide connections to flights.<sup>27</sup>
- 2.21 The proposed Agreements also provide for consultation and dispute resolution between the Parties on safety standards;<sup>28</sup> the implementation, interpretation, application or amendment of the Agreements;<sup>29</sup> and the settlement of disputes that do not relate to the domestic competition laws of the Parties.<sup>30</sup>
- 2.22 To date, Australia has not initiated a consultation process with either Serbia or Vanuatu in relation to air services.<sup>31</sup>
- 2.23 Each proposed Agreement contains an Annex that lists route schedules that may be operated by designated airlines, as well as operational provisions.<sup>32</sup>

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24 International Civil Aviation Organisation, 'About ICAO,' <<http://www.icao.int/about-icao/Pages/default.aspx>>, accessed 26 February 2014.

25 Serbia NIA, para 23 and Vanuatu NIA, para 21.

26 Serbia NIA, para 20 and Vanuatu NIA, para 18.

27 Serbia NIA, para 24 and Vanuatu NIA, para 22.

28 Serbia NIA, para 16 and Vanuatu NIA, para 14.

29 Serbia NIA, para 26 and Vanuatu NIA, para 24.

30 Serbia NIA, para 28 and Vanuatu NIA, para 25.

31 Department of Infrastructure and Regional Development, *Submission 1*, p. 2.

32 Serbia NIA, para 29.

## Aviation safety

### Ramp inspections

- 2.24 Articles 6 of the Vanuatu Agreement and 7 of the Serbia Agreement detail the air safety provisions that apply to designated airlines from either Party. Amongst other things, the Articles will permit the Parties to these Agreements to conduct, within their own territories, safety examinations (called 'ramp inspections') on aircraft owned, operated or leased by the airlines.<sup>33</sup>
- 2.25 In other words, the Civil Aviation Safety Authority (CASA) will be entitled to undertake ramp inspections of aircraft from Vanuatu and Serbia when those aircraft are on the ground in Australia. According to the relevant Articles:
- The purpose of the examination is to check both the validity of the aircraft documents and those of its crew and the apparent condition of the aircraft and its equipment ...<sup>34</sup>
- 2.26 If a ramp inspection identifies that the aircraft or the operation of the aircraft does not meet the required safety standard, or that the maintenance or administration of safety standards has been deficient in relation to the aircraft, the operation of the inspected aircraft and possibly also the operation of other aircraft by the same airline will be able to be suspended.<sup>35</sup>

### Deviation from the International Civil Aviation Organisation standards

- 2.27 Article 38 of the Chicago Convention requires a Party to notify the ICAO when it finds it impractical to comply in all respects with international standards and practices, and when it is unable to change its standards and practices to comply with standards and practices revised by the ICAO.<sup>36</sup>
- 2.28 Both Serbia and Vanuatu have formally notified the ICAO of differences with the ICAO standards. The Department of Infrastructure and Regional Development advised that Serbia has lodged 183 substantive differences and Vanuatu has lodged 82 substantive differences with the ICAO.<sup>37</sup>
- 2.29 According to the Department, substantive differences can involve a State being deficient in an ICAO Standard, meeting an ICAO Standard using a

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33 See for example the Vanuatu Air Services Agreement, Article 6.

34 Vanuatu Air Services Agreement, Article 6.

35 See for example the Serbia Air Services Agreement, Article 7.

36 *Convention on International Civil Aviation* (Chicago, 1944), 2006, Ninth Edition, Article 38.

37 Department of Infrastructure and Regional Development, *Submission 1*, p. 2.

method different to that stated in the Standard, or exceeding an ICAO Standard.<sup>38</sup>

