



**Australian Government**

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**International Air  
Services Commission**

International Air Services Commission  
**Annual Report 2009–2010**

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

The Hon Anthony Albanese MP  
Minister for Infrastructure and Transport  
Parliament House  
CANBERRA ACT 2600

Dear Minister

We are pleased to submit the seventeenth Annual Report of the International Air Services Commission, for the year ended 30 June 2010.

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

Yours sincerely

A stylized, horizontal signature in black ink.

Ian Smith  
Commissioner

A stylized, cursive signature in black ink.

Stephen Bartos  
Commissioner

16 September 2010

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, Transport, Regional Development and Local Government.

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# Part 1 – Review by Members

This annual report covers the eighteenth year of operations of the International Air Services Commission. It is our pleasure to provide an overview of the activities of the Commission for the past twelve months.

The broad context for the Commission's work this year was the gradual recovery in the international economic environment. Better economic conditions underpinned improving aviation traffic levels and revenue yields over the course of the year. This brought some relief for airlines, which endured a sharp downturn in passenger numbers and cargo volumes and yields during 2008/09 and into the early months of 2009–10. According to the International Air Transport Association (IATA), combined airline losses for 2008/09 totalled US\$27.8 billion, exceeding industry losses in 2001–02 following the 11 September terrorist attacks.

By the end of the 2009–10 year, traffic levels had returned to around those prevailing prior to the global financial crisis. Airlines were also reporting improved yields, although demand and yields for premium travel classes were recovering more slowly than for economy class travel. A setback occurred in the latter part of the financial year when the Icelandic volcanic eruption caused an unexpected disruption to air traffic within, and to and from, Europe in April and again in May, with Qantas being the most affected Australian operator. Fortunately services were restored to normal quickly, with Qantas operating supplementary flights to clear a backlog of affected passengers in Europe and intermediate points in Asia.

Australia's international airlines continued to look for opportunities to develop services, albeit on a generally modest scale in light of the subdued demand environment. This created a solid body of work for the Commission. The focus of activity was mainly within the south-west Pacific region and Asia, as Australian carriers sought to expand operations across a number of routes. Perhaps most notable was the contest between Qantas (on behalf of Jetstar) and V Australia for a large block of capacity on the Fiji route. Both carriers received allocations of capacity in this case, which is discussed in depth in the body of this report.

Qantas, Australia's largest international airline, obtained capacity from the Commission for services by Qantas and Jetstar for use on a range of routes. The capacity sought was in relatively small amounts compared with some previous years, again reflecting the weak demand situation and uncertain outlook through most of the year. The allocations from the Commission mainly facilitated increased numbers of services by

Jetstar on the Indonesia, Thailand, Vietnam and Fiji routes; and by Qantas to South Africa.

Pacific Blue Australia, the Virgin Blue Group short-haul international carrier, sought and obtained capacity from the Commission to continue expanding its services to island nations in our region, including Indonesia and Phuket in Thailand as well as south-west Pacific destinations.

V Australia, the long-haul Virgin Blue Group airline, was allocated capacity by the Commission to operate on the Thailand route, in addition to receiving Fiji capacity noted above. The airline introduced three B777-300ER services per week on the Thailand route but plans to expand to daily services over time. On the Fiji route, V Australia began operating six services per week.

Also during the year, V Australia introduced services on the South Africa route. Its twice-weekly flights between Melbourne and Johannesburg began the take-up of entitlements granted to V Australia by the Commission last year. The airline has sufficient allocated capacity on the South Africa route to expand to five flights per week. The Commission granted V Australia additional time to fully use this capacity, recognising weaker than anticipated demand as a result of the global economic downturn. Similar flexibility in capacity use was granted by the Commission to other carriers during the year.

V Australia has now introduced services on a network of four important international destinations, with the services started this year to South Africa, Fiji and Thailand complementing operations begun to the United States last year - a route on which the airline now provides twelve flights per week. Together with services operated by Pacific Blue Australia, V Australia's sister carrier, the Virgin Blue Group now operates an extensive portfolio of flights over a range of international routes.

