Report 164

Air Services - Kuwait, Air Services - Bahrain

Joint Standing Committee on Treaties
Executive Summary

This Report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- *Air Services Agreement between the Government of Australia and the Government of the State of Kuwait* (Antalya, 22 October 2015); and
- *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).

These two treaty actions were tabled in the 44th Parliament and the Committee’s inquiry into each lapsed at the dissolution of that Parliament. The treaty actions were re-referred to the Committee at the beginning of the 45th Parliament.

The Air Services agreement for Kuwait follows the standard Australian model air services agreement and is expected to facilitate trade and tourism between the two countries.

The Protocol to amend the Bahrain Air Services Agreement provides for more liberal route rights and tariff provisions for both countries and changes references to ‘the State of Bahrain’ to ‘the Kingdom of Bahrain’.

The Committee has recommended that both Air Services agreements be ratified.

The Report also includes details of three minor treaty actions for which the Committee has agreed that binding treaty action be taken:

- Amendments to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating Thereto (MARPOL); and

- Second Protocol establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17.
Contents

Executive Summary...........................................................................................................................iii
Abbreviations....................................................................................................................................vii
Members..............................................................................................................................................ix
Resolution of Appointment............................................................................................................xiii
List of Recommendations ................................................................................................................xv

The Report

1 Introduction..........................................................................................................................................1
   Purpose of the report.........................................................................................................................1
   Conduct of the Committee’s review ...............................................................................................3

2 Air Services - Kuwait .....................................................................................................................5
   Introduction.......................................................................................................................................5
   Overview and national interest summary .......................................................................................6
   Reasons for Australia to take the proposed treaty action.............................................................6
   Obligations.......................................................................................................................................7
   Implementation.................................................................................................................................12
   Costs of the treaty action ................................................................................................................12
   Conclusion.....................................................................................................................................13

3 Air Services - Bahrain....................................................................................................................15
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>15</td>
</tr>
<tr>
<td>Reasons for Australia to take the proposed treaty action</td>
<td>15</td>
</tr>
<tr>
<td>Obligations</td>
<td>16</td>
</tr>
<tr>
<td>Implementation</td>
<td>17</td>
</tr>
<tr>
<td>Costs of the treaty action</td>
<td>18</td>
</tr>
<tr>
<td>Conclusion</td>
<td>18</td>
</tr>
<tr>
<td><strong>4 Minor Treaty Actions</strong></td>
<td>19</td>
</tr>
<tr>
<td>Introduction</td>
<td>19</td>
</tr>
<tr>
<td>Amendment to Annex II of the Convention Against Doping in Sport</td>
<td>19</td>
</tr>
<tr>
<td>Amendments to Annex I of MARPOL</td>
<td>20</td>
</tr>
<tr>
<td>Second Protocol establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17</td>
<td>20</td>
</tr>
<tr>
<td>Conclusion</td>
<td>21</td>
</tr>
<tr>
<td><strong>End Matter</strong></td>
<td></td>
</tr>
<tr>
<td>A. Witnesses</td>
<td>23</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Full Form</td>
</tr>
<tr>
<td>-------------</td>
<td>-----------</td>
</tr>
<tr>
<td>AGD</td>
<td>Attorney-General’s Department</td>
</tr>
<tr>
<td>DIRD</td>
<td>Department of Infrastructure and Regional Development</td>
</tr>
<tr>
<td>ICAO</td>
<td>International Civil Aviation Organization</td>
</tr>
<tr>
<td>JSCOT</td>
<td>Joint Standing Committee on Treaties</td>
</tr>
<tr>
<td>MOU</td>
<td>Memorandum of Understanding</td>
</tr>
<tr>
<td>NIA</td>
<td>National Interest Analysis</td>
</tr>
<tr>
<td>NIE</td>
<td>National Interest Exemption</td>
</tr>
<tr>
<td>RIS</td>
<td>Regulation Impact Statement</td>
</tr>
<tr>
<td>TUE</td>
<td>Therapeutic Use Exemption</td>
</tr>
<tr>
<td>UNESCO</td>
<td>United Nations Education, Scientific and Cultural Organisation</td>
</tr>
</tbody>
</table>
Members

