

**National Interest Analysis [2012] ATNIA 16**

**with attachment on consultation**

**Exchange of Notes, done at Tokyo on [TBA] 2012, constituting an  
Agreement to further amend the Schedule to the  
Agreement between the Commonwealth of Australia and Japan for Air Services,  
done at Tokyo on 19 January 1956, as amended**

**[2012] ATNIF 13**

## NATIONAL INTEREST ANALYSIS: CATEGORY 2 TREATY

### SUMMARY PAGE

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[2012] ATNIF 13

#### **Nature and timing of proposed treaty action**

1. The treaty action proposed is to bring into force an amendment to the *Agreement between the Commonwealth of Australia and Japan for Air Services*, done at Tokyo on 19 January 1956 ([1956] ATS 6, hereinafter “the Head Agreement”) through an exchange of diplomatic notes.
2. The proposed amendment is the insertion of a new Schedule that will replace the existing Schedule to the Head Agreement (hereinafter ‘the proposed amended Schedule’). The Schedule stipulates the agreed routes for each country’s designated airlines between Australia and Japan.
3. In accordance with Article XIV of the Head Agreement, the proposed amended Schedule will enter into force after it has been confirmed by an exchange of diplomatic notes.
4. The text of the proposed amended Schedule was settled in the *Record of Discussions between Aeronautical Authorities Japan and Australia*, signed on 29 September 2011, which is an instrument of less-than-treaty status. In accordance with established Australian and international practice, the provisions of the proposed amended Schedule have been given interim effect pending the completion of domestic requirements for entry into force.

#### **Overview and national interest summary**

5. The Schedule to 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. It has been reviewed and updated several times since the Head Agreement entered into force. The proposed amended Schedule 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. The proposed amended Schedule also sets out the traffic rights that can be exercised (i.e. the setting down and uplifting of passengers and cargo).
6. Provision of services by airlines on these routes remains subject to capacity restrictions settled between aeronautical authorities from time to time, generally

in the form of instruments of less-than-treaty status, such as memorandums of understanding.

### **Reasons for Australia to take the proposed treaty action**

7. The proposed amended Schedule provides increased commercial opportunities for Australian airlines. Whereas the current Schedule restricts points that can be served in Australia and Japan, limits the intermediate points and does not include beyond points, the proposed amended Schedule would allow airlines to serve all points in Australia and Japan and unrestricted intermediate and beyond points.

### **Obligations**

8. Australia and Japan are both Parties to the *Convention on International Civil Aviation*, 1944 ([1957] ATS 5, 'the Chicago Convention'). The Head Agreement was made in accordance with and pursuant to the Chicago Convention.
9. The Head Agreement obliges Australia and Japan 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, statistics, and the commercial aspects of airline operations. These clauses are supported by more detailed provisions in associated instruments of less-than-treaty status.
10. The Schedule, which forms part of the Head Agreement (pursuant to Article I(2) of the Head Agreement), specifies the routes that may be operated by designated airlines and the traffic rights that they may exercise. The proposed amended Schedule expands the route and traffic rights available to airlines of both Contracting Parties. Airlines may operate services on these routes in accordance with capacity entitlements settled in associated instruments of less-than-treaty status.

### **Implementation**

11. The proposed amendment to the Head Agreement is to 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 are required for the implementation of the Head Agreement with the proposed amended Schedule.

### **Costs**

12. No direct financial costs to the Australian Government are anticipated in implementing the proposed amended Schedule. There are no financial implications for State or Territory Governments. Together with the Head Agreement, the proposed amended Schedule reduces the regulatory burden on business and industry, by reducing the commercial restrictions on airlines.

## **Regulation Impact Statement**

13. The Office of Best Practice Regulation has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future treaty action**

14. Article XIV of the Head Agreement provides for amendment of the Head Agreement by agreement of the Contracting Parties. Amendments relating only to the Schedule recommended by the aeronautical authorities of both Contracting Parties will enter into force after they have been confirmed by an exchange of diplomatic notes. Any further amendments to the Head Agreement or Schedule are likely to involve further deregulation of air services arrangements between the Contracting Parties and would be subject to Australia's domestic treaty processes.
15. If a general multilateral convention concerning air transport enters into force in respect of both Contracting Parties, Article XV of the Head Agreement provides that the Head Agreement will be amended to conform to the provisions of that convention.

## **Withdrawal or denunciation**

16. Article XVI of the Head Agreement sets out the procedures to be followed to terminate the Head Agreement. Either Contracting Party may at any time notify the other of its intention to terminate the Head Agreement and must also notify the International Civil Aviation Organisation (ICAO). The Head Agreement will terminate one year after the date of receipt of the notice by the other Contracting Party, unless by agreement between the Contracting Parties the notice to terminate is withdrawn before the expiry of this period. If the other Contracting Party does not acknowledge receipt of the notice, notice will be deemed to have been received 14 days after receipt by ICAO of its copy of the notice.
17. Any decision by Australia to terminate the Head Agreement would be subject to Australia's domestic treaty procedures.

## **Contact details**

Aviation Industry Policy Branch  
Aviation and Airports Division  
Department of Infrastructure and Transport

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**CONSULTATION**

18. It is the practice of the Department of Infrastructure and Transport 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.
19. On 19 July 2011, 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 Japan in the coming months. The Department invited these stakeholders to comment.
20. The stakeholders that provided comment are listed below (the names of stakeholders are as at the time of the consultation):  
  
Brisbane Airport Corporation Pty Limited  
Department of Immigration and Citizenship  
Department of Resources, Energy and Tourism  
Department of Transport, Energy and Infrastructure, Government of South Australia  
Department of Treasury, Australian Government  
Gold Coast Airport Limited  
Qantas Airways Limited  
Strategic Airlines Pty Ltd  
Tourism, Northern Territory Government  
Virgin Australia group of airlines
21. Stakeholders generally supported the Government's aim to liberalise the existing arrangements with Japan, including the liberalisation of traffic and route rights contained in the proposed amended Schedule.
22. Stakeholder comments were taken into account in developing an Australian negotiating position for air services consultations with Japan. These negotiations were conducted in September 2011 and finalised in the *Record of Discussions between Aeronautical Authorities of Australia and Japan*, signed on 29 September 2011.