



**Australian Government**

**International Air Services Commission**

# ANNUAL REPORT 2015–16

International Air Services Commission







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Annual Report 2015–16

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**Australian Government**  
**International Air Services Commission**

The Hon Darren Chester MP  
Minister for Infrastructure and Transport  
Parliament House  
CANBERRA ACT 2600

Dear Minister Chester

We are pleased to submit the twenty-fourth Annual Report of the International Air Services Commission, for the year ended 30 June 2016.

Our report is submitted to you in accordance with subsection 53(1) of the *International Air Services Commission Act 1992* (the Act) and is for presentation to each House of the Parliament in accordance with subsection 53(2) of the Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian Douglas', written over a horizontal line.

Dr Ian Douglas  
Chairperson

A handwritten signature in black ink, appearing to read 'John King', written over a horizontal line.

John King  
Commissioner

8 August 2016



The International Air Services Commission is an independent statutory authority, established under the *International Air Services Commission Act 1992*. It allocates capacity available under Australia's air services arrangements with other countries to existing and prospective Australian international airlines by making formal determinations. Applications are assessed against public benefit criteria set out in a policy statement issued to the Commission by the Minister for Infrastructure and Regional Development.

# CONTENTS

<b>PART 1</b>			
<b>The Year in Review by the Chairperson, Dr Ian Douglas</b>	1	Management of human resources	25
<b>PART 2</b>		Asset management	25
<b>Overview of the International Air Services Commission</b>	5	Purchasing	25
The role and functions of the Commission	5	Consultants, contractors and competitive tendering	25
Executive profile	7	<b>PART 5</b>	
Dr Ian Douglas	7	<b>Financial report</b>	27
Mr John King	8	<b>APPENDIX 1</b>	
The Secretariat	9	<b>Determinations and decisions</b>	29
Communications with interested parties	9	<b>APPENDIX 2</b>	
The role of the Department of Infrastructure and Regional Development (the Department)	9	<b>Route-by-route summary of Commission determinations and decisions in 2015–16</b>	33
<b>PART 3</b>		<b>APPENDIX 3</b>	
<b>Report on performance</b>	11	<b>Other information</b>	41
Overview	11	<b>APPENDIX 4</b>	
Results against performance targets	11	<b>Freedom of information schedule</b>	43
Serving the object of the Act	11	<b>APPENDIX 5</b>	
Case study – The Commission’s guidelines and the wholly-owned subsidiary	15	<b>Commission procedures</b>	45
Introduction	15	<b>APPENDIX 6</b>	
Legislative requirements	15	<b>Minister’s policy statement</b>	47
Administrative guidelines	16	<b>APPENDIX 7</b>	
Use of capacity allocation by a wholly-owned subsidiary	16	<b>Service Charter</b>	57
Serving applicants and interested parties	18	<b>APPENDIX 8</b>	
Efficiency of financial resources	20	<b>Commission office holders, 1992–2016</b>	61
<b>PART 4</b>		<b>APPENDIX 9</b>	
<b>Management and accountability</b>	23	<b>Glossary of terms</b>	63
Corporate governance practices	23	<b>INDEX</b>	
External scrutiny	24		



Photo © Qantas Airways



# PART 1

## The Year in Review by the Chairperson, Dr Ian Douglas

This annual report marks the twenty-fourth year of operations of the International Air Services Commission (the Commission). It is my pleasure to provide an overview of the activities of the Commission for 2015–16, my first as Chairperson of the Commission. I joined the Commission in November 2012 and was appointed as Chair by the Governor-General in May this year.

This year saw the strongest profitability ever recorded for the global airline industry, driven mostly by low fuel prices and further consolidation by US carriers. Fuel is a major expense for airlines and accounts for on average 27% of an airline's cost.<sup>1</sup>

In Australia, latest available annual figures show that international passenger movements into and out of the country increased by 6.4 per cent, while available seats increased by 4.7 per cent over last year. International flights during the year increased by 3.3 per cent and freight carried increased by 6.8 per cent.<sup>2</sup> These figures indicate both a small increase in average aircraft size and a strengthening of load factors.

Over the last four years, we have seen an increase in capacity growth to Australia by the Gulf carriers. They accounted for 14.1 per cent of all seats operated to and from Australia in the latest year compared to 11.6 per cent four years ago. Their total operated seats increased over the previous year by 6.1 per cent. While both Etihad and Qatar Airways have increased frequency and capacity in the latest year, the capacity of the largest of the Gulf carriers, Emirates, remained stable with a total of 4.7 million seats to and from Australia.<sup>3</sup> In March 2016, Qatar Airways commenced daily flights between Sydney and Doha in addition to its existing services between Doha and Melbourne and Perth. Subsequently, in May, Qatar launched services between Doha and Adelaide.<sup>4</sup>

In terms of Uplift/Discharge, passenger traffic across the Tasman remains the largest market, accounting for 19 per cent of traffic in the latest year, followed by Singapore (14 per cent) and United Arab Emirates (10 per cent). Of the top 10 Uplift/Discharge

1 IATA 2016

2 BITRE, International Airline Activity, year ended April 2016

3 BITRE, International Airline Activity, seat utilisation factors by airline, year ended April 2016

4 International Airlines Timetable Summary Northern Summer 2016

countries, Japan recorded the highest growth in passenger numbers compared to the previous year, increasing by 26.8 per cent, but followed closely by China on 26.4 per cent.<sup>5</sup>

In the latest year, Qantas Group (Qantas, Jetstar, Jetstar Asia) passenger numbers grew 10 per cent while Virgin Australia Group (Virgin Australia, Virgin Samoa, Tigerair Australia) passenger numbers decreased by 1.9 per cent. Qantas and Jetstar together continue to operate the largest number of seats into and out of Australia with a combined total of over 11.7 million seats (more than 25 per cent of all seats operated).<sup>6</sup>

Qantas continued its partnership with Dubai-based Emirates Airline, and expanded its commercial relationships with China Eastern Airlines and American Airlines. Qantas returned to the Sydney-San Francisco route in December 2015 using a Boeing 747-400. It also resumed services between Perth and Singapore with a Boeing B737-800 and added capacity to Japan, shifting a daily Sydney – Tokyo Narita flight to Tokyo’s Haneda Airport and launching a service from Brisbane to Tokyo-Narita. On 30 September 2015, Jetstar began twice weekly services to China, connecting Wuhan with the Gold Coast.

During the year, Virgin Australia refocused its international operations. It launched Tigerair Australia which commenced operations in March 2016 to Denpasar from Adelaide, Melbourne and Perth, replacing Virgin Australia services on these routes. Virgin Australia, however, continues to operate services to Denpasar from Sydney, Brisbane and Port Hedland.<sup>7</sup> From October 2015, Virgin Australia increased its ‘Northern Winter’ scheduled capacity to New Zealand to an average of 83 weekly services from an average of 70 weekly services in the previous year<sup>8</sup>. In January 2016, Virgin Australia withdrew services to Thailand and returned its capacity allocation on the route.

On 31 May 2016, Virgin Australia released a statement to the Australian Securities Exchange announcing it had formed a commercial alliance with HNA Aviation Group which was issued new shares equivalent to approximately 13% of the shares in the Virgin Australia Group.<sup>9</sup> This was followed by Virgin Australia’s application for a capacity allocation of 1,925 seats per week on the China route, and seven frequencies per week on the Hong Kong route. Virgin Australia intends to commence operations on these routes from 1 June 2017. Both applications were granted by the Commission.<sup>10</sup>

In its decisions granting the capacity allocations to Virgin Australia on the China and Hong Kong routes, the Commission considered that Virgin Australia’s proposed services on the Australia-Beijing and Australia-Hong Kong routes would provide more options to Australian travellers and promote further competition on these routes.

5 BITRE, International Airline Activity, year ended April 2016

6 BITRE, International Airline Activity, year ended April 2016

7 Virgin Australia’s media release of 7 August 2015

8 International Airlines Timetable Summary Northern Summer 2016

9 On 30 March 2016, Air New Zealand announced its intention to sell its 26% stake in Virgin Australia.

On 10 June 2016, Air New Zealand announced it had agreed to sell, subject to regulatory approval, 19.98% of its shareholding in Virgin Australia to a Chinese conglomerate, the Nanshan Group

10 [2016] IASC 106 and [2016] IASC 107

China is now Australia's third largest country for Origin/Destination passenger traffic with a 9.2 per cent share. Only the United States with 9.3 per cent and New Zealand with 14.7 per cent are larger.<sup>11</sup> Passenger traffic between Australia and China has recorded an average annual growth rate of 12.4 per cent over the last five years and an increase in the latest year of 17.7 per cent. The Hong Kong Origin/Destination market is ranked eleventh in terms of passenger traffic. Passenger traffic between Australia and Hong Kong has recorded an average annual growth rate of 4.1 per cent over the last five years and an increase in the latest year of 6.8 per cent. Only Cathay Pacific and Qantas currently operate non-stop services between Australia and Hong Kong.<sup>12</sup>

In relation to all-cargo services, during the year Pacific Air Express continued to operate one weekly service utilising its 17.5 tonnes of freight capacity between Brisbane and Honiara (Vanuatu) and two weekly services between Brisbane and Port Moresby (Papua New Guinea). Finally, Tasman Cargo continued to operate freight services between Sydney and Auckland.<sup>13</sup>

Since the Commission started the process of encouraging airlines to consolidate multiple determinations two years ago, we have seen airlines (Qantas, in particular) consolidating their multiple determinations on various routes. This approach has considerably streamlined the regulatory process which means the airlines will have to make fewer applications for renewal of determinations. This year, Qantas consolidated its determinations on five routes (Chile, China, Hong Kong, New Caledonia and the Philippines).

As in previous years, applications by Australian airlines to use capacity in joint services or code share arrangements with other carriers generated significant work for the Commission. With both Qantas and Virgin Australia increasing codeshare partnerships and using commercial agreements to expand their networks, the Commission is required to monitor the utilisation of allocated codeshare capacity in the same way that it monitors the utilisation of capacity allocated for the carriers' own operations.

The Commission operates with a very small Secretariat. The Executive Director Marlene Tucker has secured resources from the Department of Infrastructure and Regional Development to deliver the work of the Commission in an efficient and timely manner. Her efforts are greatly appreciated. I would also like to say a special thanks to my fellow Commissioner, Mr John King, whose expertise and experience has contributed substantially to the work of the Commission.



**Dr Ian Douglas**  
*Chairperson*

11 BITRE Australia-China Origin/Destination Passenger Data, as at April 2016

12 Australian Bureau of Statistics, Overseas Arrivals and Departures

13 International Airlines Timetable Summary Northern Summer 2016



Photo © Virgin Australia

## PART 2

# Overview of the International Air Services Commission

### The role and functions of the Commission

The Commission is an independent statutory authority established under the *International Air Services Act 1992* (the Act). The object of the Act is to enhance the welfare of Australians by promoting economic efficiency through competition in the provision of international air services, resulting in:

- increased responsiveness by airlines to the needs of consumers, including an increased range of choices and benefits;
- growth in Australian tourism and trade; and
- the maintenance of Australian carriers capable of competing effectively with airlines of foreign countries.

The Commission's primary responsibility is to serve the object of the Act by allocating capacity entitlements to Australian airlines for the operation of international airline services. The capacity allocated by the Commission comes from entitlements available to Australia's international carriers under air services arrangements between Australia and other economies. In particular, the functions of the Commission are to:

- make determinations allocating capacity to Australian carriers in both contested and uncontested situations;
- renew determinations on application by carriers;
- conduct reviews of determinations; and
- provide advice to the Minister about any matter referred to the Commission by the Minister concerning international air operations.

The Act is complemented by a policy statement from the Minister, which instructs the Commission about the way in which it is to perform its functions. The Minister's policy statement sets out criteria to be applied by the Commission in various circumstances.

For example, more complex public benefit criteria may be applied in cases where there are two carriers seeking the same limited amount of capacity, compared with an uncontested application from a well-established airline. The Minister's policy statement is a legislative instrument under section 11 of the Act. It is reproduced at Appendix 6.

Determinations allocating capacity are usually made for a period of five years for routes where capacity or route entitlements are restricted. In cases where capacity entitlements and route rights are unrestricted, determinations may be issued for a period of ten years. In either case, the Commission has the discretion to make interim determinations, which are for a period of three years. Interim determinations are normally made when capacity is being allocated to a new Australian operator. If an applicant requests that a determination be made for a shorter period, the Commission has the option to agree to this.

Carriers normally wish to renew determinations as they come towards their expiry date. The Commission is required to start reviews of these determinations at least one year before they expire. Except for interim determinations, there is a rebuttable presumption in favour of the carrier seeking renewal that the determination will be renewed as sought. The presumption does not apply if an initial new Australian carrier seeks to enter the route but there is not sufficient capacity available for that carrier to develop an efficient and sustainable operation (referred to as the 'start-up phase'). The presumption may also be rebutted after the start-up phase on the route if:

- the carrier seeking renewal has failed to service the route effectively; and
- if the use of the capacity in whole or part by another Australian carrier that has applied for capacity would better serve the public having regard to the criteria set out in paragraph 4 and 5 of the Minister's policy statement.

From time to time, airlines apply to the Commission to vary determinations held by them. There can be a number of reasons for an airline to seek a variation. For example, the airline may be seeking authorisation to use its allocated capacity to code share with another airline. The Commission conducts a review of the determination and as part of this process, it invites submissions about the application. In the case of applications to authorise code sharing, where the capacity that can be used for code share operations is available under the relevant air services arrangements, the Commission would generally be expected to authorise such applications. If the Commission has serious concerns that the proposed code share may not be of benefit to the public, it may subject the application to a more detailed assessment using the paragraph 5 criteria in the Minister's policy statement. Before doing so, it is required to consult the Australian Competition and Consumer Commission.

The Commission may itself initiate a review of a determination if it is concerned that a carrier might be in breach of a condition of the determination. This can occur, for example, where a carrier has been allocated capacity, but had not used that capacity by

the time it was required to do so by the Commission. Having conducted such a review, the Commission may confirm, vary, suspend or revoke the determination.