As in previous years, processing of applications by Australian airlines to use capacity in joint services with other carriers was an important aspect of the Commission's work. Most notably, the Commission considered an application for the extension of code share arrangements between Qantas and Air Niugini. The IASC co-ordinated its assessment with a parallel review carried out by Papua New Guinea's Independent Consumer and Competition Commission (ICCC). After an in-depth assessment, approval was given for code sharing to continue until 30 June 2012. The ICCC also approved the arrangements continuing. Appendix 2 contains a full summary of this complex case.

Once again this year the Commission granted capacity to prospective new Australian airlines. The IASC undertakes a detailed analysis of the capability of new entrant



airlines to implement their proposed services, before deciding whether or not to allocate capacity to them. This is intended to ensure, as far as practicable, that valuable capacity entitlements are not allocated to airlines which may prove unable to use them.

Three new airlines satisfied the Commission's requirements in 2009–10. In July, Pacific Wings was allocated capacity on the New Zealand and New Caledonia routes. This airline has modest plans to operate B737 passenger services on these routes. At year's end, Pacific Wings was in the process of finalising approvals for its operations.

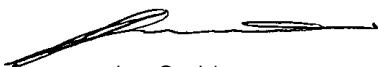
In December, the Commission authorised the transfer of capacity on the Indonesia route to Strategic Airlines from Ozjet Airlines. Strategic Airlines had earlier acquired Ozjet. From June 2010, Strategic Airlines commenced operating Airbus A320 (156 seat) services between Perth and Bali.

The Commission allocated freight capacity to Pacific Air Express (Australia) on the Vanuatu and Papua New Guinea routes. The airline subsequently implemented a once weekly B737 freighter service from Brisbane on each route. Pacific Air Express added a second service to Papua New Guinea just after the end of the financial year, with plans to add a second weekly service on the Vanuatu route later in 2010.

In November 2009, John Martin concluded a six year period as Chairperson. We report with great sadness that Mr Martin died suddenly in June 2010. John Martin holds the distinction of being the Commission's longest serving leader. He presided over the Commission during a period of major change in Australia's international aviation landscape. Notably this included the Commission's facilitation of the emergence of Jetstar and V Australia as long-haul international carriers following the demise of Ansett International in 2001, as well as the expansion of Pacific Blue Australia through the south-west Pacific and into Asia. John Martin will be remembered for his outstanding contribution to the work of the Commission.

We also acknowledge the excellent contribution of Ms Philippa Stone, whose three year term of appointment with the Commission concluded in early July 2010, just after the end of the period covered by this annual report.

Finally, we thank the members of the secretariat for their advice and administrative support to the Commission throughout the year.



Ian Smith  
Member



Stephen Bartos  
Member



# 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 be used by Australia's international airlines under air services arrangements between Australia and other countries. In particular, the functions of the Commission are to:

- make determinations allocating capacity and to renew those determinations;
- 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. It 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 policy statement is a disallowable instrument under section 11 of the Act. It is reproduced at Appendix 7.

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. 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 presumption in favour of the carrier seeking renewal that the determination will be renewed as sought.

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 allocated capacity to code share with another airline. The Commission conducts a review in response to such requests. In most situations, the Commission invites submissions from interested parties about the application. If the Commission agrees to a variation request, it makes a decision which varies the determination in the way sought by the applicant. 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 could occur, for example, where a carrier had been allocated capacity, but had not used it beyond the time by which 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 6. 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 Commission comprises a part-time chairman and two part-time members. The membership of the Commission during the year was as follows:



**Mr John Martin**

Mr John Martin, Chairman, was originally appointed in November 2003 for a three-year term. He was reappointed for a second three-year term which concluded in November 2009. John Martin died in June 2010.

Mr Martin was the director of a consulting company advising business and government on competition and other regulatory and strategic issues. He was also a director of the Accreditation Board of Standards Development.

Until June 2009, John Martin was for 10 years a Commissioner with the Australian Competition and Consumer Commission (ACCC) where he had special responsibility for matters relating to small business and was Chairman of the Commission's Regulated Access and Price Monitoring Committee. Mr Martin was Executive Director of the Australian Chamber of Commerce and Industry from 1989 until his appointment to the ACCC in June 1999. Previously Mr Martin had policy management roles in the Commonwealth Treasury and Industry Department and was for several years a regional industrial consultant with the United Nations based in South East Asia. John Martin held an Economics degree from the ANU.



