



## Australian Government

### International Air Services Commission

#### RENEWAL DETERMINATION

<b>Determination:</b>	[2022] IASC 111
<b>Renewal of:</b>	[2018] IASC 111
<b>The Route:</b>	Fiji
<b>The Applicant:</b>	Qantas Airways Limited (Qantas) (ABN 16 009 661 901)
<b>Public Register File:</b>	IASC/APP/202211

**The Commission makes a fresh determination allocating to Qantas 258 seats of passenger capacity per week in each direction on the Fiji route, subject to certain conditions. The capacity may be used by either Qantas or its wholly-owned subsidiary, Jetstar Airways Pty Limited. The determination is valid for five years from 15 June 2023.**

### 1 The application for renewal

1.1 On 15 June 2018, the International Air Services Commission (the Commission) issued Determination [2018] IASC 111 (the Determination) allocating, in favour of Qantas 258 seats of capacity per week in each direction on the Fiji route. The Determination was subject to certain conditions including the permission for Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas to use the capacity and for joint services between Qantas and its wholly-owned subsidiary.

1.2 Section 17 of the *International Air Services Commission Act 1992* (the Act) requires the Commission to start its consideration of the renewal of a determination at least 12 months before the expiry of the original determination. The Determination is due to expire on 14 June 2023. In view of this, the Commission sent, on 10 December 2021, a letter to Qantas inviting it to apply for renewal if it wished to renew the Determination.

1.3 On 17 December 2021, Qantas applied to the Commission for a renewal of the Determination and also requested the retention of all existing conditions. The Commission sought further information from Qantas. Upon receiving further information from the airline on 28 January 2022, the Commission published, in accordance with sections 12 and 17 of the Act, Qantas' application on the Commission's website inviting other applications for capacity on the Fiji route. No other applications or submissions were received.

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

## **2 Air services arrangements**

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s). Any variation made to an existing allocation of capacity should also not be contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 Under the Australia-Fiji air services arrangements, Australian designated airlines may operate up to 6,900 seats per week of passenger capacity in each direction between Fiji and the following points in Australia: Sydney, Melbourne, Brisbane and/or Perth. Qantas has a total allocation of 2,334 seats. Virgin Australia has been allocated a total of 4,389 seats of capacity. There remains 177 seats of passenger capacity available for allocation.

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

2.4 When operating or holding out agreed services on the specified routes, any Australian designated carrier may enter into cooperative marketing arrangements such as blocked space, code sharing or leasing, whether as the operating or marketing airline, with an Australian designated airline (s) or a Fijian designated airline(s). On the specified Joint Services Route, Australian designated airline(s) may enter into code sharing, blocked space and/or any other cooperative services arrangement with an airline or airlines of Fiji or with an airline of the Association of South Pacific Airlines as at 9 March 1998.

## **3 Commission's consideration**

3.1 Section 8 of the Act provides that the Commission may, at any time while a determination is in force, make a fresh determination allocating the capacity to which the original determination relates. Subsection 8(2) provides in part that the fresh determination must make the same allocation of capacity as the original determination unless the Commission is satisfied that the allocation is no longer of benefit to the public. In assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out for that purpose in the policy statement made by the Minister under section 11 of the Act.

3.2 Pursuant to section 11 of the Act, the Minister issued the International Air Services Commission Policy Statement 2018 (the Policy Statement), which came into effect on 28 March 2018.

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

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

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

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

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

3.7 On 11 March 2020, the World Health Organization declared the outbreak of COVID-19 (coronavirus) a pandemic. In response the Australian Government introduced a range of health, financial and other measures to minimise the number of people becoming infected or sick with COVID-19.

3.8 In this context, on 24 March 2020 the Prime Minister announced that the Government was introducing a ‘do not travel’ ban on Australians travelling overseas under the Biosecurity Act 2015. This ban was intended to limit travellers returning to Australia with coronavirus and to reduce the risks of spreading the coronavirus to other countries. The Prime Minister’s media statement indicated that the prohibition was aligned with the Government’s decision to raise the Smartraveller Travel Advice to Level 4 – “Do not go overseas. A travel ban is in place.” On 27 October 2021, the Government announced it would lift the international travel ban for certain categories of travellers from 01 November 2021, subject to certain conditions.<sup>1</sup> On 7 February 2022,

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<sup>1</sup> <https://www.pm.gov.au/media/interview-david-koch-and-natalie-barr-sunrise-0>

the Prime Minister announced that Australian international borders would re-open from 21 February 2022.<sup>2</sup>

3.9 On 29 October 2021, Qantas announced that the airline was “preparing for a gradual restart of international services, with the flights scheduled to resume from 1 November 2021 for Australian citizens, permanent residents and their immediate families in line with Australian Government requirements.” Qantas further stated that they were launching “flights to Singapore, Fiji, Vancouver, Tokyo, Honolulu, and an all-new route to Delhi, India, before the end of the year.”<sup>3</sup> Qantas, in support of their current application to renew 258 seats of capacity on the Fiji route, informed the Commission that Qantas and Jetstar are currently operating services to and from Fiji.