- 2.30 The Department analysed the substantive differences notified by Serbia and Vanuatu and advised the Committee that, in the case of Serbia, 84 of the substantive differences involved exceeding the ICAO Standards, 58 involved meeting the relevant Standard by another means, and 41 involved being deficient in relation to the relevant Standard.<sup>39</sup>
- 2.31 Vanuatu exceeded two of the ICAO Standards, complied with 71 Standards by a different method, and was deficient in relation to nine of the Standards.<sup>40</sup>
- 2.32 The Department noted:
- The majority of differences notified by most countries are those where the ICAO standards and recommended practice is not applicable. An example for both Australia and Vanuatu would be those standards relating to snow-clearing activities at airports.<sup>41</sup>
- 2.33 In a later submission, the Department noted that differences to ICAO Standards were not considered when Air Services Agreements were being negotiated. The Department advised that:
- Air services arrangements provide an economic framework in which airlines can consider serving a market. Differences lodged by States, among other more pertinent kinds of safety-related information, may be taken into account by the Civil Aviation Safety Authority in the assessment of applications for the operation of foreign aircraft into and out of Australia.<sup>42</sup>
- 2.34 The Committee considers that, while the Agreements are principally about opening markets, the preamble to each Agreement includes the following statement:
- ... Desiring to ensure the highest degree of safety and security in international air transport and reaffirming their grave concern about acts or threats against the security of aircraft, which jeopardise the safety of persons or property, adversely affect the operation of air transport, and undermine public confidence in the safety of civil aviation; ...<sup>43</sup>

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38 Department of Infrastructure and Regional Development, *Submission 1.1*, p. 1.

39 Department of Infrastructure and Regional Development, *Submission 1.1*, p. 1.

40 Department of Infrastructure and Regional Development, *Submission 1.1*, p. 1.

41 Department of Infrastructure and Regional Development, *Submission 1.1*, p. 2.

42 Department of Infrastructure and Regional Development, *Submission 1.2*, p. 1.

43 See for example the Serbia Air Services Agreement, preamble.

- 2.35 The Committee also notes that the Agreements themselves contain a significant number of Articles that either directly or indirectly relate to safety.
- 2.36 The Committee considers that it would be imprudent if the Department's negotiators did not at least make themselves aware of the differences notified to the ICAO by States with which they are negotiating. The Committee suggests that, as part of the negotiation process of future Air Services Agreements, the Department's negotiators consult with CASA in order to determine if any of the differences notified by the State with which they are negotiating may pose a safety risk for Australian travellers.

## Fuel policy

- 2.37 In November 2009, a charter aircraft flying from Samoa to Norfolk Island was forced to ditch off Norfolk Island as a result of running out of fuel after being unable to land because of poor weather conditions.<sup>44</sup>
- 2.38 The Australian Transport Safety Board (ATSB) found, amongst other things, that the operator of the aircraft had managed fuel planning and risk in a manner consistent with the required regulations, but that the regulations governing fuel planning to remote islands were too general and risked inconsistent decisions on in-flight fuel management and diversion.<sup>45</sup>
- 2.39 During the investigation, CASA undertook a review of the relevant regulations and proposed the following changes:
- designating Cocos (Keeling) Island as a 'remote island';
  - removing the provision that allowed an operator not to carry fuel for diversion to an alternate airport;
  - amending the definition of 'minimum safe fuel' to require the calculation of fuel for diversion to an alternate airport in the event of a loss of pressurisation coupled with the failure of an engine;
  - requiring a pilot flying to a remote island to nominate an alternate airport in the event of a diversion;
  - extending the requirement to carry fuel for diversion to an alternate airport on flights to remote islands to all passenger carrying and regular public transport flights; and

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44 Australian Transport Safety Board (ATSB), *ATSB Transport Safety Report, Aviation Occurrence Investigation AO-2009-72*, pp. 10–11.

