AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE COOK ISLANDS RELATING TO AIR SERVICES, DONE AT APIA ON 18 SEPTEMBER 2002

Documents tabled on 18 June 2002:

- **National Interest Analysis**

- **Text of the proposed treaty action**

Agreement between the Government of Australia and the Government of the Cook Islands relating to Air Services, done at Apia on 18 September 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. The treaty action proposed is to bring into force the Agreement between the Government of Australia and the Government of the Cook Islands relating to Air Services (hereafter "the Agreement").

2. Article 22 specifies that the 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.

Date of proposed binding treaty action

3. The Government proposes to provide its notification to the Government of the Cook Islands under Article 22 as soon as practicable following the conclusion of fifteen sitting days from the date the Agreement is tabled in both Houses of Parliament.

4. The Agreement was signed on 18 September 2001.

Date of tabling of the proposed treaty action

4. 18 June 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

5. The purpose of the treaty is to allow direct air services to operate between Australia and the Cook Islands, which will facilitate trade and tourism between the two countries through freight and passenger transportation and provide greater air travel options for Australian consumers.

Reasons for Australia to take the proposed treaty action

6. The Agreement provides a framework for the operation of scheduled air services between Australia and the Cook Islands by the designated airlines of both countries.

7. This framework improves access by Australian airlines to South Pacific aviation markets and provides for the development of air services between Australia and the Cook Islands based on the airlines' assessment of market demand. The Agreement also increases the opportunities for the Australian community, in particular the tourism and export industries, to access South Pacific markets.

8. Air services between Australia and the Cook Islands will facilitate trade and tourism between the two countries through the transportation of passengers and freight and will provide greater air travel options for the Australian travelling public.

Obligations

9. The Agreement obliges Australia and the Cook Islands to allow the designated airlines of each country to operate scheduled air services carrying passengers and cargo between the two countries on the specified routes. To facilitate these services, the Agreement also includes reciprocal provisions on a range of aviation-related matters such as safety, security, customs regulation, and the commercial aspects of airline operations, including the ability to establish offices in the territory of the other Party and to sell fares to the public.

10. Australia has a standard draft air services agreement which has been developed in consultation with aviation stakeholders. The Agreement does not differ in substance from the standard Australian draft at the time the Agreement was negotiated.

11. The following paragraphs highlight the key provisions of the Agreement.

12. Article 2 of the Agreement allows each Party to designate as many airlines as they wish to operate the agreed services.

13. Under Article 3 of the Agreement, each Party grants to the designated airlines of the other Party the aviation rights necessary to establish and operate agreed services, and to all other airlines of that Party, the right to overfly its territory and to make stops in its territory for non-traffic purposes. Access to airways, airports and other facilities is to be provided on a non-discriminatory basis.

14. Under Article 5 of the Agreement, either Party may revoke or limit authorisation of an airline's operations if the airline does not comply with certain laws and regulations that are consistent with the Chicago Convention on International Civil Aviation. This provision also applies if either Party is not satisfied that substantial ownership and effective control of an airline are vested in nationals of the Party designating the airline, or if airline operations are not in accordance with the Agreement.

15. Under Article 7, each Party is required to recognise certificates of airworthiness, competency and licences issued by the other Party provided such documents conform with the standards established by the International Civil Aviation Organisation (ICAO).

16. Article 8 provides that each Party may request consultations concerning safety standards maintained by the other Party. Each Party may take appropriate action essential to the safety of airline operations if it considers such actions to be necessary. If the consultations are not successful, then the Party concerned about safety may set out the steps required for the other Party to comply with the minimum standards deemed acceptable by the Chicago Convention on International Civil Aviation. A failure to take the necessary steps to meet those minimum standards will allow the Party concerned about safety to withhold authorisation for the air services.

17. Under Article 9, 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 Contracting Party may require that the designated airlines of the other Party observe its aviation security provisions for entry into, departure from or sojourn in the territory of that Party and take adequate measures to protect the aircraft and to inspect passengers, crew and carry-on items, as well as baggage, cargo and aircraft stores prior to and during boarding or loading.