The Commission has published procedures it follows in considering applications and making determinations. A summary of these procedures is at Appendix 5. The procedures are designed with the aim of ensuring that applicants and other interested parties understand the requirements for making applications or submissions, are familiar with the Commission's decision-making processes, and are aware of their rights and obligations.

## Executive profile

The Act provides for a Chairperson and two Commission members. Currently, the Commission is comprised of a Chairperson, Dr Ian Douglas, and a Member, Mr John King. Both were appointed by the Governor-General on a part-time basis.

The membership of the Commission as at 30 June 2016 is as follows:

### Dr Ian Douglas



Dr Ian Douglas was appointed by the Governor-General as part-time Chairperson of the Commission for a three-year term commencing on 5 May 2016. He has been a Member of the Commission since November 2012. He was Acting Chairperson from November 2015 to May 2016.

Dr Douglas is a Senior Lecturer in Aviation Management in the School of Aviation at the University of New South Wales (UNSW). He holds a Doctor of Business Administration and a post graduate qualification in Higher Education. His doctoral research addressed the impacts of state ownership and economic freedom on airline financial performance. His ongoing research interests encompass the areas of air transport economics and airline business model convergence. Prior to academia, Dr Douglas had a long career with Qantas Airways, with senior roles in pricing, business development, route management, strategic planning and the Joint Services Agreement with British Airways. Since leaving Qantas, he has consulted to a range of companies including Malaysia Airlines, Thai Airways International, Bain & Co Singapore, Icebox Advertising, Asian Wings Airways and Tourism Queensland. His teaching areas at UNSW Aviation include fleet and network planning, marketing and distribution strategy and air transport economics.

## Mr John King



Mr John King was formally appointed by the Governor-General as a part-time Member of the Commission for a three-year term commencing on 1 July 2013. Mr King's appointment has been extended until September 2016.

Mr King had a 20-year career at Ansett including positions in human resources, international sales and industry affairs, before establishing the Pacific Airlines Division. This division operated Air Vanuatu, Polynesian Airlines and Ansett's own Pacific services.

In 1986, Mr King established Aviation and Tourism Management Pty Ltd, a consultancy providing strategic and policy guidance to airlines, governments and the tourism industry. Clients included the World Bank, the World Tourism Organization, Continental Airlines, Thai Airways, Gulf Air, Air Malta, Cathay Pacific and British Airways.

In 1999, Mr King was appointed Chairman of the Travel Compensation Fund where he served for seven years. In 2007, he was appointed Chairman of the ASX-listed travel agency group, Jetset Travelworld Ltd, and served for two and half years before retiring.

Mr King attended Melbourne University and the Australian National University where he graduated in Law. He holds a Master's Degree in Transport Management from the University of Sydney where he served on the Board of Advice of the Institute of Transport and Logistic Studies. He is a member of the Air Transport Research Society, the German Aviation Research Society and a Fellow of the Royal Geographic Society.

### Commissioners' attendance at meetings in 2015–16

Commissioner	Number of meetings possible	Number of meetings attended
Dr Ian Douglas	14	14
Mr John King	14	14



*From left:  
John King –  
Commission Member,  
Marlene Tucker –  
Executive Director,  
Neela Jacob –  
Administrative Officer,  
Dr Ian Douglas –  
Chairperson.*



## The Secretariat

The Commission is assisted in its work by a small Secretariat. The Secretariat is staffed by officers of the Department of Infrastructure and Regional Development. The Secretariat is headed by an Executive Director, supported on a part-time basis by an Administrative Officer. The Secretariat provides advice and assistance to the Commissioners on all aspects of the Commission's operations.

## Communications with interested parties

There are many stakeholders with a direct or indirect interest in what the Commission does. They include:

- the Minister;
- current and prospective Australian international airlines;
- the broader aviation industry, including airport owners, providers of services to airlines and employee associations;
- the international tourism and freight industries, including Australian exporters;
- Australian and State Government departments and agencies;
- aviation industry investors, analysts and journalists; and
- the travelling public.

The Commission places great importance on maintaining effective relationships with those stakeholders. The Commission takes into account the views and/or interests of the stakeholders in its decision-making processes, as appropriate to particular cases. Regular electronic notification of applications and the Commission's determinations and decisions keeps interested parties up to date with the Commission's activities. At the conclusion of each financial year, the Commission invites stakeholders to provide feedback about the Commission's performance throughout the year. The aggregated results of responses to the survey this year are presented in this annual report on page 19.

## The role of the Department of Infrastructure and Regional Development (the Department)

The Commission works closely with the Department, which has responsibilities complementary to those of the Commission. The Department is responsible for the negotiation and administration of air services arrangements between Australia and other economies. An important part of the negotiating process is to provide opportunities for Australian and foreign airlines to expand their services between Australia and other economies.



The capacity and route entitlements for Australian carriers under each set of air services arrangements are recorded by the Department in a Register of Available Capacity. This is maintained by the Department, in accordance with the requirements of the Act and is available on the Department's website:

<https://infrastructure.gov.au/aviation/international/capacity.aspx>

An Australian carrier may apply to the Commission for allocation of capacity recorded on the register as available for immediate allocation. The entitlements on the Register of Available Capacity are adjusted as determinations allocating capacity are made by the Commission, as airlines hand back unused capacity and when the Department negotiates new or revised capacity entitlements on behalf of the Australian Government. There is regular communication between the Department and the Commission on these matters.

Another area where the roles of the Commission and the Department intersect is in relation to applications from prospective new Australian airlines wishing to operate scheduled international services. Before allocating capacity to an applicant airline, the Commission must be satisfied that the airline is both reasonably capable of obtaining the regulatory approvals necessary to operate on the route and of implementing its proposed services on the route. The Department is responsible for designating and licensing Australian airlines to operate regular scheduled international services. This role is relevant to the Commission in relation to whether a carrier is capable of obtaining the approvals necessary to operate. Similarly, a carrier must hold an allocation of capacity from the Commission before it can be licensed. The Commission and the Department therefore consult closely in cases involving prospective new applicants.

# PART 3

## Report on performance

### Overview

The Commission's performance report is based on an assessment of its results for the year using a range of criteria. Three sets of criteria have been adopted by the Commission to enable a thorough assessment of all aspects of its operations. Broadly, the criteria encompass:

- how well the object of the Act has been met by the Commission's decision making;
- how fair and effective the Commission has been in dealing with applicants and interested parties; and
- how efficient the Commission has been in the use of financial resources available to it.

The Commission's assessment of its performance against each of these criteria is set out below.

### Results against performance targets

#### Serving the object of the Act

The object of the *International Air Services Act 1992* is to enhance the welfare of Australians by promoting economic efficiency through competition in the provision of international air services. Under the Act, the Commission's functions are to make determinations; review determinations; and provide advice to the Minister about any matter referred to the Commission by the Minister concerning international air operations. In fulfilling its functions, the Act requires the Commission to comply with policy statements made by the Minister under section 11 and to have regard to Australia's international obligations concerning the operation of international air services.

The Commission records annually the number of determinations and decisions (involving reviews and variations of determinations) made for the year. The volume of activity varies from year to year for reasons which are unrelated to the Commission's performance. The dominant factor underlying the Commission's output is the number of applications made by airlines. The demand for new capacity from the Commission is directly related to the level of demand for air services. In turn, international aviation activity is particularly sensitive to changes in the strength of the global economy, as witnessed during the global financial crisis and other challenges facing the international community such as terrorist attacks and the outbreak of highly contagious and infectious diseases.

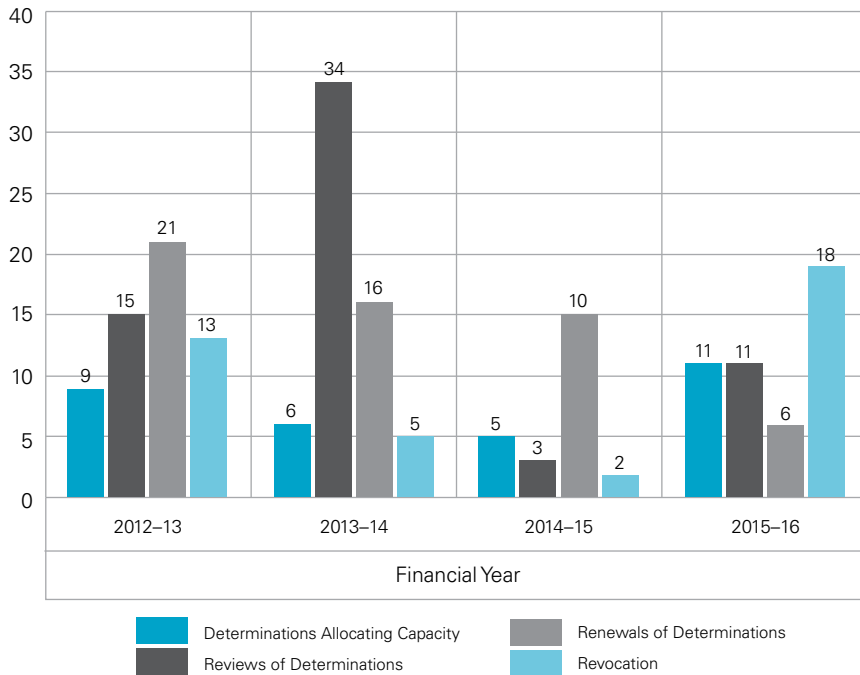
In 2014, the Commission implemented a process of allowing airlines to consolidate determinations. The consolidation process enables an Australian carrier to bring together some or all of its existing capacity entitlements allocated in various determinations into a single determination. In 2015–16, Qantas has had its determinations consolidated on the Chile, China, Hong Kong, New Caledonia and Philippines routes. These consolidations were in addition to capacity allocations previously consolidated on the South Africa, Indonesia, Hong Kong, Thailand and New Zealand routes.

The ongoing consolidation of determinations continues to considerably streamline the capacity allocation process of the Commission as it lessens the number of applications for renewal of determinations and for variation of conditions. The consolidation of determinations made in the last two financial years impacted the total number of applications made to the Commission this year.

This year, the Commission issued a total of 17 determinations – 11 new determinations and six renewals; of the 11 determinations, seven were allocations of new capacity, and four were consolidations of existing determinations. The Commission issued 18 revocations, mostly as a result of the consolidation of determinations. The Commission made 11 reviews of determinations resulting in 10 decisions varying determinations and one resolution extending the date of utilisation of the capacity.

The graph below shows a comparison of the current reporting period (2015–16) with the three preceding years.

### Historical numbers of determinations and decisions



Eleven determinations allocating capacity were made during the year, six more than last year. The allocations reflected the expansion of overseas services by the major Australian carriers.

Qantas obtained 540 seats per week of new capacity on the Cook Islands route for the use of its wholly-owned subsidiary, Jetstar Airways Pty Ltd. Jetstar commenced services between Sydney/ Melbourne and Rarotonga via Auckland in March 2016 using A320 aircraft configured with 180 seats. Qantas also obtained new capacity of 1,570 seats per week on the Indonesia route, bringing its total capacity allocation to 16,038 seats per week for the exercise of 3<sup>rd</sup> and 4<sup>th</sup> freedom rights on the route. The new capacity of 1,570 seats was not utilised throughout the year but the Commission permitted Qantas to retain the capacity to allow the airline flexibility in responding to demand during peak periods. The Commission required Qantas to utilise the new capacity from no later than 31 January 2017 or such other date approved by the Commission. Qantas and Jetstar operate over 55 services per week in each direction on the Indonesia route.

Virgin Australia sought, and was granted, the variation of five determinations on the Indonesia route to permit its capacity allocations to be used by its wholly-owned

subsidiary Tiger International Number1, trading as Tigerair Australia. Tigerair commenced services between Australia and Denpasar (Bali) in March 2016 using all-economy class configured Boeing 737-800 aircraft. Tigerair currently operates five return services per week between Adelaide and Denpasar; and daily return services on the Melbourne-Denpasar and Perth-Denpasar routes.

China and Hong Kong have both been an area of capacity growth in the last year. Qantas was granted unlimited capacity and frequency to operate services between points in Australia other than Sydney, Melbourne, Brisbane and Perth and points in China other than Beijing, Shanghai and Guangzhou. Virgin Australia was issued capacity of 1,925 seats per week on the China route. In its application, Virgin Australia stated that it intends to operate a daily service between an Australian major gateway airport and Beijing from 1 June 2017 using Airbus 330-200 aircraft configured with 275 seats.

Qantas consolidated its multiple determinations on the Hong Kong route and was issued three additional frequencies, bringing its total allocation to 28 frequencies per week on the route. Virgin Australia sought and was granted seven frequencies per week in each direction on the Hong Kong route as the airline intends to commence a daily service between Australia and Hong Kong from 1 June 2017.

The Commission continued the delegation of some of its decision making powers to the Executive Director for less complex and non-contentious cases. Drafts of delegate determinations and decisions were cleared by the Commissioners before finalisation. These arrangements are well established and improve the efficiency of decision making. During the year, the delegate made two-thirds of the determinations and decisions issued.

A brief summary of all determinations and decisions for 2015–16 is at Appendix 1. A detailed description of each case is provided at Appendix 2.

The Commission's full determinations in these cases are available from its website, <[www.iasc.gov.au](http://www.iasc.gov.au)>.

## Case study – The Commission’s guidelines and the wholly-owned subsidiary

### Introduction

In its annual report each year, the Commission includes a discussion of one of its more interesting cases to provide an insight into how it assesses applications which raise complex and difficult issues. For this year, the Commission decided to feature two issues which generated significant discussion with stakeholders during the year – (1) the Commission’s guidelines for making submissions; and (2) the applications to permit the use of capacity entitlements by another Australian carrier which is a wholly-owned subsidiary of the holder of the capacity.

### Legislative requirements

Like any agency established by legislation, the International Air Services Commission derives its power and authority from the Act which established the Commission, which in this case is the International Air Services Commission Act 1992 (the Act) and the implementing regulations. Under the Act, the primary function of the Commission is to make determinations allocating available capacity to Australian carriers. This power to make a determination is coupled with the power to review the determination and make a decision to affirm, vary or revoke it.

