

National Interest Analysis [2017] ATNIA 21

with attachment on consultation

**Agreement between
the Government of Australia and the Government of the State of Israel
relating to Air Services**

(Sydney, 23 February 2017)

[2017] ATNIF 25

NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

SUMMARY PAGE

Agreement between the Government of Australia and the Government of the State of Israel relating to Air Services

(Sydney, 23 February 2017)

[2017] ATNIA 21

[2017] ATNIF 25

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 the State of Israel relating to Air Services*, done at Sydney on 23 February 2017 (the proposed Agreement).
2. Pursuant to its **Article 23** (Entry into Force), the proposed Agreement will enter into force when the Parties have notified each other in writing through diplomatic channels that their respective requirements for the entry into force of this Agreement have been satisfied. The Australian Government will provide its notification to the Government of the State of Israel (Israel) as soon as practicable following receipt of the Joint Standing Committee on Treaties' (JSCOT) report. Israel provided notification to Australia on 9 July 2017 that it has completed its internal procedures for entry into force of the proposed Agreement.
3. The proposed Agreement will establish for the first time a treaty-level air services relationship between Australia and Israel. It will allow the airlines of Australia and Israel to develop international air services between the two countries.
4. The text of the proposed Agreement also presently forms **Appendix B** to the Memorandum of Understanding (MOU) signed by the aeronautical authorities of Australia and Israel on 6 December 2016. In accordance with established Australian and international practice, the MOU allows for the provisions of the proposed Agreement to be applied on an administrative, non-legally binding basis until the proposed Agreement enters into force. Both parties agreed to this non-binding application by exchange of letters in July 2017. This means that the proposed Agreement is observed by the aeronautical authorities of Australia and Israel pending entry into force so as to allow airlines to operate in accordance with the proposed Agreement as soon as possible.
5. Following signing of the proposed Agreement, Qantas Airways and El Al Israel Airlines signed a Memorandum of Understanding with a view to entering into a code share arrangement to provide air services on routes between Australia and Israel. These services are scheduled to commence in September 2017, subject to relevant regulatory approvals.

Overview and national interest summary

6. The key objective of the proposed Agreement is to provide a binding legal framework to support the operation of air services between Australia and Israel. The proposed Agreement will facilitate trade and tourism between the two countries and will provide opportunities for airlines to develop expanded air travel options for consumers.

Reasons for Australia to take the treaty action

7. The proposed Agreement grants access for Australian airlines to the Israeli aviation market and allows for the establishment of air services between the two countries. The proposed Agreement will enable Australian and Israeli airlines to provide services between any point in Australia and any point in Israel, based on capacity levels decided from time to time between the aeronautical authorities of the Parties.

8. Australian travellers and Australian businesses, particularly in the tourism and export industries, could benefit from the proposed Agreement through the new commercial opportunities and potential for increased passenger flows between the two countries.

Obligations

9. Australia and Israel are both Parties to the *Convention on International Civil Aviation*, done at Chicago on 7 December 1944 (the Chicago Convention)¹. 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.

10. The proposed Agreement is based on a text provided by Israel, and has been negotiated to align with Australia's model air services agreement text as closely as possible. The proposed Agreement obliges Australia and Israel 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.

11. Under **Article 2** (Grant of Rights) 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 2** also provides the right for designated airlines to operate on the routes specified in the **Annex** for the purpose of taking on board and discharging passengers, cargo and mail. The Article also precludes designated airlines from carrying purely domestic traffic (cabotage) within the territory of the other Party.

12. **Article 3** (Designation and Authorization) of the proposed Agreement allows each Party to designate any number of airlines to operate the agreed services, and obliges each Party to grant the necessary operating authorisations with minimum procedural delay.

¹ [1957] ATS 5

13. Under **Article 4** (Withholding, Revocation and Limitation of Authorization), either Party may refuse authorisation of an airline's operations, and revoke, suspend or impose conditions on the authorisation 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 principal place of business, establishment and regulatory control.