**Ms Philippa Stone**

Ms Philippa Stone, Member, was appointed in July 2007 for a three-year term ending in July 2010. She is a partner in international legal firm Freehills, specialising in equity raisings, mergers and acquisitions and listed company reconstruction. Ms Stone has been involved in a number of Australia's largest equity raisings and landmark privatisations and financial services sector acquisitions over the past twenty years, and heads Freehills'

Equity Capital Markets Group. Ms Stone advised the Commonwealth Government on the sale of Sydney Airport and acted on airport transactions involving the Northern Territory, Adelaide, Townsville, Mt Isa, Bankstown, Camden, Hoxton Park and Hobart airports. She is a member of the Australian Stock Exchange's Listing Appeals Committee.



### Mr Ian Smith

Mr Ian W Smith, Member, was appointed in November 2007 for a three-year term ending in November 2010. Mr Smith has an extensive background in aviation and commerce particularly in the last twenty-five years in aviation insurance broking where he has held Managing Director roles with several international aviation brokers. He has experience as a Company Director, currently being the Chairman of Aerospace Maritime and

Defence Foundation of Australia, and Chairman of Aviation Development Australia Limited (ADAL), with ADAL running the Australian International Airshow. Also, Mr Smith is a Board Member of Aviation Australia Ltd, Maritime Australia Ltd, and the Regional Aviation Association of Australia. He has also been a consultant to the Department of Defence on aviation insurance matters.



### Mr Stephen Bartos

Mr Bartos, Member, was appointed in July 2010 for a three year term ending in July 2013. Stephen Bartos is a director with global consulting firm LECG. He is an expert in public sector governance and risk. He is author of two books *Against the Grain – The AWB Scandal and Why it Happened* (UNSW Press, 2006) and the reference manual *Public Sector Governance – Australia* (CCH, 2004) which he continues to edit. He has written

numerous refereed articles in scholarly journals and regular governance comment and opinion pieces, including a regular column in the *Public Sector Informant* (a monthly supplement to the *Canberra Times*). His work in the aviation sector includes advising the Victorian government on aviation technical training, a review of Airservices Australia for the former Transport Minister, and advice to the Board of Airservices Australia. Much earlier, he played a key role in provision of economic advice to government on policy ending the 'two airline' agreement.

Prior to consulting, Stephen was Professor of Governance and Director of the National Institute of Governance at the University of Canberra.

Stephen previously worked in the Commonwealth Government for some 25 years. He was a Deputy Secretary in the Finance department and head of Budget Group, where he was responsible for advising Ministers on spending and non-tax revenue in the Commonwealth budget, government business enterprises, fiscal policy, accounting policies and public sector performance improvement.

## Commissioners' attendance at meetings in 2009–10

Commissioner	Number of meetings possible	Number of meetings attended
Mr John Martin	5	5
Ms Philippa Stone	9	9
Mr Ian Smith	9	9

### The secretariat

The Commission is assisted in its work by a small secretariat. The secretariat is staffed by officers of the Department of Infrastructure, Transport, Regional Development and Local Government. The secretariat is headed by an executive director, supported by a senior adviser and an office manager. These officers provide advice and assistance to the Commissioners on all aspects of the Commission's operations.



*From left: Michael Bird, Ian Smith (Member), Anita Robinson, Stephen Bartos (Member), Ilona Balint*

## Communications with interested parties

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

- the Minister for Infrastructure, Transport, Regional Development and Local Government;
- 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 these parties. Account is taken of the views and/or interests of these parties in the Commission's 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 these parties 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.

## The role of the Department of Infrastructure, Transport, Regional Development and Local Government (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 countries. An important part of the negotiating process is to settle opportunities for the airlines of Australia to serve agreed routes using agreed capacity entitlements, in return for reciprocal opportunities for airlines of the other party or parties to the agreement.

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. The capacity recorded on the register under the various agreements may be sought by airlines by applying to the Commission for an allocation of capacity. The entitlements on the Register of Available Capacity are adjusted as determinations allocating capacity are made by the Commission, when unused capacity is handed back by airlines, or 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 important area where the roles of the Commission and the Department intersect is in relation to applications from prospective new Australian airlines wishing to operate international services. Before allocating capacity to an applicant airline, the Commission must be satisfied that the airline is both reasonably capable of obtaining the approvals necessary to operate and of implementing its proposals. The Department is responsible for designating and licensing Australian airlines to operate regular scheduled international services. This role is relevant to the Commission's decision-making about 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 ***International Air Services Commission Act 1992*** (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 performance against the criteria in each of these three areas is set out below.