The Act gives the Commission broad powers to execute its functions. Section 28 of the Act enjoins the Commission to act with as little formality as possible when performing its functions; to act as quickly as is appropriate given the requirements of the Act and the need to properly consider a matter before it. The Commission may decide a matter before it without holding a hearing; is not bound by the rules of evidence; may inform itself on anything relevant to a matter before it in any way it thinks fit; may receive information or submissions orally or by written statements; and may consult such persons as it thinks fit.

The Act enables the Minister to make policy statements about the way in which the Commission is to perform its functions. The current policy statement was issued on 19 May 2004 by the then Minister for Transport and Regional Services, the Hon. John Anderson MP. The Minister’s policy statement sets out, among others:

- the criteria to be applied by the Commission in assessing the benefit to the public of allocations of capacity;
- how the Commission is to fix the periods during which determinations are to be in force;
- matters relating to the Commission’s consideration of whether determinations should be interim in nature; and
- matters concerning conditions in determinations including the variation or revocation of such conditions.

The Act requires the Commission to apply the criteria set out in the Minister's Policy Statement when assessing whether an allocation of capacity applied for is of benefit to the public.

### **Administrative guidelines**

The Commission, in consultation with its airline stakeholders, established administrative guidelines to assist the airlines and other interested parties when making applications, or submissions about a particular application, to the Commission. The guidelines are updated from time to time in consultation with airline stakeholders. The Commission updated the guidelines in 2016.

The guidelines are designed to be consistent with the requirements of the Act, its implementing regulations, the Minister's Policy Statement and the principles of natural justice. The guidelines are intended to give applicants and interested parties procedural fairness.

Under the guidelines, as updated in 2016, when an application for capacity or a variation of an existing a determination is received, the Commission, as required by the Act, will notify the public about the application and invite other applications (if the original application is for allocation of capacity) or submissions (if the application is for a variation of an existing determination). The Commission will not make a decision for a period of 10 working days from the date of notification. This will allow other interested parties to make another application for capacity or make a submission about the proposed variation during the 10-working day consultation period.

In the past, the consultation period was divided into two stages—first, giving a 'notice of intent to make an application or submission' and second, making the actual application or submission. Under the updated 2016 guidelines, we no longer require a 'notice of intent to make an application or submission' as a prerequisite to making an actual application or submission – although we continue to advise stakeholders that giving a notice of intent is a preferred approach to give advance notice to the original applicant thus aiding transparency in the consultation process. In making this administrative change, the Commission is able to align its processes with the requirements of natural justice and due process.

### **Use of capacity allocation by a wholly-owned subsidiary**

In the past year, we have seen an increase in the number of applications by Australian airlines to permit the use of the capacity by another Australian airline which is a wholly-owned subsidiary of the principal holder of the capacity.

The power of the Commission to allow the use of capacity entitlements already issued to an Australian carrier to be used by another Australian carrier which is a wholly-owned subsidiary stems from section 15 of the Act.

Section 15 provides that the Commission may include such terms and conditions it thinks fit in a determination. The section further provides that a determination 'may



include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier;
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier- that other carrier.' [paragraph 15(2)(ea)].

Section 15 further provides that the determination 'must include a condition stating the extent to which changes in the ownership or control of any such carrier are permitted while the determination is in force' [paragraph (2)(f)].

Paragraph 6.5 of the Minister's Policy Statement (dated 19 May 2004) provides that '[i]n circumstances where a carrier requests a variation of a determination to allow it flexibility in operating capacity allocated to it to include a condition of the type referred to in section 15(2)(ea) of the Act, the criteria set out in paragraph 4 above are applicable to any persons of the description used in that section'.

Paragraph 4 of the Minister's Policy Statement provides in part that in considering an **allocation** of capacity or the **renewal** or **review** of a determination, the public benefit is to be assessed against the following general criteria:

- (a) Subject to (b), the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public.
- (b) It is not of benefit to the public for the Commission to allocate capacity to Australian carriers unless such carriers:
  - (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
  - (ii) are reasonably capable of implementing their applications.

Paragraph 4, in its entirety, applies in the following circumstances:

- the Commission is considering an application for allocation of capacity; or
- the Commission is considering a renewal of a determination; or
- the Commission is considering a review of a determination.

In light of the above requirements of the Act and the Minister's Policy Statement, when an application is received to vary a determination in order to allow a wholly-owned subsidiary to utilise the capacity entitlements allocated in that determination, it is necessary for the applicant to name the relevant wholly-owned subsidiary. This will enable the Commission to assess whether such wholly-owned subsidiary is reasonably capable of obtaining the necessary approvals to operate on the route and of implementing the proposed service.

## Serving applicants and interested parties

The Commission uses the detailed commitments set out in its service charter as the framework for assessing its service performance. The specific undertakings in the service charter encompass both the ways in which the Commission engages with interested parties and how it makes its decisions. This framework provides the basis for an objective assessment of the Commission's performance.

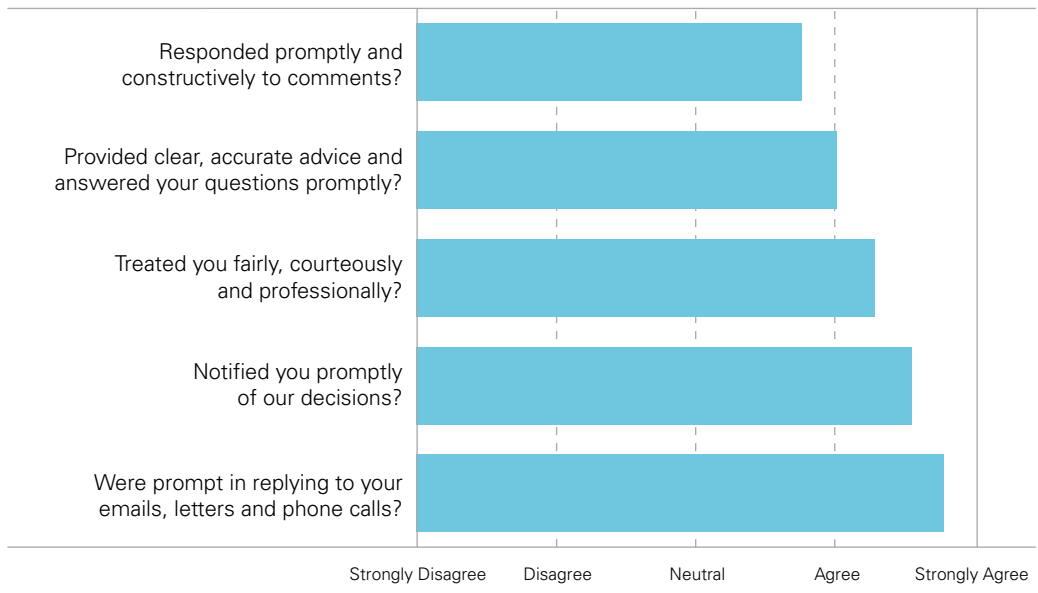
Again this year, clients were invited to assess the Commission's performance by completing an electronic questionnaire. The questions allow respondents to evaluate how well the Commission performed against each of the specific undertakings set out in the charter. Questionnaire responses may be made anonymously, although some of those responding chose to disclose their identity. The Commission very much appreciates the effort made by respondents to provide their views on the Commission's performance.

Each year, respondent scores against each criterion are aggregated and averaged. For 2015–16, the Commission's over-all performance was rated above average, but scored below previous years. The Commission notes the unfavourable feedback was due in large part to the approach taken by the Commission in assessing an application received in 2015. The Commission acts in accordance with due process requirements to ensure that its decisions are robust, legally defensible and are not left vulnerable to a successful judicial review.

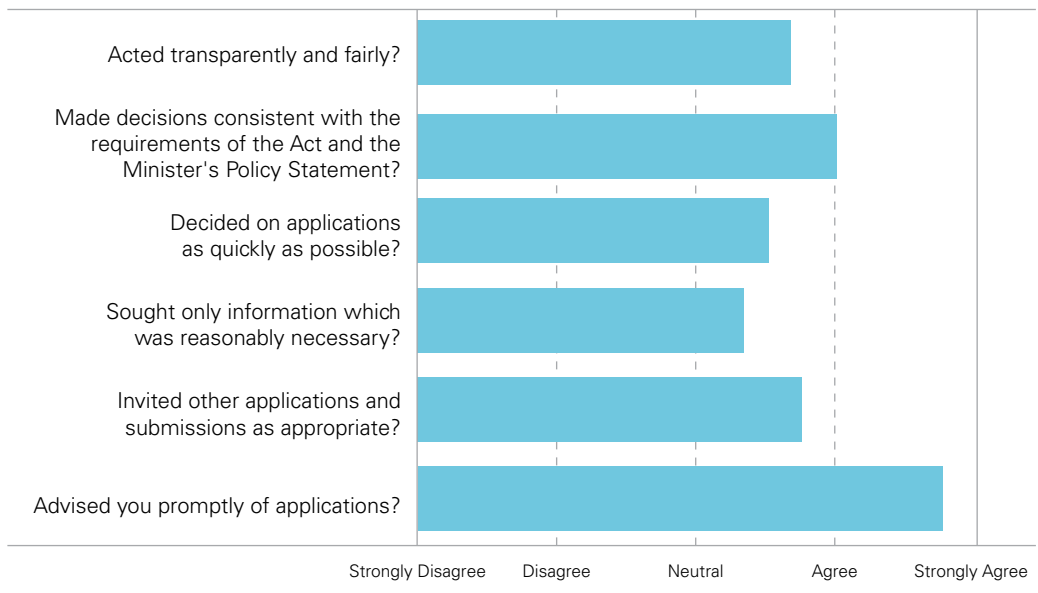
As noted earlier in this report, the Commission took the opportunity in late 2015 to review its operating procedures. After considering stakeholder comment, changes were made in 2016 to clarify the Commission's published guidelines and to ensure that they are consistently applied in accordance with the requirements of the Act and administrative law principles.

The following charts summarise the feedback from stakeholders of the Commission's service performance during the year:

### Decision making process – Do you agree that we:



### Dealings with stakeholders – Do you agree that we:



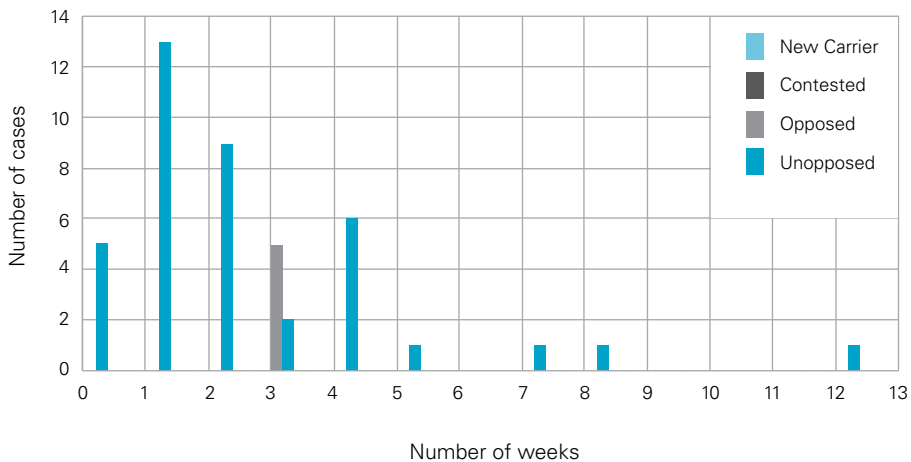
The Commission also records the time taken to make each of its decisions, as it considers timeliness to be a particularly important performance benchmark.

One of the commitments in the service charter is that the Commission will make decisions about uncontested and unopposed applications within four weeks of receipt and contested or opposed applications within 12 weeks, or inform the airline/s involved if there are reasons why a decision may take longer than this.

The Commission reviews capacity allocations for renewal 12 months ahead of expiry. During the reporting period, three renewal applications were held over for longer than four weeks to align with Commission meetings. These determinations were not urgent as they were not commencing until the following year.

Detailed information about the Commission’s timeliness performance is contained in the following chart.

### Distribution of decision times by type of case



### Efficiency of financial resources

The Commission’s budget for the year was \$325,000. These funds were made available from the resources of the Aviation and Airports Division of the Department of Infrastructure and Regional (the Department). The Commission’s budget expenditure is mostly attributable to the salaries and superannuation of secretariat staff and fees paid to Commission members including superannuation. Other expenditures include the Commissioners’ expenses in connection with their travel to Canberra to attend meetings and the production of the annual report. Most corporate overheads and property operating expenditures are paid for by the Department, as the Commission is housed in a departmental building.

The Commission's total expenditure for 2015–16 was about \$334,000 – slightly more than the allocated budget. The small variation from the allocated budget reflects the requirement for the Commission to meet Remuneration Tribunal determinations. Discretionary spending was contained within the Commission's budget.

The Commission considers the expenditures to have been made efficiently and effectively. The Commission has delivered steady efficiency gains over a long period. During the year, officers from the Department provided administrative support to the Commission. One Departmental officer at the Executive Level 1 was temporarily seconded to the Secretariat as Acting Executive Director.

Part 5 details the Commission's financial performance.



Photo © Qantas Airways

# PART 4

## Management and accountability

### Corporate governance practices

As the Commission is a small organisation, it requires less complex corporate governance structures than those of larger bodies such as Government departments. The Commission considers its corporate governance arrangements to be appropriate for its small size and consistent with its statutory role and responsibilities. There are two parts to the governance arrangements. The first of these addresses the Commission's responsibilities under the *International Air Services Commission Act 1992* (the Act). The second part of the governance structure concerns staffing of the Commission's Secretariat and the expenditure of the Commission's budget.

Part 4 of the Act sets out procedures with which the Commission must comply. The Commission considers that it meets these requirements in full. The most significant of the requirements concerns the holding of meetings. The Commission usually meets at its offices in Canberra. However, when urgent issues arise and it is not practicable to have a face-to-face meeting in Canberra, the Commission conducts meetings by teleconference. The use of electronic media for conducting meetings reduces travel costs associated with face-to-face meetings, representing a saving to the Commission's budget. A quorum of members is present at all meetings and minutes are kept of proceedings at all of its meetings.