Chair
Hon Stuart Robert MP

Deputy Chair
Senator the Hon Don Farrell (to 07.11.16)\(^1\)
Hon Michael Danby MP (from 07.11.16)\(^2\)

Members
Mr John Alexander OAM MP (from 07.11.16)
Senator Chris Back
Mr Chris Crewther MP
Senator Sam Dastyari (from 08.11.16)
Senator David Fawcett
Senator Sarah Hanson-Young

\(^1\) Senator the Hon Don Farrell resigned as Deputy Chair of the Committee on 7 November 2016 and was discharged from the Committee on 8 November.
\(^2\) The Hon Michael Danby MP was appointed to the Committee on 17 October 2016 and was elected Deputy Chair of the Committee on 7 November 2016.
Ms Madeleine King MP (to 17.10.16)

Senator Kimberley Kitching (from 10.11.16)

Senator the Hon Ian Macdonald

Ms Nola Marino MP

Senator Jenny McAllister

Mr Ken O'Dowd MP (to 07.11.16)

Senator Glenn Sterle (to 10.11.16)

Ms Susan Templeman MP

Mr Ross Vasta MP

Mr Andrew Wallace MP

Mr Josh Wilson MP
Committee Secretariat

Ms Lynley Ducker, Committee Secretary

Dr Narelle McGlusky, Inquiry Secretary

Mr Kevin Bodel, Senior Researcher

Mr James Bunce, Senior Researcher

Ms Cathy Rouland, Office Manager
Resolution of Appointment

The Resolution of Appointment of the Joint Standing Committee on Treaties allows it to inquire into and report on:

a  matters arising from treaties and related National Interest Analyses and proposed treaty actions and related Explanatory Statements presented or deemed to be presented to the Parliament;

b  any questions relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:
   i  either House of the Parliament, or
   ii  a Minister; and

c  such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.
List of Recommendations

Recommendation 1

2.34 The Committee supports the *Air Services Agreement between the Government of Australia and the Government of the State of Kuwait* and recommends that binding treaty action be taken.

Recommendation 2

3.15 The Committee supports 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* and recommends that binding treaty action be taken.
1. Introduction

Purpose of the report

1.1 This report contains the Joint Standing Committee on Treaties’ review of the following treaty actions:

- Air Services Agreement between the Government of Australia and the Government of the State of Kuwait (Antalya, 22 October 2015); and
- 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)

1.2 In addition, the Report contains the Committee’s views on three Minor Treaty Actions:

- Amendments to Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 Relating Thereto (MARPOL); and
- Second Protocol establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17.
1.3 The Committee’s resolution of appointment empowers it to inquire into any treaty to which Australia has become a signatory, on the treaty being tabled in Parliament.

1.4 The treaties, and matters arising from them, are evaluated to ensure that ratification is in the national interest, and that unintended or negative effects on Australians will not arise.

1.5 Prior to tabling, major treaty actions are subject to a National Interest Analysis (NIA), prepared by Government. This document considers arguments for and against the treaty, outlines the treaty obligations and any regulatory or financial implications, and reports the results of consultations undertaken with State and Territory Governments, Federal and State and Territory agencies, and with industry or non-government organisations.

1.6 A Regulation Impact Statement (RIS) may accompany the NIA. The RIS provides an account of the regulatory impact of the treaty action where adoption of the treaty will involve a change in the regulatory environment for Australian business. The treaties examined in this report did not require a RIS.

1.7 The Committee takes account of these documents in its examination of the treaty texts, in addition to other evidence taken during the inquiry program.

1.8 Copies of the treaties considered in this report and associated documentation may be obtained from the Committee Secretariat or accessed through the Committee’s website at:

Conduct of the Committee’s review

1.9 The treaty actions reviewed in this report were advertised on the Committee’s website from the date of tabling. Submissions for the Air Services Agreements were requested by 26 September 2016.

1.10 Invitations were made to all State Premiers, Territory Chief Ministers and Presiding Officers of each Parliament to lodge submissions. The Committee also invited submissions from individuals and organisations with an interest in the treaties reviewed.

1.11 The Committee held a public hearing into the treaties in Canberra on 10 October 2016 for the Air Service Agreements.

