

National Interest Analysis [2016] ATNIA 5

with Attachment on Consultation

**Protocol to Amend and Supplement the
Agreement between
the Government of Australia and the Government of the State of Bahrain
relating to Air Services**

(Bahrain, 8 June 2014)

[2014] ATNIF 21

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

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Nature and timing of treaty action

1. The proposed treaty action is to bring into force the *Protocol to Amend and Supplement the Agreement between the Government of Australia and the Government of the State of Bahrain relating to Air Services*, done at Bahrain on 8 June 2014 (the proposed Protocol). The proposed Protocol amends **Article 15** and the Route Annex of the Australia-Bahrain Air Services Agreement done at Bahrain on 29 April 1995 [**1995**] **ATS 29** (the Head Agreement).
2. Pursuant to its **Article 4**, and consistent with Article 19(2) of the Head Agreement, the proposed Protocol will enter into force on the date specified by the Parties through an exchange of diplomatic notes. The Australian Government will provide its diplomatic note to the Government of the Kingdom of Bahrain as soon as practicable after tabling and receipt of recommendations from the Joint Standing Committee on Treaties (JSCOT).
3. **Article 3** of the proposed Protocol also presently forms an Attachment to a *Memorandum of Understanding between the Aeronautical Authorities of Australia and the Kingdom of Bahrain* (MOU), signed on 12 March 2003. In accordance with established Australian and international practice, the MOU applies the proposed changes to the Head Agreement set out in the provisions of the proposed Protocol on an administrative, non-legally binding basis until the proposed Protocol enters into force. This means that the provisions of the **Route Annex** to the proposed Protocol are currently being observed by the aeronautical authorities of Australia and Bahrain pending its entry into force, so as to allow airlines to operate in accordance with the proposed changes as soon as possible.

Overview and national interest summary

4. The proposed Protocol removes the Head Agreement's requirements for tariff approval and replaces them with simplified provisions allowing for designated airlines to determine their own tariffs. These changes will lower the regulatory burden on airlines of Australia and Bahrain in serving the Australia-Bahrain market.
5. The **Route Annex** in the Head Agreement determines the origin and destination points in each country between which airlines are permitted to fly, in addition to their intermediate

(en-route) stops and destinations beyond the other country. The proposed amended **Route Annex** provides for a more liberal route schedule that allows airlines to serve more flexible combinations of routes between points in the other country and any intermediate and beyond points.

Reasons for Australia to take the treaty action

6. The proposed Protocol increases the commercial flexibility available to Australian airlines in the Bahrain aviation market by removing the requirement to secure prior tariff approvals from Bahrain's aeronautical authorities. The proposed amended **Route Annex** in the Protocol provides increased commercial opportunities for Australian airlines. Whereas the current **Route Annex** attached to the Head Agreement restricts points that can be served in Australia and intermediate points, the proposed amended **Route Annex** in the Protocol would allow airlines to serve all points in Australia and Bahrain and unrestricted intermediate and beyond points.

7. At Bahrain's request, Australia has agreed to replace all references in the Head Agreement to 'the State of Bahrain' with 'the Kingdom of Bahrain' (**Article 1**). The change in terminology will support Australia's broader bilateral relationship with Bahrain.

Obligations

8. Australia and Bahrain are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 (the Chicago Convention)¹. The proposed Protocol 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 Head Agreement obliges Australia and Bahrain to allow the designated airlines of each country to operate scheduled air services carrying passengers, cargo and mail between the two countries on the specified routes in accordance with the provisions of the Head Agreement. To facilitate these services, the Head Agreement also includes reciprocal clauses on a range of aviation-related matters such as customs regulation, aviation safety, aviation security and the commercial aspects of airline operations. These clauses are supported by more detailed provisions in associated instruments of less-than-treaty status. The proposed Protocol makes certain amendments to the text of the Head Agreement.

10. **Article 1** of the proposed Protocol replaces all references to the "State of Bahrain" in the Head Agreement with "Kingdom of Bahrain".