During its meetings, the Commission discusses the applications from carriers and make determinations and decisions in accordance with the Act and the Minister's Policy Statement. Additionally, administrative issues such as staffing, financial and risk management issues, as appropriate, are discussed at these meetings. Commissioners and the Secretariat maintain regular contact via email and telephone about matters requiring the Commission's attention in the periods between meetings.

Part 4 of the Act enables the Commission to hold hearings at its discretion. No hearings were held this year.

Part 5 of the Act deals with the membership of the Commission. The Chairperson and members are appointed by the Governor-General after approval by Cabinet, which considers recommendations of the Minister for Infrastructure and Regional Development (the Minister). A member may be appointed on a full-time or part-time basis and the Minister may determine the terms and conditions of appointment on matters not provided under the Act. The Act also provides that a Commissioner may be appointed for a period not exceeding five years. Currently, all Commissioners have been appointed as part-time. The Remuneration Tribunal sets members' remuneration pursuant to the *Remuneration Tribunal Act 1973*.

The Act further provides that the Minister may appoint a person to act as Chairperson under certain circumstances. In October 2015, the Hon Warren Truss MP, then Deputy Prime Minister and Minister for Infrastructure and Regional Development, appointed, on an interim basis, Dr Ian Douglas to act as Chairperson from 8 November 2015 until 7 February 2016. Dr Douglas' appointment as Acting Chair was extended for a further period of three months from 10 February 2016. On 5 May 2016, the Governor-General, General the Honourable Sir Peter Cosgrove AK MC, appointed Dr Douglas as Chairperson on a part-time basis.

In April 2016, the Hon Darren Chester MP, Minister for Infrastructure and Transport, extended the appointment of Mr John King as Commission Member on an acting and part-time basis until 30 September 2016.

Section 47 of the Act requires members to disclose any interest that could conflict with the performance of their functions in relation to proceedings conducted by the Commission. Commissioners are fully aware of this obligation.

Section 53 of the Act requires the Commission to prepare and give to the Minister a report of its operations for the financial year. The Commissioners review drafts of the annual report during its preparation. The final report is cleared and signed off by them and provided to the Minister in accordance with the requirements of the Act. The report is tabled in both Houses of Parliament.

The second part of the Commission's corporate governance arrangements arises from the Commission's relationship with the Department of Infrastructure and Regional Development (the Department). Secretariat staff members are officers of the Department and are subject to the same responsibilities and obligations applying to all departmental staff. The Commission's Executive Director is responsible for the day to day management of the Secretariat, in accordance with these obligations and responsibilities. Secretariat staff members are expected to adhere to the Australian Public Service's Values and Code of Conduct.

## **External scrutiny**

There was no formal external scrutiny of the Commission this year and no determinations or decisions made by it were the subject of judicial or administrative review.



## Management of human resources

As at 30 June 2016, the Secretariat was comprised of one full-time Executive Level 2 officer as Executive Director (Ms Marlene Tucker) and one part-time APS 5 officer as Administrative Officer (Ms Neela Jacob). During the reporting period, an officer at the Executive Level from the Department (Mr Brenton Clark) acted as Executive Director during Ms Tucker's absence.

As officers of the Department, Secretariat staff members' employment conditions are determined by the Department's normal employment arrangements. However, as part of the arrangements to ensure independence of the Commission from the Department, Secretariat staff members are responsible directly to the Commissioners on Commission matters.

The Department's human resource management policies and practices apply to Secretariat staff. These include performance management arrangements, including six-monthly discussions about work performance and professional development. The Commissioners support the professional development of Secretariat members by encouraging participation in appropriate study, training courses and conferences. During the reporting period, Mr King and Ms Tucker attended the 2016 CivSec Conference as invited delegates. CivSec 2016 is a congress of conferences, seminars and symposia which addressed the challenges of civil defence and security on border control, transport (including aviation and airports), policing and emergency services, community safety, disaster relief and other humanitarian support, search and rescue, technology and innovation.

Secretariat staff support the Commission's work through the preparation of briefing and agenda papers for meetings; preparing all Commission meeting requirements; drafting determinations and decisions for consideration by Commissioners; responding to queries from the public; and providing advice to the Commissioners and other external stakeholders.

### **Asset management**

Asset management is not a prominent aspect of the business of the Commission.

### **Purchasing**

The Commission made no significant purchases during the year.

### **Consultants, contractors and competitive tendering**

During the reporting period, the Commission did not engage the services of consultants or contractors and did not engage in competitive tendering.



Photo © TasmanCargo

# PART 5

## Financial report

### Financial report as at 30 June 2016

	(1)	(2)	(3)	(4)
	2015–16 Budget \$'000	2015–16 Actual \$'000	Variation (Column 2–1) \$'000	2016–17 Budget \$'000
Salaries/ Commissioners' fees	300	310	10	406
Revenue	0	0	0	0
Supplier expenses	25	24	-1	37
Total	325	334	9	443
Staff	1.5	1.5		1.5

### Explanatory notes

The Commission's financial report is prepared on an accrual budgeting basis.

The Commission's budget is provided from funds allocated to the Aviation and Airports Division within the Department of Infrastructure and Regional Development. The Commission's offices are in a departmental building.

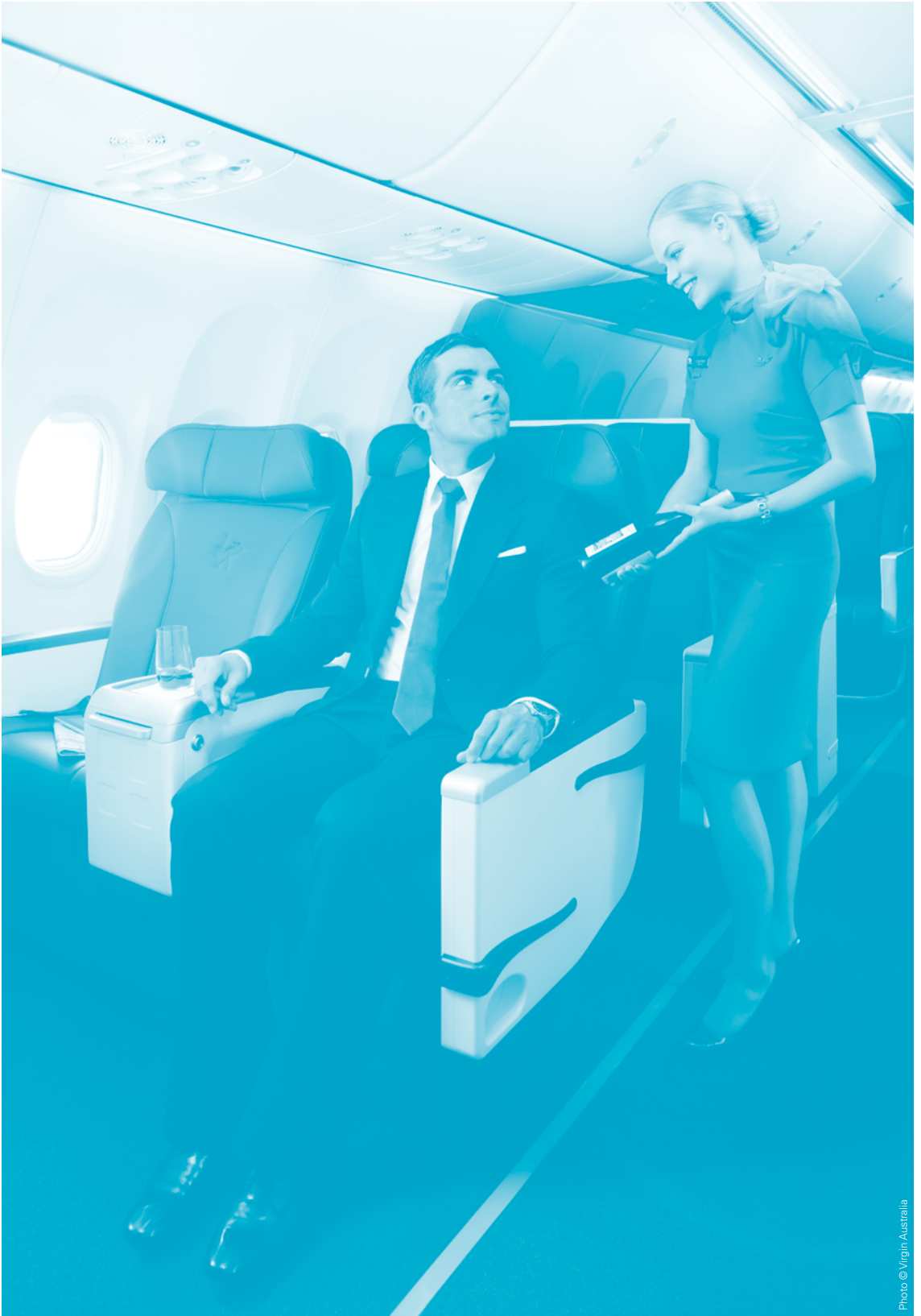


Photo © Virgin Australia

# APPENDIX 1

## Determinations and decisions

This table summarises briefly the determinations and decisions issued during 2015–16. A full summary is at *Appendix 2*. Individual determinations and decisions may be viewed on the Commission's website at <[www.iasc.gov.au](http://www.iasc.gov.au)>.

Route	Airline	IASC Number	Date	Unit	Capacity Allocated	Comment
Canada	Qantas	[2015] IASC 214	22 Oct 15			Variation of [2014] IASC 113 to add conditions allowing American Airlines to codeshare on Qantas-operated services
Chile	Qantas	[2015] IASC 107*	15 Jul 15	1,847	per week in each direction	Allocation of 1,847 seats per week effectively consolidating Qantas' multiple determinations on the route
Chile	Qantas	[2015] IASC 204*	17 Jul 15	(1,119)		Revocation of Determination [2011] IASC 114
Chile	Qantas	[2015] IASC 205*	17 Jul 15	(364)		Revocation of Determination [2014] IASC 111
China	Qantas	[2015] IASC 109	04 Sep 15		unlimited capacity	Allocation of unlimited capacity between points in Australia other than Sydney, Melbourne, Brisbane and Perth and points in China other than Beijing, Shanghai and Guangzhou
China	Qantas	[2016] IASC 102	09 May 16	4,471	per week in each direction	Consolidation of multiple capacity allocations with permission for Qantas to use the capacity for code share services with China Eastern
China	Qantas	[2016] IASC 205*	16 May 16	(2,170)		Revocation of Determination [2011] IASC 113

\* Determinations and decisions made by the delegate

Route	Airline	IASC Number	Date	Unit	Capacity Allocated	Comment
China	Qantas	[2016] IASC 206*	16 May 16	(2,301)		Revocation of Determination [2013] IASC 125
China	Virgin Australia	[2016] IASC 106*	17 Jun 16	1,925	per week in each direction	Allocation of 1,925 seats per week in favour of Virgin Australia International Airlines Pty Ltd.
Cook Islands	Qantas	[2015] IASC 113	22 Oct 15	540	per week in each direction	Allocation of 540 seats per week in favour of Qantas
Hong Kong	Qantas	[2015] IASC 115*	23 Nov 15	28	per week in each direction	Allocation of 28 frequencies per week representing the existing 25 frequencies plus additional (new) 3 frequencies
Hong Kong	Qantas	[2015] IASC 215*	23 Nov 15	(25)		Revocation of Determination [2014] IASC 103
Hong Kong	Virgin Australia	[2016] IASC 107*	17 Jun 16	7		Allocation of seven frequencies per week in favour of Virgin Australia International Airline Pty Ltd
Indonesia	Qantas	[2015] IASC 114	04 Nov 15	1,570	per week in each direction	Allocation of 1,570 seats per week subject to condition that the capacity must be fully utilised from no later than 31 January 2017
Indonesia	Virgin Australia	[2015] IASC 110*	30 Sep 15	2,800		Renewal of Determination [2011] IASC 110
Indonesia	Virgin Australia	[2015] IASC 208	24 Sep 15			Variation of Determination [2013] IASC 116 to permit a wholly-owned subsidiary of Virgin Australia to use the capacity
Indonesia	Virgin Australia	[2015] IASC 209	24 Sep 15			Variation of Determination [2013] IASC 127 to permit a wholly-owned subsidiary of Virgin Australia to use the capacity
Indonesia	Virgin Australia	[2015] IASC 210	24 Sep 15			Variation of Determination [2013] IASC 130 to permit a wholly-owned subsidiary of Virgin Australia to use the capacity
Indonesia	Virgin Australia	[2015] IASC 211	24 Sep 15			Variation of Determination [2013] IASC 131 to permit a wholly-owned subsidiary of Virgin Australia to use the capacity

\* Determinations and decisions made by the delegate

Route	Airline	IASC Number	Date	Unit	Capacity Allocated	Comment
Indonesia	Virgin Australia	[2015] IASC 212	24 Sep 15			Variation of Determination [2013] IASC 134 to permit a wholly-owned subsidiary of Virgin Australia to use the capacity
New Caledonia	Pionair	[2015] IASC 206*	04 Sep 15			Revocation of Determination [2013] IASC 128 which allocated one all-cargo per week
New Caledonia	Qantas	[2016] IASC 101	04 Mar 16	149	seats per week	Renewal of Determination [2010] IASC 113 which allocated 149 seats per week
New Caledonia	Qantas	[2016] IASC 104	09 May 16	788	per week in each direction	Allocation of 788 seats per week effectively consolidating Qantas' multiple determinations
New Caledonia	Qantas	[2016] IASC 212*	16 May 16	(239)		Revocation of Determination [2010] IASC 112
New Caledonia	Qantas	[2016] IASC 213*	16 May 16	(149)		Revocation of Determination [2010] IASC 113
New Caledonia	Qantas	[2016] IASC 214*	16 May 16	(400)		Revocation of Determination [2011] IASC 120
New Caledonia	Qantas	[2016] IASC 215*	16 May 16	(239)		Revocation of Determination [2015] IASC 105
New Caledonia	Qantas	[2016] IASC 216*	16 May 16	(149)		Revocation of Determination [2016] IASC 101
New Zealand	Qantas	[2015] IASC 213*	16 Oct 15			Variation of Determination [2014] IASC 102 to permit the capacity to be used by Jetstar for code share with LATAM Airlines Group
New Zealand	Tasman Cargo (previously known as Asian Express)	[2015] IASC 112	22 Oct 15		unlimited freight capacity	Renewal of Determination [2005] IASC 120 allocating unlimited capacity of all-cargo capacity
Papua New Guinea	Pionair	[2015] IASC 207*	04 Sep 15	(18)	tonnes per week	Revocation of Determination [2013] IASC 129
Philippines	Qantas	[2016] IASC 103	09 May 16	1,927	per week in each direction	Allocation of 1,927 seats per week effectively consolidating Qantas' multiple determinations

