

# Agreement between the Government of Australia and the Government of the Republic of Croatia relating to Air Services

## Introduction

- 3.1 This Chapter discusses the bilateral *Agreement between the Government of Australia and the Government of the Republic of Croatia relating to Air Services*.<sup>1</sup>
- 3.2 Air Services Agreements permit the operation and development of international air services between countries. Under the 1944 *Convention on International Civil Aviation* (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>2</sup>
- 3.3 The Air Services Agreement under consideration here is based on an Australian model Air Services Agreement.<sup>3</sup> The Australian model Air Services Agreement was developed by a predecessor of the Australian Government Department of Infrastructure and Regional Development in consultation with the aviation industry and other Government agencies.
- 3.4 According to the Department of Infrastructure and Regional Development, the Agreement framework is working well and has been

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1 National Interest Analysis [2013] ATNIA 15 *Agreement between the Government of Australia and the Government of the Republic of Croatia relating to Air Services done at Zagreb, 4 September 2013*, [2013] ATNIF 23 (hereafter referred to as 'NIA'), para 1.

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

3 NIA, para 10.

serving Australian and foreign airlines that operate in Australia, including associated industries.<sup>4</sup>

- 3.5 Until the proposed Agreement is given force, as is standard practice with Air Services Agreements made by Australia, arrangements contained in the proposed Agreement are being applied through non-legally binding Memorandum of Understanding (MOU). This means that the arrangements in the Agreement have already been in place for some time.<sup>5</sup>

## Overview and national interest summary

- 3.6 The objective of the proposed Air Services Agreement is to provide a binding legal framework to support the operation of air services between Australia and the Republic of Croatia. According to the National Interest Analysis (NIA), it will facilitate trade and tourism between the Parties and will provide greater opportunities for airlines to develop expanded air travel options for consumers.<sup>6</sup>

## Reasons for Australia to take the proposed treaty action

- 3.7 The proposed Air Services Agreement grants access for Australian airlines to the Croatian market and allows for the establishment of air services between the two countries. The Agreement will enable Australian and Croatian carriers to provide services between any point in Australia and any point in Croatia, based on capacity levels decided from time to time between the aeronautical authorities of the Parties.<sup>7</sup>
- 3.8 According to the NIA, Australian travellers and Australian businesses, particularly in the tourism and export industries, could potentially benefit from the proposed Agreement through the opening of increased commercial opportunities.<sup>8</sup>

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4 Mr Gilon Smith, Acting Director, Air Services Negotiations Section, Aviation Industry Policy Branch, Aviation and Airports Division, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, 24 March 2014, p. 2.

5 Mr Smith, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, 24 March 2014, p. 1.

6 NIA, para 6.

7 NIA, para 7.

8 NIA, para 8.

- 3.9 The Department of Infrastructure and Regional Development told the Committee that, currently, Croatian visitors to Australia contributed \$29 million to the Australian economy.<sup>9</sup>
- 3.10 In addition, the Department explained that the Agreement will allow Australian carriers to directly service the Croatian market:
- Qantas currently services the Croatian market through its partnership or through its co-chair arrangement with British Airways out of London. Then an agreement with Croatia allows Qantas to include Croatia on its network, whereas without the agreement it would not be able to and anyone wanting to travel between Croatia and Australia would need to do so on third party carriers.<sup>10</sup>

## Obligations

- 3.11 The proposed Air Service Agreement allows the ‘designated airlines’<sup>11</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 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.<sup>12</sup>
- 3.12 The Agreement contains the following provisions in relation to airline traffic between the Parties:
- the designated airlines of each Party has the right to fly across each Party’s territory without landing and to make stops in the territory for non-traffic reasons (such as refuelling);<sup>13</sup>
  - designated airlines have the right to operate on the routes specified for the purpose of taking on board and discharging passengers, cargo and mail;<sup>14</sup>

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9 Mr Smith, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, 24 March 2014, p. 1.

10 Mr Smith, Department of Infrastructure and Regional Development, *Committee Hansard*, Canberra, 24 March 2014, p. 3.

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

12 NIA, para 10.

13 NIA, para 12.

- designated airlines are precluded from carrying purely domestic traffic within the territory of the other Party;<sup>15</sup>
  - 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>16</sup> and
  - 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>
- 3.13 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>18</sup>
- 3.14 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>19</sup>
- 3.15 Both 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>20</sup>
- 3.16 In addition, Parties 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>21</sup>
- 3.17 Airworthiness certificates, 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>22</sup>

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14 NIA, para 12.

15 NIA, para 12.

16 NIA, para 16.

17 NIA, para 17.

18 NIA, para 11.

19 NIA, para 14.

20 NIA, para 17.

21 NIA, para 15.

22 NIA, para 14.

- 3.18 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>23</sup>
- 3.19 In relation to the operation of designated airlines, the proposed Agreement:
- provides a framework for airlines of one Party to conduct business in the territory of the other Party;<sup>24</sup>
  - exempts 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>25</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>26</sup>
- 3.20 The proposed Agreement also provides for consultation and dispute resolution between the Parties on safety standards; the implementation, interpretation, application or amendment of the Agreement; and the settlement of disputes that do not relate to the domestic competition laws of the Parties.<sup>27</sup>
- 3.21 The proposed Agreement contains the following annexes:
- **Annexe 1** contains a route-schedule which specifies the routes that may be operated by designated airlines, as well as operational provisions;<sup>28</sup> and
  - **Annexe 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.<sup>29</sup>

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23 International Civil Aviation Organisation, *About ICAO*, <<http://www.icao.int/about-icao/Pages/default.aspx>>, accessed 8 April 2014.

24 NIA, para 23.

25 NIA, para 18.

26 NIA, para 20.

27 NIA, para 26.

28 NIA, para 27.

29 NIA, para 28.

## Implementation

3.22 The proposed air service 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 those Acts or any other legislation are required for the implementation of the proposed Agreement.<sup>30</sup>

## Costs

3.23 No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement. There are no financial implications for State and Territory Governments.<sup>31</sup>

## Conclusion

3.24 The Committee supports the Air Service Agreement with the Republic of Croatia and recommends that binding treaty action be taken.

### Recommendation 2

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

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30 NIA, para 29.

31 NIA, para 30.