11. **Article 2** of the proposed Protocol wholly replaces **Article 15** (Tariffs) of the Head Agreement and provides for designated airlines to determine their own tariffs for the services provided under the Head Agreement. Under **Article 2(2)** of the proposed Protocol, designated airlines will not be required to file tariffs with the aeronautical authorities of either Party, unless required under domestic law. **Article 2(3)** provides that tariffs charged by designated airlines will be subject to the competition and consumer laws of each Party.

12. The **Route Annex** attached to the Head Agreement specifies the routes that may be operated by designated airlines of each Party under the Head Agreement. The amended **Route**

¹ [1957] ATS 5

Annex referred to in **Article 3** and attached to the proposed Protocol allows airlines to offer services on any routing between all points in Australia and Bahrain. These airline route rights are supplemented by capacity entitlements and traffic rights settled in an associated instrument of less-than-treaty status.

Implementation

13. The proposed Protocol will be implemented through existing legislation, including the *Air Navigation Act 1920* (Cth) and the *Civil Aviation Act 1988* (Cth). The *International Air Services Commission Act 1992* (Cth) 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 Protocol.

Costs

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

Regulation Impact Statement

15. The Office of Best Practice Regulation has advised the Department of Infrastructure and Regional Development that a Regulation Impact Statement is not required for international aviation bilateral agreements.

Future treaty action

16. **Article 19(1)** of the Head Agreement provides that the Head Agreement may be amended by agreement in writing between the Parties.

17. Any further amendment to the Head Agreement will be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

18. If a general multilateral convention concerning air transport comes into force in respect of both Parties, **Article 19(3)** of the Head Agreement further provides that the Head Agreement will be deemed to be amended so far as is necessary to conform with the provisions of that convention.

19. Any amendment or revision to the Head Agreement will come into force on the date the Parties specify for its entry into force by an exchange of diplomatic notes, pursuant to **Article 19(2)** of the Head Agreement.

Withdrawal or denunciation

20. **Article 21** of the Head Agreement provides for termination of the Head Agreement. Either Party may give notice in writing through the diplomatic channel at any time to the other Party of its decision to terminate the Head Agreement and must simultaneously lodge a notice of termination with the International Civil Aviation Organization. The Head Agreement shall terminate one year after the date of receipt of the notice of termination by the other Party.

21. Termination of the Head Agreement by Australia would be subject to Australia's domestic treaty-making requirements, including tabling in Parliament and consideration by JSCOT.

Contact details

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

ATTACHMENT ON CONSULTATION

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CONSULTATION

22. It is the practice of the Department of Infrastructure and Regional Development to consult a range of government and non-government stakeholders that may have an interest in the outcome of consultations and negotiations in relation to air service agreements. The Department takes into account the views of stakeholders in developing a negotiating position for the Minister's approval.

23. In the lead up to air services negotiations in 2003, aviation and tourism industry stakeholders, including Australian airlines, airports and relevant Australian and state and territory government agencies, were informed that the Department intended to hold air services consultations with Bahrain. The Department invited these stakeholders to comment.

24. The stakeholders that provided comment are listed below (the names of stakeholders are as at the time of the consultation):

- (a) Australian Tourist Commission
- (b) Brisbane Airport Corporation
- (c) Department of Foreign Affairs & Trade
- (d) Department of Industry, Tourism & Resources
- (e) Department of Planning & Infrastructure (Western Australia)
- (f) Melbourne Airport
- (g) Qantas
- (h) Sydney Airport
- (i) Tourism NSW
- (j) Tourism Task Force
- (k) Tourism Victoria
- (l) Transport SA
- (m) Virgin Blue

25. Stakeholders generally supported the Government's aim to liberalise the existing arrangements with Bahrain and raised no objection to the change in nomenclature, the liberalisation of route rights contained in the proposed amended Route Annex and the liberalised clauses related to tariffs.

26. Stakeholder comments were taken into account in developing an Australian negotiating position for air services consultations with Bahrain. These negotiations were conducted in 1993, 1996 and 2003 and finalised in the *Memorandum of Understanding*

between Aeronautical Authorities of Australia and the Kingdom of Bahrain, signed on 12 March 2003.