14. **Article 5** (Application of Laws) 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, regulations and rules relating to entry and exit of passengers, crew, baggage, cargo and aircraft (for example, immigration, aviation security, customs and sanitary measures) must be complied with in the territory of that Party. In applying their laws, the Parties are prevented from giving preference to their own or any other airline. It also confirms that each Party's competition laws apply to the operation of airlines within their respective jurisdictions.

15. **Article 6** (Direct Transit) 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.

16. Under **Article 7** (Recognition of Certificates and Licenses) each Party is required to recognise certificates of airworthiness, competency and licences issued 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.

17. Under **Article 8** (Aviation Safety), each Party may request consultations at any time concerning safety standards maintained by the other Party. If required, the other Party shall be informed of the corrective action required to be undertaken to conform to the standards pursuant to the Chicago Convention. The other Party shall then take appropriate corrective action within a time period mutually determined in writing. Each Party may, in its territory, arrange inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents, the licensing of its crew and to ensure that the aircraft equipment and the condition of the aircraft conform to the standards established at the time pursuant to the Convention. Each Party can take immediate action essential to ensure the safety of an airline operation if it considers such action to be necessary.

18. Under **Article 9** (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 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. 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. Parties shall ensure adequate measures are applied to protecting aircraft, inspecting passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. Each Party shall give sympathetic consideration to any request from the other Party for reasonable special security measures and for this purpose the aeronautical authorities of the Parties will be entitled to conclude implementing security arrangements. The Parties shall assist each other in the event of an incident or threat of an incident.

19. **Article 10** (User Charges) requires each Party to use its best efforts to encourage their charging bodies that user charges imposed on the airlines for the use of airport, airport environment, air navigation, and aviation security facilities and services, are reasonable, non-discriminatory and equitably apportioned. Reasonable charges 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 services. The Article also contains provisions addressing the exchange of information and consultations between charging bodies and airlines in relation to user charges imposed on airlines using affected services and facilities.

20. **Article 11** (Customs Duties) lists the equipment and stores used in the operation of the agreed services that the Parties are required, in accordance with international practice, to exempt from import restrictions, customs duties, excise taxes and similar fees and charges. **Article 11** 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.

21. Under **Article 12** (Capacity), 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 before the commencement of such services, and from time to time thereafter. That capacity was settled in a non-legally binding MOU signed in December 2016, and took effect on 11 July 2017 following an exchange of letters between the respective aeronautical authorities. These capacity arrangements are intended to remain in effect once the proposed Agreement enters into force.

22. **Article 13** (Tariffs) allows the designated airlines to determine their own fares, which are not required to be filed with aeronautical authorities unless required by national laws and regulations. **Article 13** also provides that neither Party may take unilateral action to disallow a tariff of an airline of the other Party.

23. **Article 14** (Commercial Opportunities) provides a framework for airlines of one Party to conduct business in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, bring in and employ staff, sell air transport services to the public, and use the services and personnel of any organisation, company or airline operating in the territory of the other Party, to conduct its business. Each Party shall permit airlines of the other Party to freely convert and move currency. Designated airlines may enter into code share arrangements with any other appropriately authorised airline.

24. **Article 15** (Leasing) allows designated airlines to utilise leased aircraft to conduct their services, provided they meet the safety and security requirements set out in the Agreement.
25. **Article 16** (Provision of 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.
26. Under **Article 17** (Consultations), either Party may at any time request consultations with the other Party on the implementation, interpretation, application or amendment of the proposed Agreement.
27. **Article 18** (Settlement of Disputes) provides a process for dispute resolution on matters relating to the interpretation or application of the proposed Agreement which cannot be settled by negotiation between the aeronautical authorities of both parties. If the Parties fail to resolve any dispute by negotiation or through diplomatic channels, there is provision for compulsory settlement through submitting the dispute 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 suspend or revoke the rights granted under the proposed Agreement to the other Party, or its designated airlines.
28. Once the proposed Agreement and any subsequent amendment enters into force, it will be registered with ICAO, under **Article 22** (Registration with ICAO).
29. The **Annex** of the proposed Agreement contains a **Route Schedule** which specifies the routes that may be operated by designated airlines, as well as operational provisions.