1.12 The transcripts of evidence from the public hearing may be obtained from the Committee Secretariat or accessed through the Committee’s website.

1.13 A list of witnesses who appeared at the public hearing is at Appendix A.
2. Air Services - Kuwait

Introduction

2.1 This chapter examines the *Air Services Agreement between the Government of Australia and the Government of the State of Kuwait* (the Agreement), which was signed on 22 October 2015 and tabled in the Parliament on 2 May 2016. The Committee’s inquiry into the treaty action lapsed at the dissolution of the 44th Parliament and the treaty was re-referred to the Committee by the Foreign Minister on 12 September 2016.

2.2 Under the *Convention on International Civil Aviation of 1944* (the Chicago Convention) international airlines cannot operate between two countries without the countries having negotiated a bilateral air services agreement.\(^1\)

2.3 The proposed agreement will establish for the first time a treaty-level air services relationship between Australia and Kuwait, and will allow the airlines of Australia and Kuwait to develop international air services between the two countries.

2.4 As is standard practice with Australian air service agreements, the Agreement was settled in conjunction with arrangements in the form of a non-legally binding memorandum of understanding (MOU). The MOU

applies the provisions of the Agreement and allows airlines to access the rights available to them prior to it being entered into force.\textsuperscript{2}

### Overview and national interest summary

2.5 According to the National Interest Analysis (NIA), the Agreement:

- provides a binding legal framework to support the operation of air services between Australia and Kuwait;
- facilitates trade and tourism between the two countries; and
- provides greater opportunities for airlines to develop expanded air travel options for consumers.\textsuperscript{3}

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

2.6 The Agreement will grant Australian airlines access to the Kuwait aviation market, allowing air services between Australia and Kuwait. It will enable Australian and Kuwaiti carriers to provide services between any place in Australia and any place in Kuwait, based on capacity levels decided from time to time between the aeronautical authorities of the two countries.\textsuperscript{4}

2.7 The Department of Infrastructure and Regional Development (DIRD) explained that, although there are no direct flights between Australia and Kuwait, the Agreement allows Australian and Kuwaiti airlines to take advantage of codeshare arrangements and facilitate a seamless travel experience for clients:

This allows Australian airlines to sell a ticket to Kuwait themselves. If you wanted to travel on, say, a QF coded ticket, this would allow Qantas to sell a


\textsuperscript{3} NIA, para 5.

\textsuperscript{4} NIA, para 6.
ticket from Australia through, which can open up their network and increase their reach.⁵

2.8 Australian travellers and Australian businesses, particularly in the tourism and export industries, could benefit from the proposed agreement through the opening of increased commercial opportunities.⁶ DIRD advised that there were 5 410 visitor arrivals in Australia from Kuwait during the financial year 2015–16.⁷

Obligations

2.9 The obligations as set out in the NIA are provided below.⁸

2.10 The Agreement was done in accordance with the Chicago Convention to which Australia and Kuwait are both Parties. The Agreement is based on Australia’s model air services agreement with adjustments settled during negotiations. The adjustments to the model agreement are in terms of structure and the exact wording of the standard obligations.⁹

2.11 Australia and Kuwait are obliged to allow the ‘designated airlines’ of each country to operate scheduled air services carrying passengers, cargo and mail between the two countries on specified routes in accordance with the provisions of the proposed Agreement. To facilitate these services, the 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.

---

⁵ Mr Glenn Smith, Policy Officer, International Air Transport Section, Department of Infrastructure and Regional Development (DIRD), Committee Hansard, Canberra, 10 October 2016, p. 3.
⁶ NIA, para 7.
⁷ Ms Ann Redmond, General Manager, Aviation Industry Policy Branch, DIRD, Committee Hansard, Canberra, 10 October 2016, p. 2.
⁸ NIA, paras 8 to 28.
⁹ Mr Smith, DIRD, Committee Hansard, Canberra, 10 October 2016, p. 2.
2.12 Under Article 3 (Granting of Rights and Privileges) 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 3(2) provides the right for designated airlines to make stops for the purpose of taking on board and discharging passengers, cargo and mail. Article 3(4) precludes designated airlines from carrying passengers, baggage, cargo or mail for compensation within the territory of the other Party.