## Results against performance targets

### Serving the object of the Act

The Commission considers that its primary task is to serve effectively the object of the Act. In the Commission's view, this task is achieved satisfactorily when determinations and decisions are made in accordance with the requirements of the Act and the related policy statement given to the Commission by the Minister. In the Commission's opinion, all determinations and decisions made during the year were made consistent with these requirements. There were no concerns raised by any interested party about any particular determination or decision.

The Commission continued the delegation of some of its decision-making powers to secretariat staff. The executive director makes most delegate decisions, although the principal advisor also has the authority to do so. The delegate handles less complex cases. Drafts of delegate determinations and decisions are cleared with Commissioners before finalisation. These arrangements are well-established and accepted by industry and help to speed up decision making as meetings of the Commission do not need to be convened. The delegate made about 38 per cent of the determinations and decisions produced for the year.

### Serving applicants and interested parties

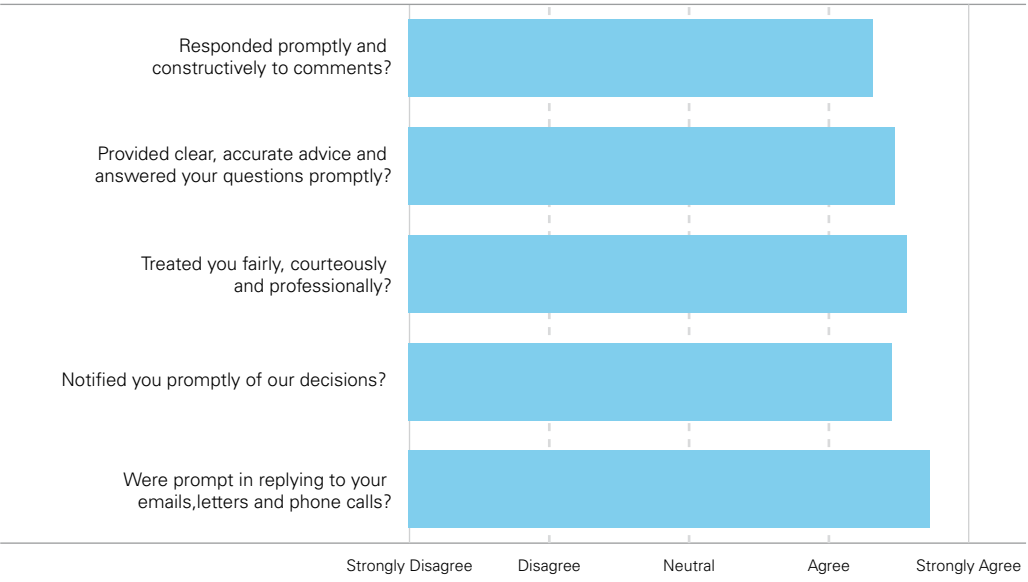
The Commission uses the detailed commitments set out in its service charter as the framework for assessing its service performance. The specific undertakings in the

service charter encompass both the ways in which the Commission aims to relate to interested parties and in how it endeavours to make its decisions. This framework provides the basis for an objective assessment of the Commission’s performance.