\* Determinations and decisions made by the delegate

Route	Airline	IASC Number	Date	Unit	Capacity Allocated	Comment
Philippines	Qantas	[2016] IASC 207*	16 May 16	(458)		Revocation of Determination [2011] IASC 124
Philippines	Qantas	[2016] IASC 208*	16 May 16	(180)		Revocation of Determination [2012] IASC 101
Philippines	Qantas	[2016] IASC 209*	16 May 16	(629)		Revocation of Determination [2013] IASC 102
Philippines	Qantas	[2016] IASC 210*	16 May 16	(129)		Revocation of Determination [2014] IASC 101
Philippines	Qantas	[2016] IASC 211*	16 May 16	(531)		Revocation of Determination [2014] IASC 115
Singapore	Qantas	[2015] IASC 111	22 Oct 15	300	seats per week	Allocation of 300 seats per week to be used to exercise own stop-over rights between Singapore and Colombo
Singapore	Qantas	[2016] IASC 105*	16 Jun 16		unlimited capacity and frequency for all cargo services	Renewal of Determination [2006] IASC 126 allocating unlimited capacity and frequency for all cargo services
Solomon Islands	Virgin Australia	[2016] IASC 203*	16 May 16			Variation of Determination [2011] IASC 115 to permit Singapore Airlines to code share on Virgin Australia services and recognise the name change of Pacific Blue Airlines to Virgin Australia Airlines (SE Asia) Pty Ltd.
Solomon Islands	Virgin Australia	[2016] IASC 204*	16 May 16			Variation of Determination [2013] IASC 133 to permit the use of the capacity for code share services with Singapore Airlines
Taiwan	Qantas	[2015] IASC 106*	14 Jul 15	1,260	per week in each direction	Renewal of Determination 1,260 seats of passenger issued under [2011] IASC 106 with 861 seats being returned
Thailand	Virgin Australia	[2016] IASC 202*	02 May 16	(3.15)	B747 equivalent services	Revocation of Determination [2013] IASC 140
United Arab Emirates	Virgin Australia	[2016] IASC 201*	27 Apr 16			Variation of [2014] IASC 116 to permit the use of the capacity for code share services with Alitalia
United Kingdom	Qantas	[2015] IASC 108	04 Sep 15		unlimited capacity	Renewal of [2006] IASC 105 allocating unlimited capacity and frequency

\* Determinations and decisions made by the delegate



## APPENDIX 2

# Route-by-route summary of Commission determinations and decisions in 2015–16

This appendix provides a summary of the Commission's determinations and decisions for 2015–16. Full determinations and decisions can be viewed on the Commission's website at <[www.iasc.gov.au](http://www.iasc.gov.au)>.

### Canada

Upon the application of Qantas, the Commission's delegate issued, on 22 October 2015, **Determination [2015] IASC 214** varying Determination [2014] IASC 113 to add conditions allowing American Airlines to codeshare on Qantas-operated services on the Canada route.

### Chile

Upon the application of Qantas, the Commission's delegate issued, on 15 July 2015, **Determination [2015] IASC 107\*** allocating 1,847 seats per week in each direction on the Chile route. The Determination consolidates Qantas' previously allocated capacity entitlements in separate determinations and a new allocation of 364 seats per week.



As part of Qantas' application to consolidate its multiple determinations on the Chile route, the Commission's delegate issued, on 17 July 2015, **Decision [2015] IASC 204\*** revoking Determination [2011] IASC 114 which allocated 1,119 seats of capacity on the Chile route.



As part of Qantas' application to consolidate its multiple determinations on the Chile route, the Commission's delegate issued, on 17 July 2015, **Decision [2015] IASC 205\*** revoking Determination [2014] IASC 111 which allocated 364 seats of capacity on the Chile route.

\* Determinations and decisions made by the delegate

## China

Upon the application of Qantas, the Commission's delegate issued, on 4 September 2015, **Determination [2015] IASC 109** allocating unlimited capacity between points in Australia other than Sydney, Melbourne, Brisbane and Perth and points in China other than Beijing, Shanghai and Guangzhou.



Upon the application of Qantas, the Commission's delegate issued, on 9 May 2016, **Determination [2016] IASC 102** allocating 4,471 seats per week in each direction, which effectively consolidated Qantas' multiple determinations on the China route. The Determination permits the use of the capacity for code share services with China Eastern.



As part of Qantas' application to consolidate its multiple determinations on the China route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 205\*** revoking Determination [2011] IASC 113 which allocated 2,170 seats per week on the China route.



As part of Qantas' application to consolidate its multiple determinations on the China route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 206\*** revoking Determination [2013] IASC 125 which allocated 2,301 seats per week on the China route.



Upon the application of Virgin Australia, the Commission's delegate issued, on 17 June 2016, **Determination [2016] IASC 106\*** allocating 1,925 seats per week in each direction on the China route in favour of Virgin Australia International Airlines Pty Ltd.

## Cook Islands

Upon the request of Qantas, the Commission's delegate issued, on 22 October 2015, **Determination [2015] IASC 113** allocating 540 seats per week in each direction on the Cook Islands route.

## Hong Kong

Upon the request of Qantas, the Commission's delegate issued, on 23 November 2015, **Determination [2015] IASC 115\*** allocating 28 frequencies per week in each direction on the Hong Kong route. The allocation represents the consolidation of 25 frequencies of capacity previously allocated in separate determinations and a new allocation of three frequencies per week.

\* Determinations and decisions made by the delegate



As part of Qantas' application to consolidate its multiple determinations on the Hong Kong route, the Commission's delegate issued, on 23 November 2015, **Decision [2015] IASC 215\*** revoking Determination [2014] IASC 103 which allocated 25 frequencies per week on the Hong Kong route.



Upon the application of Virgin Australia, the Commission's delegate issued, on 17 June 2016, **Determination [2016] IASC 107\*** allocating seven frequencies per week on the Hong Kong route in favour of Virgin Australia International Airlines Pty Ltd.

## Indonesia

Upon the request of Qantas, the Commission's delegate issued, on 4 November 2015, **Determination [2015] IASC 114** allocating 1,570 seats per week in each direction on the Indonesia route. The Determination is subject to a condition requiring the capacity to be utilised from no later than 30 April 2016 or such other date approved by the Commission. Upon the request of Qantas, the Commission issued **Resolution [2016] IASC R01** extending the date of utilisation of the capacity to 31 January 2017.



Upon the request of Virgin Australia, the Commission's delegate issued, on 30 September 2015, **Determination [2015] IASC 110\*** renewing Determination [2011] IASC 110 allocating 2,800 seats per week on the Indonesia route.



Upon the request of Virgin Australia, the Commission's delegate issued, on 24 September 2015, **Determination [2015] IASC 208** varying Determination [2013] IASC 116 to permit a wholly-owned subsidiary of Virgin Australia International Airlines Pty Ltd (VAIA) to use the capacity.



Upon the request of Virgin Australia, the Commission's delegate issued, on 24 September 2015, **Determination [2015] IASC 209** varying Determination [2013] IASC 127 to permit a wholly-owned subsidiary of VAIA to use the capacity.



Upon the request of Virgin Australia, the Commission's delegate issued, on 24 September 2015, **Determination [2015] IASC 210** varying Determination [2013] IASC 130 to permit a wholly-owned subsidiary of VAIA to use the capacity.



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\* Determinations and decisions made by the delegate

Upon the request of Virgin Australia, the Commission's delegate issued, on 24 September 2015, **Determination [2015] IASC 211** varying Determination [2013] IASC 131 to permit a wholly-owned subsidiary of VAIA to use the capacity.



Upon the request of Virgin Australia, the Commission's delegate issued, on 24 September 2015, **Determination [2015] IASC 212** varying Determination [2013] IASC 134 to permit a wholly-owned subsidiary of VAIA to use the capacity.

## New Caledonia

Upon the request of Pionair, the Commission's delegate issued, on 4 September 2015, **Decision [2015] IASC 206\*** revoking Determination [2013] IASC 128 which allocated one all-cargo per week on the New Caledonia route.



Upon the request of Qantas, the Commission's delegate issued, on 4 March 2016, **Determination [2016] IASC 101** renewing Determination [2010] IASC 113 allocating 149 seats per week on the New Caledonia route.



Upon the request of Qantas, the Commission's delegate issued, on 9 May 2016, **Determination [2016] IASC 104** allocating 788 seats per week in each direction on the New Caledonia route. The Determination consolidates Qantas' multiple determinations on the route.



As part of Qantas' application to consolidate its multiple determinations on the New Caledonia route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 212\*** revoking Determination [2010] IASC 112 which allocated 239 seats per week on the New Caledonia route.



As part of Qantas' application to consolidate its multiple determinations on the New Caledonia route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 213\*** revoking Determination [2010] IASC 113 which allocated 149 seats per week on the New Caledonia route.



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\* Determinations and decisions made by the delegate

As part of Qantas' application to consolidate its multiple determinations on the New Caledonia route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 214\*** revoking Determination [2011] IASC 120 which allocated 400 seats per week on the New Caledonia route.



As part of Qantas' application to consolidate its multiple determinations on the New Caledonia route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 215\*** revoking Determination [2015] IASC 105 which allocated 239 seats per week on the New Caledonia route.



As part of Qantas' application to consolidate its multiple determinations on the New Caledonia route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 216\*** revoking Determination [2016] IASC 101 which allocated 149 seats per week on the New Caledonia route.

## New Zealand

Upon the request of Qantas, the Commission's delegate issued, on 16 October 2015, **Decision [2015] IASC 213\*** varying Determination [2014] IASC 102 to add conditions allowing the capacity to be used by Jetstar Airways Pty Ltd for code share with LATAM Airlines Group on the New Zealand route.



Upon the request of Tasman Cargo (previously known as Asian Express), the Commission's delegate issued, on 22 October 2015, **Determination [2015] IASC 112** renewing Determination [2005] IASC 120 allocating unlimited freight capacity on the New Zealand route.

## Papua New Guinea (PNG)

Upon the request of Pionair, the Commission's delegate issued, on 4 September 2015, **Decision [2015] IASC 207\*** revoking Determination [2013] IASC 129 which allocated 18 tonnes of freight per week on the PNG route.

## Philippines

Upon the request of Qantas, the Commission's delegate issued, on 9 May 2016, **Determination [2016] IASC 103** allocating 1,927 seats per week on the Philippines route. The Determination consolidates Qantas' multiple determinations on the route.



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\* Determinations and decisions made by the delegate

As part of Qantas' application to consolidate its multiple determinations on the Philippines route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 207\*** revoking Determination [2011] IASC 124 which allocated 458 seats per week on the Philippines route.



As part of Qantas' application to consolidate its multiple determinations on the Philippines route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 208\*** revoking Determination [2012] IASC 101 which allocated 180 seats per week on the Philippines route.



As part of Qantas' application to consolidate its multiple determinations on the Philippines route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 209\*** revoking Determination [2013] IASC 102 which allocated 629 seats per week on the Philippines route.



As part of Qantas' application to consolidate its multiple determinations on the Philippines route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 210\*** revoking Determination [2014] IASC 101 which allocated 129 seats per week on the Philippines route.



As part of Qantas' application to consolidate its multiple determinations on the Philippines route, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 211\*** revoking Determination [2014] IASC 115 which allocated 531 seats per week on the Philippines route.



## Singapore

Upon the request of Qantas, the Commission's delegate issued, on 22 October 2015, **Determination [2015] IASC 111** allocating 300 seats per week on the Singapore route to be used to exercise own stop-over rights between Singapore and Colombo.



Upon the application of Qantas, the Commission's delegate issued, on 16 June 2015, **Determination [2016] IASC 105\*** renewing Determination [2006] IASC 126 which allocates unlimited frequency and capacity for all-cargo services on the Singapore route.

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\* Determinations and decisions made by the delegate

## Solomon Islands

Upon the request of Virgin Australia, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 203\*** varying Determination [2011] IASC 115 permitting the use of the capacity for code share services between Singapore Airlines and Virgin Australia in accordance with the air services arrangements between Australia and the Solomon Islands and between Australia and Singapore. The Decision also recognised the name change of the holder of the capacity from Pacific Blue Airlines to Virgin Australia Airlines (SE Asia) Pty Ltd.



Upon the request of Virgin Australia, the Commission's delegate issued, on 16 May 2016, **Decision [2016] IASC 204\*** varying Determination [2013] IASC 133 permitting the use of the capacity for code share services between Singapore Airlines and Virgin Australia in accordance with the air services arrangements between Australia and the Solomon Islands and between Australia and Singapore.

## Taiwan

Upon the request of Qantas, the Commission's delegate issued, on 14 July 2015, **Determination [2015] IASC 106\*** renewing 1,260 seats per week previously issued under Determination [2011] IASC 106 and handing back 861 seats of capacity on the Taiwan route.

## Thailand

Upon the request of Virgin Australia, the Commission's delegate issued, on 2 May 2016, **Decision [2016] IASC 202\*** revoking Determination [2013] IASC 140 which allocated 3.15 B747 equivalent services per week on the Thailand route.

## United Arab Emirates

Upon the request of Virgin Australia, the Commission's delegate issued, on 27 April 2016, **Decision [2016] IASC 201\*** varying Determination [2014] IASC 116 to permit the use of the capacity for code share services with Alitalia Airlines.

