



Australian Government

International Air Services Commission

RENEWAL DETERMINATION

Determination:	[2022] IASC 118
Renewal of:	[2017] IASC 115
The Route:	Fiji
The Applicant:	Virgin Australia (SE Asia) Pty Limited (Virgin Australia) ABN 79 097 892 389
Public Register File:	IASC/APP/202231

The Commission makes a fresh determination allocating to Virgin Australia 1,260 seats of passenger capacity per week in each direction on the Fiji route, subject to certain conditions. The determination is valid for five years from 10 July 2023.

1 The application for renewal

1.1 On 10 August 2017, the International Air Services Commission (the Commission) issued Renewal Determination [2017] IASC 115 (the Determination) allocating 1,260 seats of capacity per week in each direction on the Fiji route in favour of Virgin Australia.

1.2 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the original determination. The Determination is due to expire on 9 July 2023. In view of this, the Commission sent, on 25 July 2022, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 24 August 2022, Virgin Australia applied to the Commission for a renewal of the Determination for a further five-year period and also requested the retention of all relevant conditions.

1.4 As required by sections 12 and 17 of the Act, the Commission published, on 24 August 2022, a notice on its website and subsequently sent a notification by email to stakeholders inviting other applications for capacity on the route. No other applications or submissions were received.

1.5 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-Fiji air services arrangements, Australian designated airlines may operate up to 6,900 seats of passenger capacity per week in each direction between Fiji and the following points in Australia: Sydney, Melbourne, Brisbane and/or Perth. Virgin Australia has been allocated a total of 4,389 seats of passenger capacity. Qantas has a total allocation of 2,499 seats of passenger capacity. According to the Register of Available Capacity, there remains 12 seats of passenger capacity per week in each direction available for allocation to Australian designated airlines.

2.3 Additionally, the designated airlines of Australia may determine the frequency of service, capacity and aircraft type to be operated on the specified routes to or from points in Australia other than Sydney, Melbourne, Brisbane and/or Perth.

3 Commission's consideration

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. Subsection 8(2) provides in part that the fresh determination 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.

3.2 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.

3.3 Section 14 of the Policy Statement applies where the Commission is proposing to make a fresh determination under section 8 of the Act, and is considering whether the allocation of capacity in the original determination is no longer of benefit to the public for the purpose of section 8(2)(a)(i) of the Act. Section 14(2) of the Policy Statement provides that, without limiting the matters to which the Commission may have regard, an allocation is generally no longer of benefit to the public if:

- the carrier has failed to service the route effectively (section 14(2)(a)); and
- there are other applications for some or all of the capacity (section 14(2)(b)); and
- the Commission is satisfied that a different allocation of capacity would be of greater benefit to the public, having regard to the criteria set out in sections 8 and 9 of the Policy Statement (section 14(2)(c)).

3.4 The Commission notes that, under subsection 14(2) of the Policy Statement, an allocation will generally no longer be of benefit to the public where all of the above conditions are satisfied.

3.5 There are no other applications for some or all of the capacity to which the determination in question relates, and therefore the condition in section 14(2)(b) of the Policy Statement is not satisfied. The Commission therefore finds that the proposed allocation does not fall within the class of allocations that are generally no longer of benefit to the public contemplated by subsection 14(2) of the Policy Statement.

3.6 However, subsection 14(2) of the Policy Statement operates ‘without limiting the matters to which the Commission may have regard’. In view of the circumstances pertaining to the Coronavirus disease (COVID-19) pandemic, the Commission has proceeded to consider whether the allocation is no longer of benefit to the public in all the circumstances.

3.7 On 11 March 2020, the World Health Organization declared the outbreak of COVID-19 a pandemic. In response, the Australian Government introduced a range of health, financial and other measures to prevent and minimise the transmission of COVID-19.

3.8 In this context, on 24 March 2020 the Prime Minister announced that the Australian Government was introducing a ‘do not travel’ ban on Australians travelling overseas under the *Biosecurity Act 2015*. On 27 October 2021, the Government announced it would lift the international travel ban for certain categories of travellers from 1 November 2021, subject to certain conditions. On 7 February 2022, the Prime Minister announced that Australian international borders would re-open from 21 February 2022.

3.9 On 12 October 2021, Virgin Australia announced its recommencement of international services from December 2021 with services to Fiji resuming on 16 December 2021. In January 2022, Virgin Australia temporarily suspended its services to Fiji until March 2022 due to the emergence of the Omicron variant.

3.10 In assessing the current Virgin Australia application for the renewal of its capacity allocation of 1,260 seats of passenger capacity per week on the Fiji route, the Commission considered whether Virgin Australia has failed to service the route effectively.

3.11 Until travel restrictions linked to the COVID-19 pandemic were imposed by the Australian Government in March 2020, Virgin Australia operated regular services between points in Australia and Fiji. Prior to March 2020, there was no information to suggest that Virgin Australia had failed to service the Australia-Fiji route effectively.

3.12 The Commission considers that the temporary suspension of Virgin Australia’s services to Fiji in 2020-21 and 2022 was directly in response to travel restrictions associated with the COVID-19 pandemic. The Commission therefore finds that the temporary suspension of Virgin Australia’s services in these circumstances does not mean that it has failed to service the route effectively. Moreover, the Commission notes

that following the temporary suspension of services to Fiji in January 2022, Virgin Australia resumed operating the services from 10 March 2022.

3.13 The Commission has also considered the ‘reasonable capability criterion’ in section 8 of the Policy Statement, i.e. 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 allocated under the determination.

3.14 The Commission notes that Virgin Australia is an established carrier that currently operates services between Australia and Fiji.

3.15 Accordingly, the Commission has concluded that the carrier satisfies the criteria under section 8. The Commission, therefore, has decided to allocate the capacity as requested by Virgin Australia.

3.16 There is no other information before the Commission that it considers to be relevant or material to its assessment of Virgin Australia’s application. Based on its findings above, the Commission is not satisfied that the allocation of capacity in the original determination is no longer of benefit to the public for the purposes of section 8(2)(a)(i) of the Act. Therefore, the Commission is required to make the same allocation of capacity as the original determination (see section 8(2)(a) of the Act).

3.17 The Commission will continue to monitor the utilisation of capacity by Virgin Australia on this route.

3.18 Under section 19 of the Act, the Commission “must include the same terms and conditions as the original determination to which it relates” (subsection 19(1)(c)), but “may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied that are warranted because of changes in circumstances since the original determination was made” (subsection 19(3)).

3.19 Pursuant to section 19 of the Act, the Commission has decided to include certain conditions as set out in item 4 below.

3.20 Nothing in this decision should be taken as indicating either approval or disapproval by the Australian Competition and Consumer Commission (ACCC). This decision is made without prejudicing, in any way, possible future consideration by the ACCC.

4 Determination allocating capacity on the Fiji route to Virgin Australia ([2022] IASC 118)

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Virgin Australia, allocating 1,260 seats per week in each

direction on the Fiji route in accordance with the Australia - Fiji air services arrangements.

4.2 The determination is valid for five years from 10 July 2023.

4.3 The determination is subject to the following conditions:

- (a) Virgin Australia is required to fully utilise the capacity from the date this determination comes into effect or such other date as may be approved by the Commission.
- (b) Only Virgin Australia is permitted to utilise the capacity.
- (c) Virgin Australia is not permitted to utilise the capacity to provide code share or joint services with another Australian carrier or any other person unless approved by the Commission.
- (d) 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 — Fiji 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: 16 September 2022



GENEVIEVE BUTLER
Chairperson



JANE MCKEON
Commissioner