2.13 Article 4 (Designation and Authorisation) allows each Party to designate any number of airlines to operate the agreed services. On receipt of such a designation, and an application from a designated airline for operating authorisation, the other Party must grant the appropriate authorisations provided that the airline being designated complies with the conditions for incorporation and principal place of business set out in the Agreement, holds the necessary operating permits and meets the conditions the Party receiving the designation normally applies to the operation of international air transport (Article 4(2)). It is also a condition of granting an authorisation to a designated airline that the Party designating the airline has and maintains effective regulatory control over the airline and complies with the safety and security provisions of the Agreement.

2.14 Article 5 (Revocation, Limitation and Imposition of Conditions) sets out each Party’s rights to revoke, suspend or impose conditions on a designated airline’s operating authorisations in the event of any non-compliance with the terms of Article 4(1). Article 5(2) provides that any such action shall only be exercised after consultations between aeronautical authorities, unless compliance with safety or security provisions requires immediate action.

2.15 Article 6 (User Charges) requires each Party to use its best efforts to ensure that user charges imposed or permitted to be imposed on the designated airlines of the other Party for the use of airports, their facilities, technical and other installations and services, are reasonable, non-discriminatory and equitably apportioned (Article 6(1)). 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 of a Party’s own airlines operating similar services (Article 6(2)). Article 6(3)
contains provisions addressing consultation, notification and the exchange of information in relation to user charges imposed on airlines using affected services and facilities.

2.16 **Article 7** (Exemptions from Custom Duties and Other Charges) provides that the aircraft operated by the airlines of each Party, and the listed equipment and stores used in the operation of the agreed services, shall be exempt from import restrictions, customs duties, excise taxes and similar fees and charges (**Article 7(1), (2)**). **Article 7(3)** provides that equipment and supplies (within its scope) may be required to be kept on board, or under the supervision or control of the appropriate authorities until they are either re-exported or disposed of in accordance with the customs laws of the Party.

2.17 **Article 8** (Financial Provisions) provides for designated airlines to sell air transport services to the public and to freely convert and move currency.

2.18 **Article 9** (Technical and Commercial Representation) 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.

2.19 **Article 10** (Entry and Clearance Regulations) provides that each Party’s laws and regulations relating to entry and exit of passengers, crew, cargo and mail, and aircraft (for example immigration, advance passenger information, customs and quarantine) must be complied with in the territory of that Party (**Article 10(1)**). This Article requires each Party to apply such laws to the aircraft of the other Party without distinction as to nationality (**Article 10(2)**).

2.20 Under **Article 11** (Capacity Provisions), 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 Agreement and to take action to eliminate all forms of discrimination or unfair competition affecting the competitive position of a designated airline of the other Party (**Article 11(1), (2)**). The capacity which may be provided by the designated airlines of each Party must 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 the MOU between the aeronautical authorities of the two Parties. These capacity arrangements are intended to remain in effect once the Agreement enters into force.

2.21 **Article 12** (Timetable Submission and Slots) sets out requirements for the submission of timetable information, in accordance with each Party’s domestic laws and regulations. It also confirms each Party will provide airlines fair and equal opportunity to secure slots and access to the airports in its territory (**Article 12(2), (3)**).

2.22 **Article 13** (Information and Statistics) provides that the aeronautical authorities of one Party may require the relevant authorities and designated airlines of the other Party to provide statistics related to the traffic carried on services performed under the Agreement.

2.23 **Article 14** (Establishment of Tariffs) provides that each Party shall allow each designated airline to determine its own air fares (tariffs) based on commercial considerations (**Article 14(1)**). **Article 14** also establishes a process for limited intervention (**Article 14(3)**) and consultation in the event of unreasonable pricing practices, subject to each Party’s competition and consumer protection laws (**Article 14(4), (5)**).