## United Kingdom

Upon the request of Qantas, the Commission's delegate issued, on 4 September 2015, **Determination [2015] IASC 108\*** renewing Determination [2006] IASC 105 allocating unlimited capacity and frequency on the United Kingdom route.

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\* Determinations and decisions made by the delegate



Photo © Qantas Airways



# APPENDIX 3

## Other information

### Occupational health and safety

As the staff members of the Secretariat are employees of the Department of Infrastructure and Regional Development, (the Department), they are subject to the same occupational health and safety arrangements as departmental officers. The Department's annual report contains details of those arrangements.

### Freedom of information

The International Air Services Commission (the Commission) is an agency subject to the *Freedom of Information Act 1982* (the FOI Act). Major reforms of the FOI Act in 2011 required relevant agencies to comply with the Information Publication Scheme (IPS) set out in Part II of the FOI Act. In compliance with the IPS requirements, the Commission has established an Information Publication Plan which is available on its website <<http://www.iasc.gov.au/foi/ipp.aspx>>.

The Commission also makes available on its website information about its organisational structure; the membership of the Commission including biographical notes of the current Chairperson and Members of the Commission; its functions including its decision-making powers and other powers affecting the public; copies of its annual reports; its legislative framework and its guidelines and procedures; copies of all determinations and decisions issued; applications including submissions in relation to the applications (if any); contact details of the Commission and its Executive Director; and the Commission's operational information. Operational information refers to the information held by the Commission to assist it in performing or exercising its functions or powers in making decisions or recommendations affecting the public.

The information contained in this report meets the requirements of the FOI Act, as amended. Refer to Appendix 4 for further details.

The Commission received no requests under the FOI Act in 2015–16.



## Advertising and market research

The Commission does not advertise its functions and services. During the reporting period, the Commission did not pay any person for advertising or for performing any market research.

The Commission maintains its own website <[www.iasc.gov.au](http://www.iasc.gov.au)> which provides details about its functions, the applications it receives and determinations/ decisions it has issued, among other matters. The Commission updates its website on a regular basis.

## Ecologically sustainable development and environmental performance reporting

The Commission's offices and Secretariat staff are located within the Department's building and as such are covered by the Department's processes in this area.

# APPENDIX 4

## Freedom of information schedule

Item	Information
Access facilities	In many cases, application for information under the <i>Freedom of Information Act 1982</i> (the FOI Act) might not be required because information or documents may be readily available on the Commission's website. Formal requests under the FOI Act must be made in writing to the Executive Director, FOI contact officer, of the Commission. The Commission maintains a dedicated FOI page on its website which sets out the information required to be published under section 8 of the FOI Act.
Arrangements for public involvement	Formal participation and consultation can be arranged by contacting the Executive Director of the Commission whose details are listed below. The Commission welcomes views and comments from members of the public and bodies outside the Commonwealth concerning its functions.
Commission powers	The Commission exercises decision-making powers under the Act. It has the power to do everything necessary or convenient to be done for, or in connection with, performing those functions. The Commission has a range of specific powers that include convening public hearings and summoning witnesses.
Decision process	The general power to grant or refuse access to Commission documents under the FOI Act is held by the Chairperson of the Commission. On 19 August 2013, the Chairperson authorised the Executive Director, and in his/her absence, the Senior Adviser, to exercise the Chairperson's powers and functions under the FOI Act.



Item	Information
Documents available for inspection	<p>The Commission keeps a Register of Public Documents containing public versions of applications, submissions and comments for each case before the Commission. The register is available for public scrutiny. A Register of Confidential Documents that contains material from applications and submissions deemed to be confidential by the Commission or its delegate is also maintained. The Commission applies those standards based on the FOI Act for the protection of documents relating to business affairs. Consistent with the transparency of its processes, the Commission encourages applicants and submitters to keep requests for confidential treatment of documents to a minimum.</p> <p>The Commission has published a series of guidelines that describe its procedures and processes in relation to allocating capacity. These guidelines are available on request or from the Commission's website. Documents may also be obtained by facsimile or by email. Operational files are maintained on all the Commission's activities and are stored at the office of the Commission. These files are not open to public access.</p>
Functions of the Commission and How it is organised	<p>The functions of the Commission, as set out in section 6 of the <i>International Air Services Commission Act 1992</i>, are to:</p> <ul style="list-style-type: none"> <li>(a) make determinations;</li> <li>(b) conduct reviews of those determinations; and</li> <li>(c) provide advice to the Minister about any matter referred to the Commission by the Minister concerning international air operations.</li> </ul>
	<p>The organisation of the Commission is described in Part 2 of this report.</p>
FOI Contact Officer	<p>The Executive Director, and in his/her absence, the Senior Adviser is the Commission's FOI contact officer. Any request or query on FOI matters may be directed to the:</p> <p>International Air Services Commission  GPO Box 630 Canberra ACT 2601 Australia  Phone: (612) 6267 1100  Email: <a href="mailto:iasc@infrastructure.gov.au">iasc@infrastructure.gov.au</a></p>

# APPENDIX 5

## Commission procedures

The Commission has published procedures for making determinations allocating available capacity. The procedures are designed to be consistent with the requirements of the *International Air Services Commission Act 1992* (the Act), its implementing regulations, administrative law principles and the Minister's policy statement which compliments the Act. The Commission's procedures are intended to ensure procedural fairness for both the applicants and other interested parties; ensure the Commission's processes are open and transparent; and provide guidance to anyone wishing to apply for, or make submissions about, matters being considered by the Commission. The Secretariat provides further individual guidance to applicants for capacity and other stakeholders when requested.

The Commission's procedures incorporate the following main steps:

- ➔ A Register of Public Documents is created for each route and is made available for viewing. The Commission requires a public version of all applications for, and submissions about, an allocation of capacity to be made available. A small amount of information received by the Commission is of a commercial-in-confidence or confidential nature and is held on the Commission's confidential register. All public documents are published on the Commission's website and distributed electronically to all stakeholders in its mailing list. Any member of the public may request to be included in the Commission's mailing list.
- ➔ The Commission will publish a notice inviting other applications for capacity in response to an initial application for capacity, and submissions about applications where required by the Act and Minister's policy statement.
- ➔ The Commission will assess the application in accordance with the relevant criteria set out in the Minister's Policy Statement. More complex public benefit criteria may be applied in cases where there are two carriers seeking the same limited amount of capacity, compared with an uncontested application from a well-established carrier.



- ➔ Where relevant, invite the applicant(s) to submit further information addressing public benefit criteria.
- ➔ The Minister's policy statement requires the Commission to ensure that the applicant is reasonably capable of obtaining the approvals necessary to operate and of using the capacity if so granted.
- ➔ A hearing may be conducted by the Commission if further information is needed to establish the nature and extent of a proposal's public benefit and, in the case of two or more competing applications, decide which application would be of the greatest benefit to the public.
- ➔ The Commission will publish a draft determination in the case of competing applications or if it is proposed to reject all or part of an application, or where non-standard conditions are being proposed. This provides applicants and other interested parties with an opportunity to comment on the Commission's proposal prior to the issuing of a final determination. In other cases the Commission will proceed directly to a final determination.
- ➔ The Commission regularly updates its procedures. They are available from the Commission's website at <<http://www.iasc.gov.au>>, or upon request to the Commission.

# APPENDIX 6

## Minister's policy statement

International Air Services Policy Statement No. 5 dated 19 May 2004

made pursuant to section 11 of the

*International Air Services Commission Act 1992*

### Background

The *Aviation Legislation Amendment Act 2002* (AVLA) inserted Part 3A into the *International Air Services Commission Act 1992*. It permits the International Air Services Commission to delegate some of the Commission's powers and functions regarding the allocation of capacity in the operation of international air services to an Australian Public Service employee in the Department of Transport and Regional Services. The *International Air Services Commission Amendment Regulations 2003* specify the circumstances in which the Commission may delegate those powers and functions.

The effect of these amendments is to streamline the procedures for considering applications from Australian carriers for a determination granting capacity.

References to the Commission in this instrument include the delegate of the Commission unless expressly excluded.

#### 1. CITATION

- 1.1 This instrument may be referred to as the International Air Services Policy Statement No.5. This policy statement replaces the policy statement made under section 11 of the *International Air Services Commission Act 1992* by the instrument dated 23 April 1997 (as amended on 9 March 1999).

## 2. DEFINITIONS

2.1 In this policy statement, unless the contrary intention appears:

“Act” means the *International Air Services Commission Act 1992* (as amended)

“commercially sustainable level of capacity” means the minimum capacity necessary to permit the development of efficient commercially sustainable operations on a route.

“Commission” means the International Air Services Commission, unless otherwise specified.

“delegate” means a person exercising the powers and functions of the Commission pursuant to section 27AB of the Act.

“new entrant” means, in relation to a route, an Australian carrier that has not previously been allocated a commercially sustainable level of capacity in relation to that route.

“route” relates to the full set of entitlements available to Australian carriers under a particular bilateral arrangement. All the combinations of origin, destination, intermediate and beyond points available to Australian carriers under the bilateral arrangement constitute a single route.

“start-up phase” means, in relation to any route, the period from 1 July 1992, or from such later date as a particular bilateral arrangement becomes subject to the Act in order that available capacity under that arrangement may be allocated by the Commission, until the date on which a determination has been made under the section 7 or 8 of the Act allocating a commercially sustainable level of capacity on the route to a new entrant.

## 3. GENERAL

3.1 This policy statement sets out the criteria to be applied by the Commission in performing its functions in relation to allocations of capacity to Australian carriers:

- in particular types of circumstances where the Commission is not obliged to apply the full range of criteria set out in paragraphs 4 and 5 below;
- during the start up phase on a route;
- when considering the renewal of determinations including interim determinations; and
- when considering the review of determinations including variation and transfer applications.



- 3.2 The Commission should, in any adjudication of applications for capacity allocation, seek to maximise the benefits to the public to be gained from the operation of the capacity, assessed in accordance with the Act and against applicable criteria set out in this policy statement. When calling for applications, the Commission may set out matters it considers particularly important and the weighting that it is likely to give each of those matters.
- 3.3 In general, where capacity is subject to competing applications, the Government considers that own aircraft operations deliver greater benefits per unit of capacity used than code share operations involving arrangements for marketing seats on international carriers operated by another carrier or carriers.
- 3.4 In allocating capacity between competing applicants, the Commission may specify points to be served on the route when the criteria in paragraph 5 below are being applied. In other cases the Commission is to provide the carrier with flexibility to distribute capacity allowed to it among some or all of the combinations available on the route. However, in circumstances where, under a particular bilateral arrangement, limitations apply which prevent the same amount of capacity from being operated over the entire route, the Commission is to apply the provisions of paragraphs 4, 5 and 6 below as appropriate to the allocation of that limited capacity.
- 3.5 Subject to paragraphs 4, 5, 6 and 7 below, in allocating capacity on a route, the Commission will have regard to the objective of providing reasonable growth in entitlements to all Australian carriers operating on that route.
- 3.6 Where capacity that can be used for code share operations is available under air services arrangements, including where foreign airlines have rights to code share on services operated by Australian carriers, the Commission would generally be expected to authorise applications for use of capacity to code share. However, if the Commission has serious concerns that a code share application (or other joint service proposal) may not be of benefit to the public, it may subject the application to more detailed assessment using the additional criteria set out in paragraph 5 (whether the application is contested or not). Before doing so, the Commission will consult with the Australian Competition and Consumer Commission.
- 3.7 Where the Commission authorises a carrier to utilise allocated capacity to provide joint services with another carrier, the Commission will include a condition in all relevant determinations and decisions that the Australian carrier concerned should take all reasonable steps to ensure that passengers are informed, at the time of booking, that another carrier may operate the flight.

#### **4. GENERAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC**

4.1 Subject to paragraph 6 below, the general criteria against which the benefit to the public is to be assessed by the Commission in considering an allocation of capacity or the renewal or review of a determination allocating capacity to an Australian carrier are set out below:

- (a) Subject to (b), the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public.
- (b) It is not of benefit to the public for the Commission to allocate capacity to Australian carriers unless such carriers:
  - (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
  - (ii) are reasonably capable of implementing their applications.

4.2 The delegate of the Commission must refer any applications back to the members of the Commission where the delegate has doubts that the applicant carrier satisfies the requirements of paragraph 4.1(b).

#### **5. ADDITIONAL CRITERIA FOR ASSESSING BENEFIT TO THE PUBLIC**

5.1 The following additional criteria are applicable in assessing the benefit to the public in all circumstances other than is provided in relation to particular circumstances set out in paragraph 6 below.

##### **Competition Benefits**

- (a) In assessing the extent to which applications will contribute to the development of a competitive environment for the provision of international air services, the Commission should have regard to:
  - the need for Australian carriers to be able to compete effectively with one another and the carriers of foreign countries;
  - the number of carriers on a particular route and the existing distribution of capacity between Australian carriers;
  - prospects for lower tariffs, increased choice and frequency of service and innovative product differentiation;
  - the extent to which applicants are proposing to provide capacity on aircraft they will operate themselves;
  - the provisions of any commercial agreements between an applicant and another carrier affecting services on the route but only to the extent of determining comparative benefits between competing applications;

- any determinations made by the Australian Competition and Consumer Commission or the Australian Competition Tribunal in relation to a carrier using Australian entitlements under a bilateral arrangement on all or part of the route; and
- any decisions or notifications made by the Australian Competition and Consumer Commission in relation to a carrier using Australian entitlements under a bilateral arrangement on all or part of the route.

### **Other Benefits**

#### *Tourism Benefits*

- (b) In assessing the extent to which applications will promote tourism to and within Australia, the Commission should have regard to:
- the level of promotion, market development and investment proposed by each of the applicants; and
  - route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).

#### *Consumer Benefits*

- (c) In assessing the extent to which the applications will maximise benefits to Australian consumers, the Commission should have regard to:
- the degree of choice (including, for example, choice of airport(s), seat availability, range of product);
  - efficiencies achieved as reflected in lower tariffs and improved standards of service;
  - the stimulation of innovation on the part of incumbent carriers; and
  - route service possibilities to and from points beyond the Australian gateway(s) or beyond the foreign gateway(s).