Implementation

30. 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.
31. The proposed Agreement provides the Civil Aviation Safety Authority with the scope and ability to enforce ICAO safety standards, as well as applying Australia's regulatory framework for issuing relevant regulatory approvals, such as a Foreign Aircraft Air Operators Certificate, for an Israeli airline wishing to operate to Australia.

Costs

32. 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

33. The Office of Best Practice Regulation has advised the Department of Infrastructure and Regulation that a Regulation Impact Statement is not required for bilateral international air services agreements.

Future treaty action

34. **Article 19** provides that any amendment to the proposed Agreement shall enter into force when the two Parties have notified each other, in writing through diplomatic channels, that they have completed their domestic procedures for entry into force of the amendment.

35. **Article 20** provides that the proposed Agreement will be deemed to be amended so far as is necessary to comply with any multilateral air transportation instrument that may come into force for both Parties.

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

Withdrawal or denunciation

37. **Article 21** (Termination) provides for termination of the proposed Agreement. Either Party may give notice in writing, through diplomatic channels 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.

38. Termination of the proposed 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 Business Division
Department of Infrastructure and Regional Development

ATTACHMENT ON CONSULTATION

Agreement between the Government of Australia and the Government of the State of Israel relating to Air Services

(Sydney, 23 February 2017)

[2017] ATNIF 25

CONSULTATION

39. It is the practice ahead of negotiations of an air services agreement for the Department of Infrastructure and Regional Development 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.

40. Prior to the negotiation of the proposed Agreement which occurred at the ICAO Air Services Negotiating Event held in December 2016 (ICAN 2016), 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 with various economies taking part in ICAN 2016 and invited to comment on issues of importance to them (agency names are given as at the time of consultation):

State Government Agencies

- NSW Department of Premier and Cabinet;
- NSW Transport and Infrastructure;
- South Australian Government Department of Planning, Transport and Infrastructure;
- Tasmanian Department of State Growth;
- Victorian Government Department of Innovation, Industry and Regional Development;
- Victorian Government Department of Economic Development, Jobs, Transport and Resources;
- NT Department of Transport;
- Destination New South Wales;
- Tourism and Events Queensland;
- Tourism Tasmania;
- Tourism Victoria;
- Tourism NT;
- Tourism Western Australia; and
- VisitCanberra.

Industry

- Adelaide Airport Limited;
- Australian Airports Association;
- Australian Council of Trade Unions;
- Australian and International Pilots Association;
- Australian Tourism Export Council;
- Avalon Airport Australia Proprietary Limited;

- Aviation Australia;
- Board of Airline Representatives of Australia;
- Brisbane Airport Corporation Limited;
- Cairns Airport;
- Canberra Airport;
- Chamber of Commerce Northern Territory;
- CHOICE;
- Melbourne Airport;
- Newcastle Airport Limited;
- Northern Territory Airports Pty Limited;
- Perth Airport
- Qantas Airways Limited;
- Queensland Airports Limited;
- South Australian Freight Council Incorporated;
- Sydney Airport Corporation Limited;
- Tasmanian Freight Logistics Council;
- Tourism and Transport Forum Australia;
- Tourism Tropical North Queensland;
- Transport Workers Union of Australia; and
- Virgin Australia

41. Comments were received from Qantas and Virgin Australia with respect to the negotiation of the proposed Agreement with Israel.

42. Stakeholders who provided comments supported the negotiation of a new air services agreement with Israel with a view to opening market access for airlines in both countries.

43. State and Territory Governments were advised of the proposed Agreement through the mechanism of the biannual Commonwealth Standing Committee on Treaties.