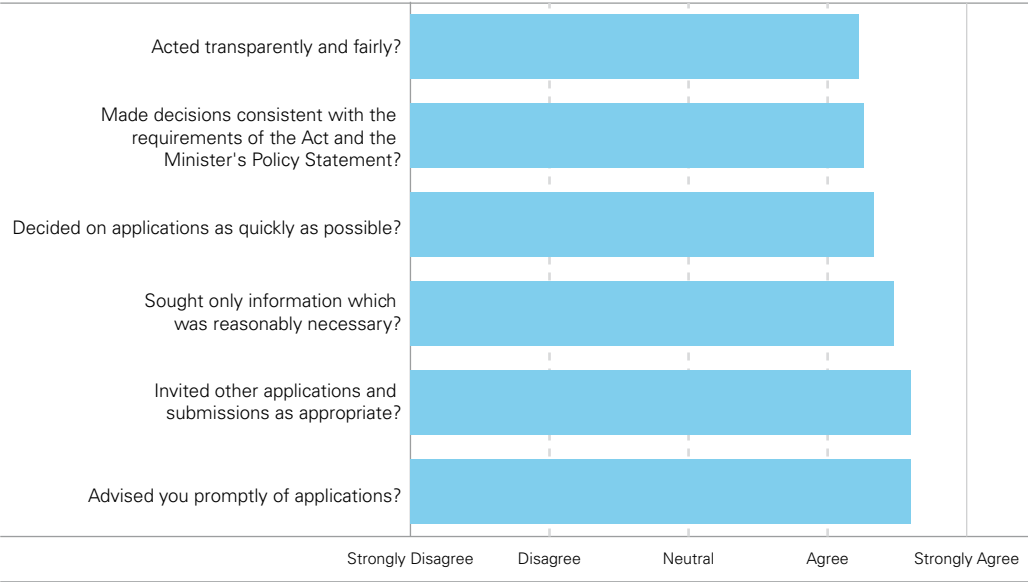
Again this year, clients were invited to assess the Commission’s performance by completing an electronic questionnaire. The questions allow respondents to evaluate how well the Commission performed against each of the specific undertakings set out in the service charter. Questionnaire responses may be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

Respondent scores against each criterion are aggregated and averaged. The following charts show that clients continue to rate the Commission’s performance positively. This suggests a very good level of satisfaction with how the Commission is doing its job.

How we dealt with stakeholders — do you agree that we:



Decision making process — 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. This data is used to supplement client feedback in this area.

To assess its performance, the Commission has two benchmarks against which timeliness is assessed. Firstly, the Commission aims to make decisions about uncontested and unopposed cases, excluding those from prospective new carriers, within four weeks of receiving an application. These cases are generally straightforward.

There were 29 cases in this category. The average decision time was 3.9 weeks. This result compares with an average completion time of 3.0 weeks in 2008–09 and 3.2 weeks in the year before that. Five of the 29 cases took longer than the four weeks benchmark to finalise. One case in particular took a particularly long time to complete and this lifted the average completion time significantly. The Commission was unable to conclude that case until a change was made to the relevant air services arrangements to provide a basis for the Commission’s determination.

In more complex cases the Commission's target time for completion is no more than 12 weeks from the date of application. The longer period required is because additional public benefit criteria are applicable in such cases, or a more in-depth assessment is required. Cases in this category include contested applications, applications which attract opposing submissions, applications where the Commission has concerns about the impact on competition of a particular proposal, or where an applicant is a prospective new carrier. There were several cases in this category this year. They are summarised briefly as follows. The average time taken to complete these cases was 11.2 weeks.

Qantas and V Australia made competing applications for the remaining passenger capacity on the Fiji route. Both were allocated capacity. This case is featured below in this section of the report. This case required 11 weeks to complete.

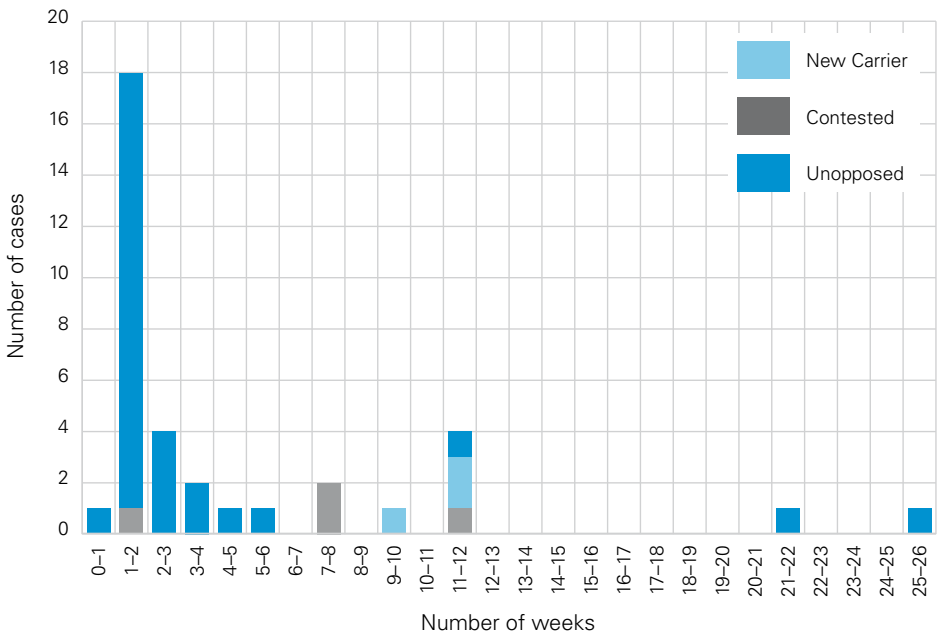
HeavyLift Cargo Airlines and Pacific Air Express (Australia) competed for 16.5 tonnes per week of cargo capacity on the Papua New Guinea route. The Commission allocated the capacity to HeavyLift Cargo Airlines. This case was completed in 10 weeks.

