



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

**INTERIM DETERMINATION**

**Determination:** [2017] IASC 101  
**The Route:** New Zealand  
**The Applicant:** Norfolk Island Airlines  
ABN 63 125 580 823  
**Public Register:** IASC/APP/201702

**The Commission makes an interim determination allocating to Norfolk Island Airlines unlimited capacity to operate scheduled passenger services between Australia and New Zealand. The interim determination is valid for three years.**

## **1 The application**

1.1 On 16 January 2017, Norfolk Island Airlines applied to the International Air Services Commission (the Commission) for an allocation of unlimited passenger capacity on the New Zealand route. Norfolk Island Airlines proposes to offer two weekly services on a Boeing 737-300 between Norfolk Island and Auckland starting from 27 May 2017. The services will be operated under a wet lease arrangement between Norfolk Island Airlines and Nauru Airlines, with Norfolk Island Airlines as the marketing carrier.

1.2 As required by section 12 of the *International Air Services Commission Act 1992* (the Act), the Commission published a notice on 16 January 2017 inviting other applications for capacity. No other applications were received.

1.3 All non-confidential material supplied by Norfolk Island Airlines is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

## **2 Relevant provisions of the air services arrangements**

Under the Australia – New Zealand air services arrangements, there is unlimited capacity for Australian carriers to operate scheduled passenger and freight services between Australia and New Zealand, via and beyond to third countries. Designated airlines of Australia may enter into code share and other cooperative marketing arrangements, as the marketing and/or operating airline, with any airline including airlines of third countries.

### 3 Commission's assessment

3.1 In considering an application for allocating available capacity, section 7 of the Act requires that the Commission must not allocate available capacity unless the Commission is satisfied that the allocation would be of benefit to the public. Section 7 further provides that the determination must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement, or a combination of bilateral arrangements, permitting the carriage to which the capacity relates. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act. On 19 May 2004, then Minister for Transport and Regional Services, the Hon. John Anderson MP issued a Policy Statement (hereinafter referred to as the Minister's Policy Statement), concerning the way the Commission is to perform its functions including the criteria for assessing public benefit.

3.2 Under paragraph 6.1 of the Minister's Policy Statement, in circumstances where capacity is not limited under a bilateral arrangement (as in the case of New Zealand), only the criteria in paragraph 4 are applicable. Under paragraph 6.2, in circumstances where there is only one applicant for allocation of capacity on a route, only the criteria in paragraph 4 are applicable. Paragraph 4 provides that the use of entitlements by Australian carriers under a bilateral arrangement is of benefit to the public unless such carriers are not reasonably capable of obtaining the necessary approvals to operate on the route and are not reasonably capable of implementing their applications.

3.3 The Australia - New Zealand air services arrangements provide for unlimited capacity on the trans-Tasman route. Additionally, Norfolk Island Airlines is the only applicant for capacity on the route. As such, the Commission assessed the application under paragraph 4.

3.4 As mentioned earlier, the proposed services will be operated under a wet lease arrangement whereby Nauru Airlines operates the services and Norfolk Island Airlines market them. Under this arrangement, it is expected that Nauru Airlines would secure the necessary regulatory approvals to operate the services. From information available to the Commission, it considers that Nauru Airlines would be reasonably capable of obtaining the operational approvals and of implementing the proposed services.

3.5 Nauru Airlines is the national carrier of the Republic of Nauru, operating passenger and freighter services around the Pacific and Asia. The airline was incorporated as Nauru Air Corporation in 2006, originally trading as Our Airline which was subsequently renamed in 2014 as Nauru Airlines. It offers charter flights to various locations in Australia, New Zealand, Pacific and Asia. While the airline is foreign-registered, it holds an Australian Air Operator's Certificate (AOC).<sup>1</sup>

3.6 As with all applicants seeking to operate regular scheduled international services, Norfolk Island Airlines is required to obtain an international airline licence

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<sup>1</sup> Nauru Airlines website: <http://www.ourairline.com.au/>

from the Department of Infrastructure and Regional Development (the Department). The airline must also be formally designated by Australia to the relevant bilateral partner nation to operate international services as an Australian carrier.

3.7 Norfolk Island Airlines is a prospective new carrier and, as such, has not previously operated international regular public transport services. In line with its normal practice for potential new entrant airlines, the Commission sought advice from the Department as to whether it considered Norfolk Island Airlines to be reasonably capable of obtaining the approvals necessary to obtain a licence and to be designated.

