



Australian Government

International Air Services Commission

DETERMINATION

Determination: [2024] IASC 127
The Route: Palau
The Applicant: Qantas Airways Limited (Qantas)
(ABN 16 009 661 901)
Public Register File: IASC/APP/202438

The Commission makes a determination allocating to Qantas 174 seats of capacity per week to operate passenger services in each direction on the Palau route. The determination is valid for five years from 28 November 2024.

1 The application

1.1 On 6 November 2024, Qantas applied to the International Air Services Commission (the Commission) for an allocation of 174 seats per week to operate passenger services on the Palau route. Qantas stated in its application that the capacity will be utilised by Qantas to operate one service per week between Brisbane and Koror, using Boeing 737-800 aircraft configured with 174 seats.

1.2 Qantas has requested the capacity allocation on the following basis:

- the allocation is requested for a period of five years from the date of the determination; and
- the capacity will be fully utilised by 31 January 2025.

1.3 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 7 November 2024, the Commission published a notice on its website inviting other applications for capacity on the Palau route. No other applications were received.

1.4 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Air services arrangements

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

2.2 Under the Australia-Palau air services arrangements, Australian designated airlines may operate up to 1,200 seats of capacity per week in each direction between Australia and Palau.

2.3 According to the Register of Available Capacity, there are 1,200 seats of passenger capacity per week available for allocation to Australian designated airlines to operate passenger services between Australia and Palau.

3 Commission's consideration

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services. Qantas is seeking the allocation of 174 seats of capacity per week in each direction on the Palau route to operate one weekly passenger service. The Commission notes that the proposed service is intended to be operated through a contract awarded by the Australian Government to Qantas, to operate the Palau Paradise Express, a direct route between Brisbane and Koror, as announced by the Minister of Foreign Affairs on 16 October 2024¹.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.3 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.4 Pursuant to section 11 of the Act, the Minister issued the International Air Services Commission Policy Statement 2018 (the Policy Statement) which came into effect on 28 March 2018. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 The Commission notes that there are no other applicants seeking capacity on the route and no opposition to the application. Section 12 of the Policy Statement provides, in part, that in circumstances where there is only one applicant for allocation of capacity on a route, and there is no opposition to the application, the Commission is to have regard to the 'reasonable capability criterion' in section 8 of the Policy Statement and need not have regard to any other matter.

3.6 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is required to assess the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity

¹ <https://www.foreignminister.gov.au/minister/penny-wong/media-release/qantas-operate-palau-paradise-express>

allocated under the determination.

3.7 Pursuant to section 29 of the Act, the Commission wrote to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (the Department) requesting advice about whether Qantas satisfies the Section 8 reasonably capable criteria on the Palau route.

3.8 On 22 November 2024, the Department advised the Commission that based on current information and subject to approval from the Palau aeronautical authorities, it considers that Qantas “is reasonably capable of obtaining the licenses, permits and other approvals necessary to operate scheduled services to and from Palau and using the capacity sought in its application”.

3.9 The Department further advised that Qantas has been designated as an Australian airline under the Australia-Palau air services arrangements and holds an International Airline Licence issued by the Department, amended to allow the airline to operate international services on the requested route.

3.10 Accordingly, the Commission has concluded that Qantas satisfies the criteria under section 8. The Commission, therefore, has decided to allocate the capacity as requested by Qantas.

3.11 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. The Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.12 Paragraph 15(2)(a) of the Act requires a determination to specify the period during which it is to be in force. Subsection 15(3) of the Act effectively provides that if the Policy Statement sets out how the period of validity of the determination is to be fixed, then the period of validity is as so fixed. In any other case, an interim determination is to be in force for three years while a determination that is not an interim determination is to be in force for five years.

3.13 Section 20 of the Policy Statement sets out how the Commission is to fix the period during which a determination is to be in force. The Commission considers that this application is within the scope of subsection 20(4) and has decided that this Determination is to be in force for a period of five years.

4 Determination allocating capacity on the Palau route to Qantas Airways Limited ([2024] IASC 127)

4.1 In accordance with section 7 of the Act, the Commission makes a determination in favour of Qantas Airways Limited, allocating 174 seats of capacity per week to operate passenger services on the Palau route in accordance with the Australia – Palau air services arrangements.

4.2 The determination is valid for five years from 28 November 2024.

4.3 The determination is subject to the following conditions:

- (a) Qantas Airways Limited is required to fully utilise the capacity no later than 31 January 2025 or from such other date as approved by the Commission.
- (b) Only Qantas Airways Limited is permitted to utilise the capacity.
- (c) Qantas Airways Limited is not permitted to utilise the capacity to provide code share or joint services with another carrier or any other person unless approved by the Commission.
- (d) Changes in relation to the ownership and control of Qantas Airways Limited are permitted except to the extent that any change:
 - results in the designation of Qantas Airways Limited as an Australian carrier under the Australia - Palau 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 Qantas Airways Limited or be in a position to exercise effective control of Qantas Airways Limited without the prior consent of the Commission.

Dated: 28 November 2024



GENEVIEVE BUTLER
Chairperson



JANE MCKEON
Commissioner