An application from Qantas to continue code sharing with Air Niugini on the Papua New Guinea (PNG) route was subjected to detailed public benefit analysis. This case was conducted in parallel with PNG's Independent Consumer and Competition Commission, requiring extensive liaison between the two bodies. This case took five months to finalise and was the only one to exceed the 12 weeks benchmark.

There were applications from four prospective new carriers. The Commission approved an application from Ozjet Airlines to transfer to Strategic Airlines, the new carrier, capacity originally allocated to Ozjet on the Indonesia route. There was an opposing submission about this application. The case took about 11 weeks to conclude. Pacific Wings applied for and was allocated capacity on the New Zealand and New Caledonia routes. This application was finalised in seven and a half weeks. Pacific Air Express (Australia) sought and was granted freight capacity on the Vanuatu route. As the airline had previously satisfied the Commission about its suitability to operate in the contested case with HeavyLift on the Papua New Guinea route referred to above, this case took only two weeks to conclude. Another prospective carrier - Australian Indian Ocean Territories Airlines - applied for capacity on the Singapore route, but subsequently withdrew its application.

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

Distribution of decision times by type of case



Note: The chart does not include renewal determinations. These are initiated by the Commission on a time frame that suits airlines’ requirements.

The Commission records annually the number of determinations and decisions made for the year, although this data is published for information, as it does not relate to any performance target. No target is set as 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 the strength of the global economy, as was witnessed during the recent global economic crisis. Airlines naturally seek more capacity from the Commission as demand rises.

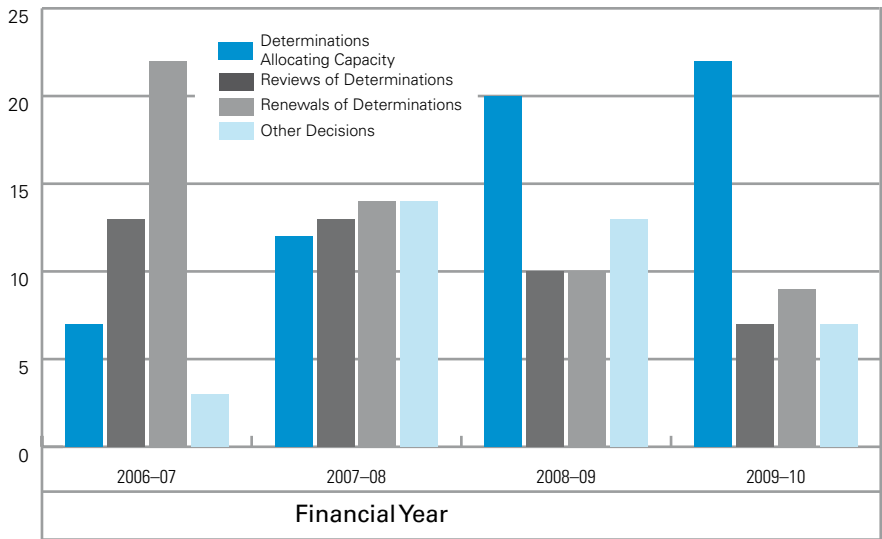
Airlines also wish to vary determinations on occasion, commonly to use allocated capacity to code share with other carriers. Another factor in activity levels is the number of Commission determinations due for renewal each year. This number varies from year to year.

The chart below shows that a total of 45 determinations and decisions were made by the Commission (28) and its delegates (17) in 2009–10. The graph also shows comparative data for the preceding three years.

