



Australian Government

International Air Services Commission

DETERMINATION

Determination:	[2024] IASC 111
The Route:	Vanuatu
The Applicant:	Virgin Australia International Airlines Pty Ltd (Virgin Australia) (ABN 63 125 580 823)
Public Register File:	IASC/APP/202420

The Commission makes a determination allocating to Virgin Australia International Airlines Pty Ltd 1,304 seats of capacity per week to operate passenger services on the Vanuatu route. The determination is valid for five years from 28 May 2024.

1 The application

1.1 On 10 May 2024, Virgin Australia applied to the International Air Services Commission (the Commission) for an allocation of 1,304 seats of capacity per week to operate passenger services on the Vanuatu route. Virgin Australia stated in its application that it intends to utilise the capacity to operate an additional seven (7) services per week on the route from July 2024, using Boeing 737 aircraft. It also intends to utilise the capacity to accommodate an aircraft configuration increase from 176 to 182 seats for its existing services operated on the Brisbane to Port Vila route.

1.2 Virgin Australia has requested the capacity allocation on the following basis:

- the capacity will be utilised by Virgin Australia;
- the allocation is requested for a period of five years from the date of the Determination; and
- the capacity will be fully utilised by 31 December 2024.

1.3 In a subsequent communication received on 27 May 2024, Virgin Australia confirmed that it intends to utilise the capacity to operate up to three (3) services per week between Sydney and Port Vila, increasing to up to five (5) services per week from Northern Winter 2024-25. It also intends to operate up to an additional two (2) services per week from Brisbane to Port Vila.

1.4 In accordance with section 12 of the *International Air Services Commission Act 1992* (the Act), on 13 May 2024, the Commission published Virgin Australia's application on the Commission's website inviting other applications for capacity on the Vanuatu route. No other competing applications were received. The Commission notes that on 21 May 2024, Qantas applied in its own right to the Commission seeking an allocation of 1,798 seats per week on the Vanuatu route.

1.5 All non-confidential material supplied by the applicant is available on the Commission's website (www.iasc.gov.au).

2 Air services arrangements

2.1 Paragraph 7(2)(aa) of the Act provides that the Commission must not allocate available capacity contrary to any restrictions on capacity contained in a bilateral arrangement(s).

2.2 According to the Register of Available Capacity, there are 3,120 seats of capacity per week available for allocation to Australian designated airlines to operate passenger services between Vanuatu and the following points in Australia: Sydney, Melbourne (including Avalon), Brisbane and/or Perth.

2.3 Currently, Virgin Australia has a total capacity allocation on the Vanuatu route of 880 seats of passenger capacity allocated under Determinations [2023] IASC 109 (as varied¹) and [2023] IASC 110.

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

3 Commission's consideration

3.1 Subsection 12(3) of the Act allows any person to apply to the Commission for a determination allocating capacity to enable an Australian carrier to operate international air services.

3.2 Subsection 7(1) of the Act empowers the Commission to make a determination allocating available capacity. Subsection 7(2) requires, in part, that the Commission's determination must not allocate capacity unless the Commission is satisfied that the allocation would be of benefit to the public and would not be contrary to any restrictions on capacity contained in bilateral arrangements, or combination of bilateral arrangements.

3.3 Further, subsection 7(3) of the Act provides that in assessing the benefit to the public of an allocation of capacity, the Commission must apply the criteria set out in the policy statement made by the Minister pursuant to section 11 of the Act.

3.4 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. The Policy Statement sets out the criteria which the Commission is required to apply in assessing the benefit to the public of allocations of capacity.

3.5 The Commission notes that there are no other applicants seeking an allocation of the same capacity and no opposition to the application. Section 12 of the Policy Statement provides, in part, that in circumstances where there is only one applicant for the allocation of that capacity on a route, and there is no opposition to the application, the Commission

¹ Varied by [Decision \[2023\] IASC 207](#)

is to have regard to the ‘reasonable capability criterion’ in section 8 of the Policy Statement and need not have regard to any other matter.

3.6 Under the reasonable capability criterion in section 8 of the Policy Statement, the Commission is required to assess 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.

3.7 The Commission notes that Virgin Australia is an established international carrier which currently operates scheduled international services between Australia and Vanuatu. The Commission therefore finds that Virgin Australia is reasonably capable of obtaining the necessary regulatory approvals to operate on the route and of using the proposed capacity allocation.

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

3.9 Subsection 15(1) of the Act empowers the Commission to include such terms and conditions as it thinks fit. The Commission has decided to issue this determination subject to the conditions set out in Item 4 below.

3.10 Paragraph 15(2)(a) of the Act requires a determination to specify the period during which it is to be in force. Subsection 15(3) of the Act effectively provides that if the Policy Statement sets out how the period of validity of the determination is to be fixed, then the period of validity is as so fixed. In any other case, an interim determination is to be in force for three years while a determination that is not an interim determination is to be in force for five years.

3.11 Section 20 of the Policy Statement sets out how the Commission is to fix the period during which a determination is to be in force. The Commission considers that this application is within the scope of subsection 20(4) and has decided that this Determination is to be in force for a period of five years.

4 Determination allocating capacity on the Vanuatu route to Virgin Australia International Airlines Pty Ltd ([2024] IASC 111)

4.1 In accordance with section 7 of the Act, the Commission makes a Determination in favour of Virgin Australia International Airlines Pty Ltd, allocating 1,304 seats of capacity per week to operate passenger services on the Vanuatu route in accordance with the Australia – Vanuatu air services arrangements.

4.2 The Determination is valid for five years from 28 May 2024.

4.3 The Determination is subject to the following conditions:

- (a) Only Virgin Australia International Airlines Pty Ltd is permitted to utilise the capacity.
- (b) Virgin Australia International Airlines Pty Ltd is required to fully utilise the capacity no later than 31 December 2024 or such other date approved by the Commission.
- (c) Virgin Australia International Airlines Pty Ltd is not permitted to utilise the capacity to provide code share or joint services with another Australian carrier or any other person unless approved by the Commission.
- (d) Changes in relation to the ownership and control of Virgin Australia International Airlines Pty Ltd are permitted except to the extent that any change:
 - results in the designation of the airline as an Australian carrier under the Australia – Vanuatu 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 International Airlines Pty Ltd or be in a position to exercise effective control of Virgin Australia International Airlines Pty Ltd, without the prior consent of the Commission.

Dated: 28 May 2024



Genevieve Butler
Chairperson



Jane McKeon
Commissioner