



**Australian Government**  

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**International Air Services Commission**

**RENEWAL DETERMINATION**

**Determination:** [2017] IASC 116  
**Renewal of:** [2013] IASC 107  
**The Route:** Fiji  
**The Applicant:** Virgin Australia Airlines (SE Asia) Pty Ltd  
(Virgin Australia) ACN 097 892 389  
**Public Register:** IASC/APP/201731

**The Commission makes a determination allocating to Virgin Australia 360 seats of capacity per week in each direction on the Fiji route. The determination is valid for five years from 1 August 2018.**

## **1 The application for renewal**

1.1 On 8 March 2013, the Commission's delegate issued Determination [2013] IASC 107 (the Determination) allocating, in favour of Virgin Australia, 360 seats of capacity per week in each direction on the Fiji route.

1.2 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the Determination. The Determination is due to expire on 31 July 2018. In view of this, the Commission sent, on 21 June 2017, a letter to Virgin Australia inviting it to apply for renewal if it wished to renew the Determination.

1.3 Virgin Australia applied to the Commission on 11 July 2017 for a renewal of the Determination for a further five-year period from 1 August 2018. In its original application, Virgin Australia also sought the inclusion of a condition permitting the use of the capacity by a wholly-owned subsidiary; however, this request was subsequently withdrawn on 4 August 2017.

1.4 As required by sections 12 and 17 of the Act, the Commission published a notice on its website inviting other applications for the capacity. No other applications were received.

1.5 All non-confidential material supplied by Virgin Australia is available on the Commission's website ([www.iasc.gov.au](http://www.iasc.gov.au)).

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

2.1 According to the Register of Available Capacity, there are 501 seats per week of available capacity on the Fiji route to and from Sydney, Melbourne, Brisbane and Perth in accordance with the Australia - Fiji air services arrangements.

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

## **3 Commission's consideration**

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. The fresh determination must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.2 Under paragraph 8 of the Minister's Policy Statement issued on 19 May 2004, there is a presumption in favour of the carrier seeking a renewal which may be rebutted only if the carrier has failed to service the route effectively and the use of the capacity, in whole or in part, by another carrier who applied for the capacity, would better serve the public having regard to the criteria set out in paragraphs 4 and 5 of the Minister's Policy Statement.

3.3 The Commission does not have information to indicate that Virgin Australia has failed to service the route effectively. Additionally, there is no other carrier applying for the capacity.

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

3.5 The Commission notes that: (i) there are no other applicants seeking the capacity for which Virgin Australia has applied; and (ii) Virgin Australia is an established international carrier reasonably capable of obtaining the necessary approvals to operate on the route and of implementing its application.

3.6 In these circumstances, the Commission is satisfied that allocating 360 seats of capacity per week to Virgin Australia is of benefit to the public.

#### **4 Determination for renewal of [2013] IASC 107 allocating capacity on the Fiji route to Virgin Australia ([2017] IASC 116)**

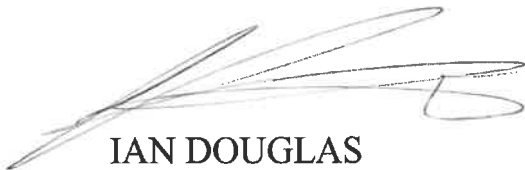
4.1 The Commission allocates to Virgin Australia, pursuant to section 8 of the Act, 360 seats per week in each direction on the Fiji route in accordance with the terms of the Australia – Fiji air services arrangements.

4.2 The determination is valid for five years from 1 August 2018.

4.3 The determination is subject to the following conditions:

- Virgin Australia is required to fully utilise the capacity from 1 August 2018 or such other date approved by the Commission;
- only Virgin Australia is permitted to use the capacity;
- Virgin Australia is not permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person without the approval of the Commission;
- nothing in this determination exempts Virgin Australia from complying with the Australian Consumer Law;
- changes in relation to the ownership and control of Virgin Australia are permitted except to the extent that any change:
  - results in the designation of the airline as an Australian carrier under the Australia – Fiji air services arrangements being withdrawn; or
  - has the effect that another Australian carrier, or a person (or group of persons) having substantial ownership or effective control of another Australian carrier, would take substantial ownership of Virgin Australia or be in a position to exercise effective control of Virgin Australia, without the prior consent of the Commission.

Dated: 10 August 2017



**IAN DOUGLAS**  
Chairperson



**JAN HARRIS**  
Commissioner