



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

**Determination:** [2014] IASC 114  
**Renewal of:** [2009] IASC 129  
**The Route:** Cook Islands  
**The Applicant:** Virgin Australia Airlines (SE Asia) Pty Ltd  
(Virgin Australia) ACN 79 097 892 389  
**Public Register:** IASC/APP/201468

**The Commission's delegate makes a fresh determination allocating 180 seats per week to Virgin Australia on the Cook Islands route for five years.**

#### 1 The application

1.1 On 12 October 2009, the Commission issued Renewal Determination [2009] IASC 129 (the Determination) allocating 180 seats per week on the Cook Islands route to Virgin Australia. The Determination, as varied by Decision [2011] IASC 213, is valid for five years from 13 October 2010.

1.2 Under section 17 of the *International Air Services Commission Act 1992* (the Act), the Commission must start its consideration of the renewal of a determination at least 12 months before its expiry; the Determination (as varied) expires on 12 October 2015. In view of this, on 2 October 2014 the Commission sent a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 Virgin Australia applied to the Commission on 10 October 2014 for a renewal of the Determination for five years from 13 October 2015. Virgin Australia confirmed that the capacity is currently being fully utilised. Virgin Australia also indicated the conditions contained in Decision [2011] IASC 213 do not need to continue in any subsequent determination.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on 10 October 2014 inviting other applications for capacity. No applications were received.

1.5 All non-confidential material supplied by Virgin Australia is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

#### 2 Delegate's assessment

2.1 In accordance with section 27AB of the Act and regulation 3A of the *International Air Services Commission Regulations 1992*, the delegate of the

Commission may consider the application for allocation of capacity. (For purposes of this decision, all references to the Commission include the delegate of the Commission).

2.2 In considering an application for renewal of a determination under section 8 of the Act, the Commission must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

2.3 Under paragraph 6.2 of the Minister's Policy Statement (No. 5) of 19 May 2004 (the Policy Statement), in circumstances where there is only one applicant for allocation of capacity on a route, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

2.4 The Commission notes that:

- there are no other applicants seeking the capacity for which Virgin Australia has applied; and
- Virgin Australia is an established international carrier incumbent on the route and is therefore reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

2.5 Under paragraph 8.1 of the Policy Statement, there is a presumption in favour of the carrier seeking the renewal.

2.6 In these circumstances, the Commission is satisfied that renewal of [2009] IASC 129 (as varied) allocating 180 seats per week of capacity on the Cook Islands route to Virgin Australia is of benefit to the public.

2.7 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Paragraph 15(2)(c) requires the inclusion of a condition stating that the capacity be fully used except so far as the determination provides otherwise in relation to a specific period.

2.8 Virgin Australia has also requested the discontinuation of the conditions prescribed in Decision [2011] IASC 213 – which varied the original Determination to allow (then) V Australia to code share on Pacific Blue services on the Cook Islands route – as the condition is not required. The Commission considers there are no issues with this and accepts the removal of the conditions as requested by Virgin Australia.

### **3 Determination for renewal of Determination [2009] IASC 129 allocating capacity on the Cook Islands route to Virgin Australia ([2014] IASC 114)**

3.1 In accordance with section 8 of the Act, the delegate, on behalf of the Commission, makes a fresh determination in favour of Virgin Australia, allocating 180 seats per week in each direction on the Cook Islands route in accordance with the terms of the Australia-Cook Islands air services arrangements.

3.2 The determination is for five years from 13 October 2015.

3.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from the date this instrument comes into effect;
- Only Virgin Australia is permitted to use the capacity;
- Virgin Australia is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- changes in relation to the ownership and control of Virgin Australia are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia-Cook Islands air services arrangements being withdrawn; or
  - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Virgin Australia or be in a position to exercise effective control of Virgin Australia, without the prior consent of the Commission.

Dated: 20 October 2014



Marlene Tucker  
Executive Director  
Delegate of the IASC Commissioners