3.10 In assessing the current Qantas application for the renewal of its capacity allocation of 258 seats of capacity per week on the Fiji route, the Commission considered whether Qantas has failed to service the route effectively.

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

3.12 The Commission considers that the temporary suspension in 2020-21 of Qantas/Jetstar flights between Australia and Fiji was in response to the COVID-19 travel restrictions. The Commission therefore finds that the temporary suspension of the Qantas Group’s services in these circumstances does not mean that it has failed to service the route effectively. Moreover, the Commission notes that the Qantas Group resumed operating flights to Fiji in December 2021.

3.13 The Commission has also considered the ‘reasonable capability criterion’ in section 8 of the Policy Statement, i.e. the extent to which all Australian carriers that are, or would be, permitted to use the capacity allocated under a determination are reasonably capable of: (a) obtaining any licences, permits or other approvals required to operate on and service the route to which the determination relates; and (b) using the capacity allocated under the determination.

3.14 The Commission notes that Qantas and its wholly-owned subsidiary, Jetstar, are established carriers which, under normal circumstances, operate scheduled international services on various routes and finds that the carriers are reasonably capable of obtaining the necessary regulatory approvals and of using the capacity allocated on the Australia-Fiji route.

3.15 There is no other information before the Commission that it considers to be relevant or material to its assessment of Qantas’ application. Based on its findings above, the Commission is not satisfied that the allocation of capacity in the original

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<sup>2</sup> <https://www.pm.gov.au/media/reopening-tourists-and-other-international-travellers-secure-our-economic-recovery>

<sup>3</sup> <https://www.qantas.com/us/en/travel-info/travel-updates/coronavirus/qantas-international-network-changes.html>

determination is no longer of benefit to the public for the purposes of section 8(2)(a)(i) of the Act. Therefore, the Commission is required to make the same allocation of capacity as the original determination (see section 8(2)(a) of the Act).

3.16 The Commission will continue to monitor the utilisation of capacity by the Qantas Group on this route.

3.17 Qantas also requested to retain all existing conditions. Under section 19 of the Act, the Commission “must include the same terms and conditions as the original determination to which it relates” (s 19(1)(c)), but “may make such changes (if any) to the terms and conditions included in the original determination (including adding or deleting terms and conditions) as it is satisfied are warranted because of changes in circumstances since the original determination was made” (s 19(3)). The Commission has decided to permit the use of the capacity for code sharing with the airlines listed in Item 4 below subject to conditions as stated.

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

#### **4 Determination allocating capacity on the Fiji route to Qantas ([2022] IASC 1111)**

4.1 In accordance with section 8 of the Act, the Commission makes a determination in favour of Qantas, allocating 258 seats per week of passenger capacity in each direction on the Fiji route under the Australia - Fiji air services arrangements.

4.2 The determination is valid for five years from 15 June 2023.

4.3 The determination is subject to the following conditions:

- (a) Qantas is required to fully utilise the capacity from the date the determination comes into effect or from such other date approved by the Commission.
- (b) The capacity may be utilised by:
  - Qantas; or
  - Jetstar Airways Pty Ltd, as long as it remains a wholly-owned subsidiary of Qantas; or
  - such other wholly-owned subsidiary of Qantas that the Commission approves in writing, as long as it remains a wholly-owned subsidiary of Qantas.
- (c) Neither Qantas nor another Australian carrier which is a wholly-owned subsidiary of Qantas is permitted to utilise the capacity to provide services jointly with another Australian carrier or any other person unless approved by the Commission.

- (d) As approved by the Commission, the capacity may be used by Qantas to provide joint services with any wholly-owned subsidiary of Qantas and by any wholly-owned subsidiary of Qantas to provide joint services with Qantas.
- (e) To the extent that the capacity is used to provide joint or code share services on the route, the airlines must take all reasonable steps to ensure that passengers are informed of the carrier actually operating the flight at the time of the booking. Nothing in this determination exempts the airlines from complying with the Australian Consumer Law.
- (i) Changes in relation to the ownership and control of the airlines authorised to use the capacity are permitted except to the extent that any change:
- results in the designation of the airline(s) 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 Qantas (or the wholly-owned subsidiary) or be in a position to exercise effective control of Qantas (or the wholly-owned subsidiary), without the prior consent of the Commission.

Dated: 28 February 2022



GENEVIEVE BUTLER  
Chairperson



JANE MCKEON  
Commissioner