2.24 Under **Article 15** (Aviation Safety), each Party may also request consultations with the other Party at any time concerning the safety standards maintained by the other Party (**Article 15(1)**). 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 (**Article 15(2)**). **Article 15(2)** provides that each Party may, in its territory, arrange inspections of aircraft of the other Party to verify the validity of the relevant aircraft documents and those of its crew and ensure that the aircraft equipment and the condition of the aircraft conform to the standards prescribed under the Chicago Convention. Each Party can take immediate action essential to ensure the safety of an airline, including varying or suspending operating authorisation, if it considers such action to be necessary (**Article 15(6)**). **Article 15(8)** requires each Party to recognise certificates of airworthiness, certificates of competency and licences issued or rendered valid 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 operators that have been issued by the other Party.

2.25 Under Article 16 (Aviation Security), both Parties reaffirm their obligations 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 (Article 16(1)). 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 (Article 16(2)). Each Party must act in conformity with the standards established by ICAO, 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 (Article 16(3)). Parties shall ensure effective measures are applied to protect aircraft and to screen passengers, crew, carry-on items, baggage, cargo and aircraft stores, prior to and during boarding or loading. 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 (Article 16(4)). The Parties shall assist each other in the event of an unlawful incident or threat of an incident (Article 16(5)). Each aeronautical authority may request to conduct a security assessment in the other Party’s territory. Such assessments are to be conducted in accordance with arrangements agreed between the aeronautical authorities without delay (Article 16(6)).

2.26 Under Article 17 (Consultations and Modifications), consultations between the aeronautical authorities in relation to the application of the Agreement shall take place as needed. Either Party may additionally request consultations with the other Party at any time for the purpose of amending the Agreement.

2.27 Article 18 (Settlement of Disputes) provides a process for dispute resolution on matters relating to the interpretation or application of the Agreement, other than those relating to the application of domestic competition laws. If the Parties cannot resolve a dispute by negotiation between themselves, Article 18(2) provides 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 limit, suspend or revoke any rights or privilege granted under the Agreement for the duration of the non-compliance.

2.28 Under Article 20 (Conformity with Multilateral Conventions), the provisions of any general multilateral air transport convention that enters into force for both Parties in the future will prevail over the provisions of the Agreement, to the extent of any inconsistencies.

2.29 Once the Agreement enters into force, it will be registered with ICAO, under Article 21 (Registration).

2.30 The Annex to the proposed Agreement contains a Route Schedule which specifies the routes that may be operated by designated airlines of each Party, as well as operational provisions. It also provides designated airlines with the right to enter into code share arrangements with any other appropriately authorised airline.

Implementation

2.31 The 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 of Australian airlines. No amendments to this legislation or any other legislation is required for the implementation of the Agreement.\(^{10}\)

Costs of the treaty action

2.32 No direct financial costs to the Australian Government are anticipated in the implementation of the Agreement. There are no financial implications for State or Territory Governments.\(^{11}\)

\(^{10}\) NIA, para 29.

\(^{11}\) NIA, para 30.
Conclusion

2.33 The Committee supports the Agreement and recommends that binding treaty action be taken.

Recommendation 1

2.34 The Committee supports the *Air Services Agreement between the Government of Australia and the Government of the State of Kuwait* and recommends that binding treaty action be taken.
3. Air Services - Bahrain

Introduction

3.1 This chapter examines 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 (the Protocol). The Protocol amends Article 15 and the Route Annex of the Australia-Bahrain Air Services Agreement done at Bahrain on 29 April 1995 (herein referred to as the ‘Head Agreement’).¹

Reasons for Australia to take the proposed treaty action

3.2 According to the National Interest Analysis (NIA), the 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.²

3.3 The 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 amended Route Annex provides increased commercial opportunities for


² NIA, para 4.
Australian airlines, allowing airlines to serve all points in Australia and Bahrain and unrestricted intermediate and beyond points.\(^3\)

3.4 The Department of Infrastructure and Regional Development (DIRD) assured the Committee that the changes carried no additional obligations:

The provisions around tariffs that were included in that protocol are consistent with what we usually look to negotiate, and they provide for free pricing for airlines to determine their own airfares for carriage of passengers and cargo, which is consistent with our standard approach.\(^4\)

3.5 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’, and this change in terminology will support the broader bilateral relationship between Australia and Bahrain.\(^5\)

**Obligations**

3.6 The obligations as set out in the NIA are provided below.\(^6\)

3.7 The Protocol was made in accordance with the Chicago Convention to which Australia and Bahrain are both Parties.

3.8 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

\(^3\) NIA, para 5.

