



**Australian Government**  

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**International Air Services Commission**

**DETERMINATION**

**Determination:** [2018] IASC 103  
**The Route:** Cook Islands  
**The Applicant:** Virgin Australia Airlines (SE Asia) Pty Ltd  
(Virgin Australia)  
ABN 63 125 580 823  
**Public Register:** IASC/APP/201810

**The Commission makes a determination allocating to Virgin Australia 156 seats per week of capacity on the Cook Islands route. The determination is valid for five years.**

## **1 The application**

1.1 On 30 January 2018, Virgin Australia applied to the International Air Services Commission (the Commission) for an allocation of 156 seats per week on the Cook Islands route. The capacity will be used for additional services between Australia and Cook Islands to be operated using B737 aircraft, and are planned to commence in June-July 2018.

1.2 As required by section 12 of the International Air Services Commission Act 1992 (the Act), the Commission published a notice on 31 January 2018 inviting other applications for capacity. No other applications were received.

1.3 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 Relevant provisions of the air services arrangements**

2.1 Paragraph 7(2)(aa) of the Act requires the Commission not to allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s)

2.2 According to the Register of Available Capacity, there are 1,560 seats per week of capacity to and from points in Australia, which are currently available for immediate allocation on the Cook Islands route.

### **3 Commission's assessment**

3.1 In considering an application for allocating available capacity, section 7 of the Act requires that the Commission must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public. Section 7 further provides that the determination must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates. 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.

3.2 Pursuant to section 11 of the Act, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued Policy Statement No. 5 (hereinafter referred to as the Policy Statement) dated 19 May 2004. The Policy Statement sets out the range of criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.3 Under paragraph 6.2 of 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.

3.4 The Commission notes that:

- there are no other applicants seeking capacity on the route; and
- Virgin Australia is an established international carrier, and is therefore reasonably capable of obtaining the necessary approvals and of implementing its application.

3.5 To date, Virgin Australia has a total capacity allocation of 900 weekly seats on the Cook Islands route. It utilises up to 880 seats per week using B737-800 aircraft (as per the Northern Winter 2017-18 Timetable Summary published by the Department of Infrastructure, Regional Development and Cities).

3.6 The Commission considers that Virgin Australia fulfils the criteria under paragraph 4 of the Policy Statement to operate additional services on the Cook Islands route and allocating capacity to Virgin Australia on the Cook Islands route would be of benefit to the public.

### **4 Determination allocating capacity to Virgin Australia Airlines (SE Asia) Pty Ltd on the Cook Islands route ([2018] IASC 103)**

4.1 The Commission, under section 7 of the Act, allocates 156 seats per week in each direction to Virgin Australia on the Cook Islands route in accordance with the terms of the Australia-Cook Islands air services arrangements.

4.2 The determination is for five years from the date of the determination.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from no later than 31 July 2018, or from such other date approved by the Commission;
- 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; and
- 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: 22 February 2018

  
IAN DOUGLAS  
Chairperson

  
JAN HARRIS  
Commissioner

  
KAREN GOSLING  
Commissioner