18. Under Article 11, both Parties are obliged to ensure that there is a fair and equal opportunity for the designated airlines of both Parties to operate the agreed services on the specified routes. Designated airlines of both Parties may transport traffic originating in Australia and destined for the Cook Islands and vice versa, and traffic originating in or destined for third countries in accordance with general capacity principles.

19. Article 13 provides that both Parties are required to exempt equipment and stores used in the operation of agreed services specified in the treaty from customs and excise duties and other related charges.

20. Article 14 provides that the tariffs for the transportation of traffic between the territories of the Parties shall be established at reasonable levels with due regard to all relevant factors including the interests of users of air transportation, cost of operation, reasonable profit and the tariffs of other airlines for any part of the specified routes. The Parties are obliged, with a view to preserving and enhancing competition, to apply agreed provisions for the approval of fares to be charged by airlines for carriage between each country and the other.

21. Articles 15 and 16 provide a framework that allows airlines to establish themselves in the territory of the other Party. The framework includes provisions allowing designated airlines to establish offices, employ and maintain staff, and the abilities to sell tickets to the public and to convert currency freely. In addition, each Party shall take all appropriate action within its jurisdiction to eliminate all forms of discrimination or unfair competitive practices adversely affecting the competitive position of the designated airlines of the other Party.

22. The Agreement allows scheduled air services to be operated only in accordance with the Route Schedule in the Annex to the Treaty. The Agreement does not allow the transport of domestic passengers or freight by a designated airline of the other Party.

Implementation

23. The Agreement is to be implemented through existing legislation including the Air Navigation Act 1920 and the Civil Aviation Act 1988 on matters such as route licensing, aircraft configuration, safety and environmental protection. No amendments to these Acts are required for the implementation of the Agreement.

Costs

24. No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement.

Consultation

25. Information on the Agreement has been provided to the States and Territories through the Commonwealth-State-Territory Standing Committee on Treaties. Consultations were held with relevant Government Departments and with members of the Australian aviation industry prior to the negotiations with the aeronautical authorities of the Cook Islands on the Agreement. These included the Departments of Treasury, Agriculture, Fisheries and Forestry - Australia, Industry, Tourism and Resources, the Australian Customs Service, the International Air Services Commission, State Government Tourism Authorities, tourism industry bodies, Australian international airports, and Qantas Airways Ltd.

26. All major stakeholders supported the Agreement.

Regulation Impact Statement

27. No Regulation Impact Statement is required for the proposed treaty action.

28. The Department of Transport and Regional Services and the Office of Regulation Review have discussed the application of the Government's Regulation Impact Statement requirements to bilateral air service arrangements. It was confirmed by the Office of Regulatory Review that a Regulation Impact Statement is not required as Australia's air services agreements are all negotiated from a standard template.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

29. Article 18 of the Agreement provides for amendment or revision by agreement of the Parties.

30. Any amendment to the Agreement, including the Annex, shall enter into force when the two Parties have notified each other, through an exchange of diplomatic notes, of the fulfilment of their constitutional procedures relating to the conclusion and entry into force of international agreements.

31. Any amendment to the Agreement, including the Annex, will be subject to Australia's domestic treaty action procedures.

32. If a multilateral convention concerning air transport comes into force in respect of both Parties, the Agreement shall be deemed to be amended so far as is necessary to conform with the provisions of that convention.

33. Any future amendments to the Agreement are likely to involve further deregulation of air services arrangements between the Parties.

Withdrawal or denunciation

34. Article 20 of the Agreement provides arrangements to be followed for termination. Either Party may give notice in writing at any time through the diplomatic channel to the other Party of its decision to terminate the Agreement. The Agreement shall terminate one year after the date of receipt of the notice by the other Party.

35. In default of acknowledgment of a receipt of a notice of termination by the other Party, the notice shall be deemed to have been received 14 days after the date on which ICAO acknowledged receipt thereof.

36. Any notification of withdrawal from the treaty by Australia will be subject to Australia's domestic treaty action procedures.

Contact details

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