3.8 The Department advised by letter dated 1 February 2017 that they do not foresee any reason why Norfolk Island Airlines, or Nauru Airlines, will not be able to secure the necessary regulatory approvals.

3.9 The Commission's assessment of whether an applicant is reasonably capable of implementing its proposals has regard to a range of factors including the applicant's aviation-related experience, financial data and other commercial information provided to the Commission. Norfolk Island Airlines has provided the Commission with commercial-in-confidence material in support of its claims that it is capable of implementing international services successfully. The Commission has assessed this information in detail.

3.10 The information provided by Norfolk Island Airlines in support of its application suggests to the Commission that the applicant has the resources, skills and experience necessary to implement its proposals.

3.11 In light of the above, the Commission has formed the view that Norfolk Island Airlines and Nauru Airlines would be reasonably capable of obtaining the necessary approvals to operate between Norfolk Island and Auckland and of implementing their proposed services.

3.12 Currently only Air New Zealand operates one weekly direct service between Norfolk Island and Auckland.<sup>2</sup> However, on 16 December 2016, Air New Zealand announced it would cease operating its direct flights to Norfolk Island from May 2017 and instead would offer services to the island via Sydney and Brisbane.<sup>3</sup>

3.13 Eighty per cent of tourists in Norfolk Island come from mainland Australia with nearly 18.5 per cent from New Zealand and the rest from the United States, Great Britain and others. In terms of age demographic, over 80 per cent of visitors are above 50 years old.<sup>4</sup> Statistics from the Bureau of Infrastructure, Transport and Regional Economics (BITRE) indicate that on average, there are 926 monthly passengers from 2014 to 2016 between Norfolk Island and Auckland. The peak period is between March and May each year when there are, on average, 1200 direct passengers.

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<sup>2</sup> International Airlines Timetable Summary, Northern Winter 2016-2017 (30 October 2016-25 March 2017), <[www.infrastructure.gov.au](http://www.infrastructure.gov.au)>

<sup>3</sup> <https://www.airnewzealand.com.au/press-release-2016-air-new-zealand-consolidates-norfolk-island-routes>

<sup>4</sup> Norfolk Island Government Tourist Bureau (2015)

3.14 The Commission considers that Norfolk Island Airlines' proposed operation of services between Norfolk Island and New Zealand would fill up the vacuum which would otherwise have been created by the pulling out of Air New Zealand's direct services between Norfolk Island and Auckland from May 2017. In light of the above, the Commission is of the view that allocating capacity to Norfolk Island Airlines on the New Zealand route would be of benefit to the public.

3.15 Paragraph 11 of the Minister's Policy Statement provides for the period for which a determination is in force. On routes where capacity and route rights are unrestricted (such as the New Zealand route), if the determination is an interim determination, the period of validity is three years and if the determination is not an interim determination, the period of validity is 10 years.

3.16 Consistent with the requirements of the Minister's Policy Statement and the Commission's long-standing practice, the Commission has decided to issue an interim determination valid for three years in favour of Norfolk Island Airlines.

3.17 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. Subsection 15(2) requires the inclusion of certain conditions. Consistent with the legislative requirements, the Commission has decided to include certain conditions as set out in item 4 below.

#### **4 Interim Determination allocating capacity to Norfolk Island Airlines on the New Zealand route ([2017] IASC 101)**

4.1 The Commission allocates under section 7 of the Act to Norfolk Island Airlines unlimited capacity to operate scheduled international air services between Australia and New Zealand in accordance with the terms of the Australia-New Zealand air services arrangements.

4.2 The interim determination is valid for three years from the date of issue.

4.3 The interim determination is subject to the following conditions:

- Norfolk Island Airlines is required to fully utilise the capacity from no later than 30 June 2017, or from such other date approved by the Commission;
- only Norfolk Island Airlines is permitted to use the capacity;
- Norfolk Island Airlines is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission; and
- changes in relation to the ownership and control of Norfolk Island Airlines are permitted except to the extent that any change:

- results in the designation of the airline as an Australian carrier under the Australia-New Zealand air services arrangements being withdrawn; or
- has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Norfolk Island Airlines or be in a position to exercise effective control of that airline, without the prior consent of the Commission.

Dated: 10 February 2017



IAN DOUGLAS  
Chairperson



IAN HARRIS  
Commissioner