#### *Trade Benefits*

- (d) In assessing the extent to which applications will promote international trade, the Commission should have regard to:
- the availability of frequent, low cost, reliable freight movement for Australian exporters and importers.

#### *Industry Structure*

- (e) The Commission should assess the extent to which applications will impact positively on the Australian aviation industry.

### *Other Criteria*

(f) The Commission may also assess applications against such other criteria as it considers relevant.

- 5.2 The Commission is not obliged to apply all the criteria set out in paragraph 5.1, if it is satisfied that the criteria relevant to the application have been met. In applying all criteria, the Commission should take as the pre-eminent consideration, the competition benefits of each application.

## 6. CRITERIA APPLICABLE IN PARTICULAR CIRCUMSTANCES

### **Where capacity is not limited**

- 6.1 In circumstances where capacity is not limited under a bilateral agreement, only the criteria in paragraph 4 are applicable.

### **Where there is only one applicant or sufficient available capacity**

- 6.2 In circumstances where:
- (a) there is only one applicant (or where more than one application is made but all except one are withdrawn) for allocation of capacity on a route; or
  - (b) there is more than one applicant but the amount of available capacity is equal to or exceeds the total amount of capacity applied for:
- only the criteria in paragraph 4 are applicable.

### **Variations of existing Determinations**

- 6.3 Subject to paragraph 6.4, when the Commission is required to assess the benefit to the public, in circumstances where:
- (a) a carrier requests a variation of a determination to allow it flexibility in operating its capacity, including to use Australian capacity in a code share arrangement with a foreign carrier; and
  - (b) no submission is received about the application
- only the criteria in paragraph 4 are applicable.
- 6.4 The Commission may apply the additional criteria set out in paragraph 5 where submissions are received about the application for variation, **provided** those criteria were considered when the original application for allocation of capacity was made, or in the circumstances set out in paragraph 3.6 above including where no submissions are received.
- 6.5 In circumstances where a carrier requests a variation of a determination to allow it flexibility in operating capacity allocated to it to include a condition of the type referred to in section 15(2)(ea) of the Act, the criteria set out in paragraph 4 above are applicable to any persons of the description used in that section.

## 7. ALLOCATION CRITERIA – START UP PHASE

- 7.1 Where capacity is limited under a bilateral arrangement, during the start up phase in relation to any route on which an Australian carrier is already operating scheduled international services, the preeminent consideration is to introduce competition on the route through the allocation to an initial new entrant of sufficient capacity to develop an efficient and commercially sustainable operation. The Commission should therefore allocate such capacity to an initial new entrant, providing it is satisfied that:
- (a) the level of capacity available and in prospect is sufficient to support efficient, commercially sustainable operations by both a new entrant and an incumbent Australian carrier;
  - (b) the new entrant’s tariff and service proposals would enhance competition on the route;
  - (c) approval would not result in a decrease in inbound tourism to Australia or to Australian consumer benefits or trade; and
  - (d) the new entrant is reasonably capable of obtaining the necessary approvals and commencing operations as proposed.
- 7.2 Where a bilateral arrangement provides for dedicated freight capacity in addition to other capacity (whether that other capacity is for passenger services alone or in combination with, or convertible to, freight services (however described), the start-up phase will be applied separately in relation to:
- (a) capacity involving the operation of passenger services (even if freight is also carried on those services); and
  - (b) capacity for the operation of dedicated freight services, (irrespective of whether this would involve the use of dedicated freight capacity or the use of dedicated freight capacity in combination with other capacity under a bilateral arrangement):
- and the application of the start up phase criteria in the case of either (a) or (b) above will not end the start up phase in the case of the other.
- 7.3 An Australian carrier seeking an allocation of capacity, or which may be permitted to use capacity allocated to an incumbent Australian carrier, will not be taken to be a new entrant if it is a subsidiary or a holding company of an incumbent Australian carrier operating on the route or if there is another substantial connection between the two carriers in relation to ownership and control.
- 7.4 Where there are applications for capacity on a route during the start up phase by two or more prospective new entrants, the criteria set out in paragraphs 4 and 5 are to be applied in selecting one of those applicants as the initial new entrant to be allocated the level of capacity referred to in paragraph 7.1.

7.5 Where the Commission invites applications for capacity on a route during the start up phase and none of the applications received are from new entrants, the criteria in paragraph 4 and, subject to paragraph 6.2, in paragraph 5 above are to be applied in considering an allocation.

7.6 In considering determinations during the start up phase, the Commission shall have particular regard to the possible use of interim determinations to facilitate the introduction of competition on the route without any unnecessary delay in the use of capacity.

## 8. RENEWAL OF DETERMINATIONS

8.1 Where capacity is limited under a bilateral arrangement, the criteria for assessing the benefit to the public for the purposes of the renewal of determinations, other than interim determinations, are set out below. The criteria reflect a presumption in favour of the carrier seeking renewal which may be rebutted only by application of the criteria in the circumstances described:

(a) During the start up phase on the route:

- the start up phase allocation criteria set out in paragraph 7 apply in relation to that part of the capacity which is reasonably necessary for a level of scheduled international services necessary to permit the development of efficient commercially sustainable operations; and
- the criteria set out in paragraph 8.1(b) below apply to the balance of the capacity.

(b) After the start up phase on the route:

- whether the carrier seeking renewal has failed to service the route effectively; and
- whether use of the capacity in whole or part by another Australian carrier that has applied for the capacity would better serve the public having regard to the criteria set out in paragraphs 4 and 5.

In relation to subparagraph (b), the Commission should issue a fresh determination allocating the capacity to the carrier seeking renewal unless both the criteria are met, in which case all or part of the capacity can be reallocated.

### Renewal of Interim Determinations

8.2 Where capacity is limited under a bilateral arrangement, the criteria for assessing the benefit to the public for the purposes of renewal of interim determinations are:

(a) during the start up phase on the route

- the criteria set out in paragraph 7 as applicable.

(b) after the start up phase on the route

- the criteria set out in paragraphs 4 and 5.

## **9. THE 'USE IT OR LOSE IT' PRINCIPLE**

- 9.1 For the purposes of specifying a period within which capacity allocated to an Australian carrier must be fully used, the Commission should specify as short a period as is reasonable having regard to the steps required to commence operations. Except in exceptional circumstances, the Commission should not specify a period longer than 3 years.
- 9.2 When seasonal variations in demand are a feature of a route or code share arrangements between airlines and cause temporary minor variations in capacity usage, or unforeseen conditions outside the control of operating international airlines cause temporary suspension of services, the Commission may take these circumstances into account when interpreting the term "fully used" in section 15(2)(c) of the Act.

## **10. APPROVAL OF TRANSFER APPLICATIONS**

- 10.1 For the purposes of considering transfer applications the Commission should take into account that approvals which encourage speculative activity would not be of benefit to the public. Except in exceptional circumstances, approvals should not be given that would have the effect of allowing a carrier that has never exercised an allocation or has only exercised it for less than a reasonable period, to transfer that allocation.
- 10.2 A period of 6 months would usually represent a reasonable period for the purposes of subparagraph 10.1.

## **11. PERIOD FOR WHICH A DETERMINATION IS IN FORCE**

- 11.1 The period for which a determination is to be in force is:
- (a) on routes where either capacity or route rights are restricted:
    - (i) if the determination is an interim determination – 3 years; or
    - (ii) if the determination is not an interim determination – 5 yearsunless a carrier applies in writing requesting that a determination be for a lesser period than stipulated in (a) or (b). In these circumstances, the Commission may specify a lesser period in any determination relating to the application. In considering the renewal of a determination made in these circumstances, paragraph 8 will not apply.
  - (b) on routes where capacity and route rights are unrestricted:
    - (i) if the determination is an interim determination – 3 years; or
    - (ii) if the determination is not an interim determination – 10 years.



Photo © Qantas Airways



# APPENDIX 7

## Service Charter

This charter sets out what we do and the standards of service that you can expect from us.

### From the Chairperson

This charter sets out the standards of service that you can expect from the International Air Services Commission and its staff. These standards apply to how we make decisions and to how we deal with you. We want to give you the best service possible and we welcome your ideas for helping us do so.

**Dr Ian Douglas**

*Chairperson*

### About the Commission

The Commission is an independent statutory authority comprised of three part-time Commissioners – a Chairperson and two members – supported by a small secretariat. It is established under the *International Air Services Commission Act 1992* (the Act). The aim of the Act is to enhance the welfare of Australians by promoting economic efficiency through competition in the provision of international air services.

Our role is to allocate capacity available under Australia's bilateral air service agreements to Australian airlines so they can operate these international air services. We assess applications for capacity from airlines, using public benefit criteria in a policy statement given to us by the Minister for Infrastructure and Transport. If an application meets the criteria, we make a determination granting capacity to the airline concerned. We also decide on airlines' applications to vary determinations, usually to allow for code sharing, and to renew determinations.

For more straightforward cases, we have authorised our delegate, usually the Commission's executive director, to make determinations and decisions on our behalf. The Commissioners decide on the more complex applications. In either case, you can expect the same high level of service from us and our staff.

## Making an application

If you wish to apply for capacity, or make a submission when we have invited these in certain cases, procedures for doing so can be found on our web site at <[www.iasc.gov.au](http://www.iasc.gov.au)>. We suggest that prospective new airlines first contact the Commission's executive director.

## Our clients

In the broadest sense, the Australian community is our primary client because competitive air services promote the welfare of Australians. At a practical level though, airlines are the clients most directly affected by our decisions. However, our work is also relevant to many other parties. These include:

- the travelling public;
- the tourism and air freight industries, including Australian exporters;
- the wider aviation industry, including airport owners, providers of services to airlines, and employee associations;
- the Minister for Infrastructure and Transport;
- Australian and State government departments and agencies; and
- the aviation industry media and analysts.

## Our services to you

We aim to provide you with the highest standards of service, both in the way we deal with you and in making our decisions. We make these commitments to you:

In our dealings with you, we will

- act with as little formality as possible;
- treat you courteously and professionally;
- provide you with clear and accurate advice;
- include contact names and phone numbers in our correspondence;
- answer phone calls promptly by name or return any missed calls within one working day if you leave a message;
- reply to your emails within two working days;
- reply to your letters within ten working days; and
- respond constructively to your suggestions for improving our service.

In our decision-making processes, we will

- notify you within five working days of receiving an application for capacity;
- follow our published procedures for handling applications – the procedures are on our website or we will post, email or fax them to you upon request;
- seek only information that we consider is reasonably necessary for us to best carry out our functions;
- protect information you provide to us in confidence (although we prefer to keep confidential information to a minimum to ensure transparent decision making);
- make our decisions consistent with the requirements of the Act and the Minister’s policy statement;
- make decisions about uncontested applications within four weeks of receipt and contested or opposed applications within twelve weeks, or inform the airline/s involved if there are reasons why a decision may take longer than this;
- finalise the renewal of existing determinations quickly and, in the case of contested renewals, at least six months prior to the expiry date, circumstances permitting; and
- notify applicants by email within one working day of a decision being made, and other interested parties by email and on our website as soon as practicable thereafter.

## What we ask of you

We ask you to provide comprehensive and accurate information in good time and to be straightforward in your dealings with us. We also ask that you cooperate fully in response to requests for information that we think is relevant to a matter before us.

## Accessibility

We will keep you informed quickly and comprehensively about our activities. We also endeavour to make contacting us as easy as possible. Contact details conclude this charter.

Our primary method of communication is by email. We provide information about current cases directly to interested parties who ask for it by this means. We advise you of applications received, and Commission decisions about those applications. We can email copies of these documents to you, or provide links to the documents on our website. Please contact us if you wish to be added to either notification list.

Our website at <[www.iasc.gov.au](http://www.iasc.gov.au)> provides up-to-date information about the Commission’s business. It includes applications received, documents relating to current

cases and all Commission determinations and decisions. Other important documents are on the site, including the Act and the Minister's policy statement, as well as the Commission's procedures.

## Feedback and improving our service

We will monitor our performance against our service commitments. We encourage you to comment on our performance, including suggesting ways in which we can improve our service. Comments should be provided to the Commission's executive director by mail, email or telephone.

At the end of each year, we will assess how we have performed against our service standards. We will invite your comments on our service performance through a brief confidential questionnaire. The aggregated results of the assessments will be summarised in our annual report.

## Making a complaint

We regard complaints as part of the feedback process which helps us improve our performance.

If you are dissatisfied with any aspect of our service, it is important that you tell us so we can address your concerns. If you have a complaint you should first try to resolve the issue with the secretariat staff member you dealt with. If you are still not satisfied you should contact the executive director.

## Review

We will review this charter through an ongoing consultative process with our stakeholders to ensure that it is meeting your requirements.

## Contact details

International Air Services Commission

Telephone:	(02) 6267 1100
Facsimile:	(02) 6267 1111
Email:	<a href="mailto:iasc@infrastructure.gov.au">iasc@infrastructure.gov.au</a>
Internet:	<a href="http://www.iasc.gov.au">www.iasc.gov.au</a>
Postal address:	GPO Box 630, Canberra ACT 2601
Premises:	Level 4, 111 Alinga Street Canberra, ACT

# APPENDIX 8

## Commission office holders, 1992–2016

The following tables set out the Chairpersons and Members of the Commission since the Commission was established in 1992.