45 ATSB, *ATSB Transport Safety Report, Aviation Occurrence Investigation AO-2009-72*, p. 43.

- allowing for CASA to permit an operator not to comply with these regulations subject to conditions that would not adversely affect safety.<sup>46</sup>
- 2.40 The Norfolk Island incident was followed by another low fuel incident in June 2013, when two passenger aircraft bound for Adelaide were diverted to Mildura due to poor weather in Adelaide. Poor weather in Mildura, which had not been forecast, combined with the aircraft having insufficient fuel to divert to another airport, caused the pilots of the aircraft to land at Mildura under conditions that breached Civil Aviation Regulations.<sup>47</sup>
- 2.41 The ATSB investigation of this incident was not complete at the time this Report was drafted.
- 2.42 Further, in 2012, the ICAO amended the Annex to the Chicago Convention relevant to in-flight fuel management (Annex 6 Part I) to improve: the definition of a minimum fuel emergency; and procedures for protecting final fuel reserves. In particular, the operator and pilot-in-command of an aircraft are required to continually ensure that the amount of usable fuel remaining on board is not less than the fuel needed to proceed to an airport where a safe landing can be made with the planned final reserve fuel remaining upon landing.<sup>48</sup>
- 2.43 To deal with the issues arising from these events, CASA has initiated a project to implement new regulations relating to fuel management. The project proposes to:
- in light of the ICAO amendments, amend regulations on fuel and operational requirements, including provisions for diversion to an alternate airport for flights to isolated airports;
  - expand the relevant regulations to provide guidance to pilots on when and under what circumstances to consider a diversion;
  - change the regulations on fuel planning, in-flight fuel management, and the selection of alternate airport to include the methods by which pilots and operators calculate fuel required and fuel on board;

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46 Civil Aviation Safety Authority (CASA), *Notice of Proposed Rule Making, Carriage of Fuel on Flights to a Remote Island, July 2010*, p. 10.

47 ATSB, *ATSB Transport Safety Report, Aviation Occurrence Investigation, Weather related operational event involving Boeing 737s VH-YIR and VH-VYK, Mildura Airport, Victoria on 18 June 2013 AO-2013-100, Interim Report*, pp. 4–8.

48 International Federation of Airline Pilots' Association, 'Air Traffic Services Briefing Leaflet: ICAO Changes for Minimum and Emergency Fuel,' published 10 October 2012 <<http://www.ifalpa.org/downloads/Level1/Briefing%20Leaflets/Air%20Traffic%20Services/13ATSBL01%20-%20ICAO%20changes%20for%20minimum%20and%20emergency%20fuel.pdf>>, accessed 7 March 2014.

- specify that the pilot-in-command or the operator, must take reasonable steps to ensure sufficient fuel and oil will be carried to undertake and continue the flight in safety;
  - require consideration of a 'critical fuel scenario' taking into account an aeroplane system failure or malfunction which could adversely affect flight safety;
  - publish internal and external educational material along with conducting briefings where necessary.<sup>49</sup>
- 2.44 According to the CASA website, this project is not yet complete.<sup>50</sup> The Committee notes that the regulatory changes proposed as part of this Project have a direct bearing on flights between Australia and Vanuatu.
- 2.45 The Committee is of the view that the establishment or renewal of Air Service agreements should be a trigger for CASA to undertake a due-diligence review of the status of compliance (including filing of differences with ICAO) with new or revised safety-critical regulations such as those outlined in para 2.42. This review should be completed as part of CASA's input to the evaluation of new or renewed Air Services Agreements and the documented outcomes included in the Department's evidence to the Joint Standing Committee on Treaties.

## Implementation

- 2.46 The proposed Agreements 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 Agreements.<sup>51</sup>

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49 CASA, *Project OS 09/13 Fuel and Alternate Requirements*, <  
[http://www.casa.gov.au/scripts/nc.dll?WCMS:PWA::pc=PC\\_93397](http://www.casa.gov.au/scripts/nc.dll?WCMS:PWA::pc=PC_93397)>, accessed 7 March 2014.

50 The project is listed under 'Active Projects'.

51 Serbia NIA, para 30 and Vanuatu NIA, para 28.

## Costs

- 2.47 No direct financial costs to the Australian Government are anticipated in the implementation of these proposed Agreements. There are no financial implications for State or Territory Governments.<sup>52</sup>

## Conclusion

- 2.48 Noting the Committee's statements in relation to differences notified by the bilateral signatories to ICAO Standards, and in relation to fuel management on passenger flights to isolated airports, the Committee supports the Air Services Agreements with Serbia and Vanuatu.

### Recommendation 1

**The Committee supports the *Air Services Agreement between the Government of Australia and the Government of the Republic of Serbia* and the *Agreement between the Government of Australia and the Government of the Republic of Vanuatu relating to Air Services*, and recommends that binding treaty action be taken.**

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<sup>52</sup> Serbia NIA, para 31 and Vanuatu NIA, para 29.