\(^4\) Mr Glen Smith, Policy Officer, International Air Transport Section, Department of Infrastructure and Regional Development (DIRD), *Committee Hansard*, Canberra, 10 October 2016, p. 2.

\(^5\) NIA, para 7.

\(^6\) NIA, paras 8 to 12.
instruments of less-than-treaty status. The proposed Protocol makes certain amendments to the text of the Head Agreement.

3.9 **Article 1** of the Protocol replaces all references to the ‘State of Bahrain’ in the Head Agreement with ‘Kingdom of Bahrain’.

3.10 **Article 2** of the 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 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.

3.11 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 Annex referred to in **Article 3** and attached to the 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**

3.12 The Protocol 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 Protocol.7

---

7 NIA, para 13.
Costs of the treaty action

3.13 No direct financial costs to the Australian Government are anticipated in the implementation of the Protocol. There are no financial implications for any State or Territory Governments.\(^8\)

Conclusion

3.14 The Committee supports the Protocol and recommends that binding treaty action be taken.

Recommendation 2

3.15 The Committee supports 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 and recommends that binding treaty action be taken.

\(^8\) NIA, para 14.
4. Minor Treaty Actions

Introduction

4.1 Minor treaty actions are generally technical amendments to existing treaties which do not impact significantly on the national interest.

4.2 Minor treaty actions are presented to the Committee with a one-page explanatory statement and are listed on the Committee’s website. The Committee has the discretion to formally inquire into these treaty actions or indicate its acceptance of them without a formal inquiry and report.

Amendment to Annex II of the Convention Against Doping in Sport


4.4 The amendments clarify the standard of proof that must be satisfied in order for a Therapeutic Use Exemption (TUE) to be granted. The amendments add the words ‘by a balance of probability’ to the requirements in Clause 4.1. Previously this clause had been silent on the required evidentiary standard.
Amendments to Annex I of MARPOL


4.6 The treaty action consists of technical amendments to international regulations for the prevention of oil pollution from ships. The amendments would amend regulations concerning oil residue (sludge) tanks, in order to minimise the possibility of oil residues being discharged at sea.

4.7 The explanatory statement advises that the amendment may require some refitting on Australian registered ships built before 2014. The cost is expected to be minimal, as this refitting involves modifying the piping arrangements and does not require replacement of the tanks. The explanatory statement advises that industry peak bodies have indicated that the costs involved will be minor, and no stakeholders have raised concerns about this treaty action.

Second Protocol establishing the Prolongation of the Treaty between the Kingdom of the Netherlands and Australia on the Presence of Australian Personnel in the Netherlands for the Purpose of Responding to the Downing of Malaysia Airlines flight MH17

4.8 This minor treaty action extends Australia’s deployment of personnel in the Netherlands, in order to secure and identify the remains of the victims and investigate the cause of the MH17 downing. The explanatory statement advises that this investigation is still ongoing, and requires personnel to continue until the end of 2016.

4.9 The treaty action is the second extension, prolonging the treaty until 31 December 2016. The Treaty originally entered into force on 1 August 2014 with an expiry date of 1 August 2015. In May 2015 the Treaty was extended until 1 August 2016. The explanatory statement advises that under Dutch
domestic requirements the duration of each Protocol is limited to twelve months.

4.10 According to the explanatory statement, the treaty action does not require legislative change and has negligible legal and financial effects.

4.11 The Committee examined and reported on the original Treaty in February 2015. The Minister invoked the National Interest Exemption (NIE), and the treaty entered into force on 1 August 2014 before being tabled in the Parliament on 30 September 2014. The First Protocol extending the Treaty was also given expedited consideration by the Committee at the Minister’s request. The Second Protocol, which only extends the term by five months, has been presented as a minor treaty action.

Conclusion

4.12 The Committee determined not to hold a formal inquiry into any of these amendments, and agreed that binding treaty action may be taken in each case.

The Hon Stuart Robert MP

Chair

21 November 2016
A. Witnesses

*Air Services - Kuwait; Air Services - Bahrain*

**Monday, 10 October 2016**

Canberra

*Department of Infrastructure and Regional Development*

*Attorney-General’s Department*