Chairs	Period	Members	Period
Stuart Fowler	July 1992 to April 1993	Brian Johns	July 1992 to June 1997
James Bain	July 1993 to June 1998	Russell Miller	July 1992 to June 1998
Russell Miller	July 1998 to January 2000	Michael Lawriwsky	December 1997 to February 2007
Michael Lawriwsky and Stephen Lonergan (Members presiding at alternate meetings)	January 2000 to August 2000	Stephen Lonergan	August 1998 to August 2004
Ross Jones	August 2000 to August 2003	Vanessa Fanning	November 2004 to November 2007
John Martin	November 2003 to November 2009	Philippa Stone	July 2007 to July 2010
Philippa Stone and Ian Smith (Members presiding at alternate meetings)	November 2009 to June 2010	Ian Smith	November 2007 to February 2011
Ian Smith and Stephen Bartos (Members presiding at alternate meetings)	July 2010 to February 2011		
Jill Walker	February 2011 to August 2014	Stephen Bartos	1 July 2010 to 30 June 2013
Ian Douglas and John King (Members presiding at alternate meetings)	August 2014 to November 2015	Ian Douglas	8 November 2012 to present
Ian Douglas (Acting)	November 2015 to May 2016	John King	1 July 2013 to present
Ian Douglas	May 2016 to present		



Photo © Virgin Australia

# APPENDIX 9

## Glossary of terms

Act	in this report, means the <i>International Air Services Commission Act 1992</i> , as amended.
Air services arrangement	is a set of treaty and/or lower level understandings or arrangements between Australia and another country which permits the carriage by air of passengers or freight or both on agreed routes.
Allocation	a finding by the Commission, included in a determination, that an Australian carrier is permitted to use a specified amount of capacity.
Australian carrier	means a person who conducts, or proposes to conduct, an international airline service to and from Australia; and under the air services arrangements to which the capacity applies, may be permitted to carry passengers or freight, or both passengers and freight, under that arrangement as an airline designated, nominated or otherwise authorised by Australia.
Available capacity	means that an operational decision is not in force in relation to an amount of capacity available under air services arrangements, so an Australian carrier may seek an allocation of some or all of that capacity.
Benefit to the public	occurs if the Australian carrier to whom the capacity is allocated uses that capacity.
BITRE	means Bureau of Infrastructure, Transport and Regional Economics.
Blocked space	a form of code sharing involving one airline purchasing a “block” of seats on another airline’s services, which it is then able to sell to the travelling public.

Capacity	is an amount of space available on an aircraft for the carriage of passengers and/or freight. It may be expressed within air services arrangements in various ways, such as in number of seats, units of capacity, or frequency of service, usually per week, in each direction on a route.
Code sharing	is a form of joint service between two carriers. It involves an arrangement under which one carrier sells capacity under its own name on flights operated by another airline.
Commission	means the International Air Services Commission, established by section 6 of the Act.
Commissioner	means a member of the Commission including the Chairperson.
Consolidation of determinations	means the process of consolidating into one determination the capacity entitlements of an Australian carrier originally issued in separate determinations.
Contested application	involves two or more applicants seeking an allocation of the same limited amount of capacity.
Decision	affects an existing determination, either by confirming, varying, suspending or revoking it.
Determination	allocates capacity to an Australian carrier, usually for a period of five years, but in some cases for three years (an interim determination), or for ten years (where capacity is not limited under the air services arrangements in question).
Department	means the Department of Infrastructure and Regional Development.
Free-sale	a form of code sharing involving one airline selling seats on another airline's services and paying that other airline an agreed amount for the number of seats actually sold.
Frequency	refers to the number of flights that may be or are being operated, usually on a weekly basis.
Gulf carriers	refers to Emirates Airline, Etihad Airways and Qatar Airways
Hand-back	where a carrier decides it no longer wishes to use allocated capacity, and applies to return some or all of the capacity.



IASC	means the International Air Services Commission, established by section 6 of the Act.
IATA	means International Air Transport Association.
Interim determination	is a determination that is in force for three years, rather than the five (or in some cases 10) years for a standard determination. It does not carry the rebuttable presumption in favour of an incumbent carrier that usually attaches to a standard determination at the renewal stage.
Jetstar	means Jetstar Airways Pty Ltd.
Joint service	an arrangement entered into by an Australian carrier with another carrier to operate services on a joint basis. It may take different forms such as one or more of code sharing, joint pricing, or revenue and/or cost sharing or pooling. Australian carriers must receive approval from the Commission before using allocated capacity in joint services.
Member	means a member of the Commission.
Minister's policy statement	is a written instrument made by the then Minister for Transport and Regional Services in 2004 under subsection 11(1) of the Act. It sets out the way in which the Commission is to perform its functions under the Act.
Opposed application	a situation in which an interested party makes a submission arguing that an application from a carrier should not be granted by the Commission.
Pacific Air Express	means Pacific Air Express (Australia) Pty Ltd.
Pionair	means Pionair Australia Pty Ltd.
Qantas	Qantas Airways Limited
Reduced capacity	where the amount of capacity allocated to a carrier is reduced, including to nil.
Register of available capacity	sets out the amount of capacity under each of Australia's air services arrangements available for allocation, after deducting any allocations already made by the Commission. The Department maintains the Register and is publicly available on its website.
Renewal determination	a new determination that renews an allocation of capacity made under a determination that is approaching its expiry. It may include updated terms and conditions at the Commission's discretion.



Review	involves an examination of an existing determination, either at the request of a carrier which wishes to vary the determination, or on the Commission’s initiative if it is concerned that a carrier has or will breach a condition of the determination. In the case of a carrier-initiated review, the Commission may either vary the determination as requested by the carrier or confirm the determination. For a Commission-initiated review, the Commission may decide to confirm, vary, suspend or revoke the determination.
Revocation	a decision by the Commission to revoke (cancel) a determination.
Route	is the combination of origin, destination, intermediate and beyond points (cities) which an Australian carrier may serve under an air services arrangement.
Tasman Cargo	means Tasman Cargo Airlines
Tigerair Australia	means Tiger International Number1
Uplift-Discharge data	these data detail, by direction, the revenue traffic between the actual points of uplift and discharge within each flight. It shows the movement of traffic between two airports not necessarily directly connected but within the same flight number.
Use it or lose it	a principle requiring allocated capacity to be used, or else be returned for reallocation.
US/ USA	United States of America
Variation	a decision amending a determination, including conditions attached to it.
Virgin Australia	refers to Virgin Australia International Airlines Pty Ltd and/ or Virgin Australia Airlines (SE Asia) Pty Ltd.

# INDEX

## A

about the Commission, 5–10, 57  
accessibility arrangements, 59–60  
accommodation, 20  
accountability *see* management and accountability  
acronyms and abbreviations, 63–66  
address, 60  
administrative guidelines, 15–16, 45  
advertising and market research, 42  
advice to Minister, 5, 11  
air services arrangements, 9–10  
airline capacity changes, 1–2  
applications for determination, 12–13, 58–59  
    code sharing, 3, 6  
    consolidation of, 3, 12  
    contested, 6  
    guidelines for, 16  
    by new airlines, 6, 10, 53  
    notices of intent, 16  
    number of (2015–16), 12–13  
    procedures, 7, 45–46  
    public notification of, 9, 16, 45–46  
    renewal, 6, 12–13, 20, 54  
    transfer, 55  
    uncontested, 6, 20, 52  
    *see also* capacity; determinations and decisions  
appointment of Commissioners, 24  
APS Values and Code of Conduct, 24  
asset management, 25  
Australian Competition and Consumer Commission, 6

## B

benchmarks, 11, 20  
breach of determination conditions, 6–7  
budget, 20–21, 27

## C

Canada route, 29, 33  
capacity  
    allocation, 1–3, 5, 10, 13–14  
        allocation criteria, 5–6, 47–55  
        available, 10  
        demand for, 12  
        hand-back, 2, 10  
        new, 12, 13  
        reviews, 6–7, 12  
        revocations, 12  
        unused, 6, 10, 13, 55  
        use by wholly-owned subsidiary, 16–17  
        *see also* applications for determination;  
        determinations and decisions  
    cargo services, 3, 31, 36–37  
Chairperson, 7, 57  
    year in review, 1–3  
Chester, the Hon Darren (Minister for Infrastructure and Transport), 24  
Chile route, 2, 29, 33  
China route, 2–3, 14, 29–30, 34  
clients, 18–19, 58  
code of conduct *see* APS Values and Code of Conduct  
code sharing, 3, 6 *see also* applications for determination

- Commissioners, 7–8
    - advice and assistance to, 9, 25
    - appointment of, 24
    - attendance at meetings, 8, 23
    - conflicts of interest, 24
    - profiles, 7–8
    - remuneration, 27
  - communication with stakeholders, 9, 18–19
  - competition criteria, 50–52
  - complaints handling, 18, 60
  - conferences, seminars and symposia, attendance at, 25
  - confidential information, 45
  - conflict of interest, 24
  - consolidation of applications, 3, 12
  - consultants and contractors, 25
  - contact details, 60
  - contested applications *see* applications for determination
  - Cook Islands route, 13, 30, 34
  - corporate governance, 15–17, 23–24
- D**
- decisions *see* determinations and decisions
  - definitions, 63–66
  - delegated determinations *see* determinations and decisions
  - Department of Infrastructure and Regional Development, 9
    - provision of Secretariat, 9, 24
    - role, 9–10
    - secondments to Commission, 21
  - determinations and decisions, 5, 11–14, 29–39
    - allocation criteria, 5–6, 47–55
    - breach of conditions, 6–7
    - consultation periods, 16
    - delegated, 14, 57
    - draft, 46
    - expiry, 55
    - interim, 6, 54
    - number of (2015–16), 12–13
    - procedures, 7, 18, 45–46
    - public notification of, 9, 16
    - publication of, 9, 41, 45–48
    - review, 6–7, 15
    - revocations, 7, 12
    - statistics, 12–13
    - summaries on, 33–39
    - timeliness benchmarks, 20
    - validity periods, 6, 55
    - variation, 6, 13–14, 16–17, 52
    - wholly-owned subsidiaries, 16–17
    - see also* applications for determination; capacity
  - Douglas, Dr Ian (Chairperson), 1–3, 7, 61
    - appointment, 24
- E**
- ecologically sustainable development, 42
  - electronic communications, 9, 59
  - email address, 60
  - Emirates Airline, 2
  - employment conditions, 25
  - environmental performance reporting, 42
  - Executive Director, 9, 24–25, 57
  - executive profile, 7–8
  - expenditure, 20–21, 27
  - expiry of determinations *see* determinations and decisions
  - extension resolutions, 12
  - external scrutiny, 24
- F**
- feedback from stakeholders, 9, 18–19, 60
  - financial management, 20–21
  - financial report, 27
  - freedom of information, 41
    - schedule, 43–44
  - freight *see* cargo services
  - functions *see* role and functions
- G**
- glossary, 63–66
  - governance *see* corporate governance
  - guidelines, administrative, 16, 45–46
- H**
- hand-back of capacity, 2, 10
  - hearings, 15, 23, 46
  - Hong Kong route, 3, 14, 30, 34–35
  - human resources, 25

## I

Indonesia route, 2, 13–14, 30–31, 35–36  
Information Publication Plan, 41  
interested parties, communication with, 9, 18  
interim determinations, 54 *see* determinations and decisions  
*International Air Services Act 1992*, 5–6  
    Commission's powers and functions under, 15  
    corporate governance responsibilities under, 23  
    object, 5, 11  
International Air Services Commission  
    membership, 7–8, 24  
    overview of, 5–10  
    performance criteria, 11  
    responsibilities, 5  
international passenger movements, 1–3  
international services, licensing for, 10

## J

Japan route, 2  
Jetstar Airways Pty Ltd, 2, 13  
joint services arrangements *see* code sharing

## K

King, Mr John (Commissioner), 8  
    appointment, 24

## L

licensing, airline, 10

## M

management and accountability, 23–25  
market research *see* advertising and market research  
meetings, Commissioners' attendance at, 8, 23  
membership, 7–8, 24  
Minister for Infrastructure and Regional Development, 9, 24  
Minister's Policy Statement, 5–6, 11, 15–17, 45–55

## N

new airlines, 6, 10, 53  
New Caledonia route, 31, 36–37  
new capacity *see* capacity

New Zealand route, 2, 13, 31, 37

notification of applications *see* applications for determination

notification of decisions *see* determinations and decisions

## O

occupational health and safety, 41  
office holders, 61  
operating procedures  
    review of, 18  
organisational structure, 7–9, 24

## P

Papua New Guinea route, 31, 37  
passenger movements 2015–16, 1–3  
performance criteria, 11, 20  
performance management, 25  
performance questionnaire, 18–19  
performance report, 11–21  
Philippines route, 32, 37–38  
procedures, 7, 45–55  
    review, 15–17  
professional development, 25  
public benefit criteria, 6, 17, 50–52  
public notification of applications, 16, 45  
publication of information, 9, 41, 45–46  
purchasing, 25

## Q

Qantas Airlines, 2, 13–14, 29  
questionnaire, stakeholder, 9, 18–19

## R

Register of Available Capacity, 10  
Register of Public Documents, 45  
remuneration, 20, 27  
renewal applications *see* applications for determination  
report on performance, 11–21  
reporting to Minister, 24  
responsibilities of Commission, 5

results against performance targets, 11–21  
review by external bodies, 24  
review of determinations *see* determinations and decisions  
review of procedures, 18  
revocations *see* determinations and decisions  
role and functions, 5–7, 11, 57

## S

salaries *see* remuneration  
Secretariat, 9, 24–25  
    secondments to, 21  
service charter, 18, 57–60  
service standards, 58–59  
Singapore route, 32, 38  
Solomon Islands route, 32, 39  
staff *see* human resources  
stakeholders, 9, 18–19, 58  
start-up phase criteria, 6, 53–54  
summaries of determinations and decisions, 33–39  
survey on performance, 9, 18–19

## T

Taiwan route, 32, 39  
telephone number, 60  
tendering, 25  
Thailand route, 32, 39  
Tigerair Australia, 2, 14  
timeliness benchmarks, 20  
training, 25  
transfer applications *see* applications for determination  
Truss, the Hon Warren, 24  
Tucker, Ms Marlene (Executive Director), 3

## U

uncontested applications *see* applications for determination  
United Arab Emirates route, 32, 39  
United Kingdom route, 32, 39  
unused capacity *see* capacity

## V

validity periods *see* determinations and decisions  
variations of determinations *see* determinations and decisions  
Virgin Australia, 2, 13–14

## W

website, 14  
materials available on, 41, 45–46  
wholly-owned subsidiaries, applications involving, 16–17

## Y

year in review, 1–3