There were 22 determinations allocating new capacity made during the year, two more than last year. In many cases, the allocations were for modest amounts of capacity, reflecting the weak state of demand in the industry. On the other hand, six determinations were revoked at the request of the particular carrier holding the capacity. Small amounts of capacity were involved. The Commission varied a further eight determinations, either to authorise code sharing or to approve the transfer of allocated capacity from one carrier to another. Another nine determinations approaching their expiry date were renewed at the request of the airlines concerned.

A brief summary of all determinations and decisions for 2009–10 is at Appendix 1. A detailed description of each case is provided at Appendix 2.

Historical numbers of determinations and decisions



Summary of expenditure

The Commission’s budget for the year was \$342,000. These funds are made available from the resources of the Aviation and Airports Division of the Department of Infrastructure, Transport, Regional Development and Local Government (the Department). The Commission’s budget expenditure is attributable mainly to the salaries of secretariat staff, fees paid to Commission members, travel, the production of the annual report and general office needs. Most corporate overheads and property operating expenditure are paid for by the Department, as the Commission is housed in a departmental building.



Total expenditure for 2009–10 was about \$323,000 or \$19,000 less than budget. Commissioners consider the expenditure to have been made efficiently and effectively. The Commission has delivered steady efficiency gains over a long period. The secretariat comprised an average of about 1.9 equivalent full-time staff, compared with about 2.5 full time equivalent staff last year. Part 5 details the Commission’s financial performance.

## Case study – the Fiji route

### Introduction

Each year the Commission highlights one of its more interesting cases, to provide readers with a flavour of the Commission’s approach to assessing complex applications. This year’s focus is on a case involving competing applications from Qantas and V Australia for the last of the capacity available on the Fiji route.

### The applications

V Australia applied in August 2009 for an allocation of 1,267 seats per week of capacity. It planned to introduce daily B777-300ER flights between points in Australia and Fiji. The proposed services would be in competition with V Australia’s sister carrier, Pacific Blue Australia and a Qantas/Air Pacific alliance in which Qantas code shared on Air Pacific flights on the route.

As V Australia’s aircraft were fitted with 361 seats, a total of 2,527 seats per week were required to operate daily services as planned, or 1,260 more seats than applied for. V Australia proposed to make up this shortfall by Pacific Blue Australia transferring this amount of capacity to V Australia. This capacity would be freed-up by Pacific Blue Australia ending its daily B737-800 flights between Sydney and Nadi, as V Australia started its services.

In response to V Australia’s application, Qantas applied for 1,491 seats per week of capacity. Its proposal was for Jetstar to operate daily A320 services between Sydney and Nadi. The combined total of the two applications exceeded the 1,760 weekly seats available for allocation, creating a contested situation. The Commission uses specific public benefit criteria in these cases, called the “paragraph 5 criteria” which refers to the part of the Minister’s policy statement in which they are contained. The primary paragraph 5 criterion is the extent to which proposals develop competition in international air services. Other criteria embrace tourism, consumer and trade benefits, as well as the extent to which a proposal will contribute positively to the Australian aviation industry. The Commission invited each applicant to address these criteria.

## Claims against the paragraph 5 criteria

### V Australia

V Australia argued that Qantas had chosen for commercial reasons to participate in the market only through code sharing on Air Pacific, but nevertheless had a strong commercial presence in the market. Against the competition criterion, V Australia said that its entry would bring pressure for lower air fares, including in the premium market as well as competition for air freight. It said that the Air Pacific/Qantas partnership operated a total of 62% of route capacity and would still hold 54% if V Australia's application was successful.

In terms of other benefits, V Australia noted that there was limited potential for tourism development to Australia but that Fijian visitor numbers to Australia had risen since Pacific Blue Australia had entered the market. V Australia's entry would encourage increased visitation. In terms of consumer benefits, V Australia would offer increased consumer choice with wide-body aircraft and offerings in business and premium economy. The wide-body B777-300 ER offered trade benefits because of its ability to carry pallets and containers. V Australia also argued that the Fiji operations formed an important part of the airline's network expansion.

### Qantas

Qantas pointed out that Pacific Blue Australia was the only Australian carrier with an allocation of capacity on the route and that the Virgin Blue Group would hold 90% of all Australian entitlements if its proposal was accepted. Qantas said that Jetstar's entry would see it take up 30% of Australian rights, while bringing a new carrier into the market which would compete strongly on price and utilise its brand identity and domestic network. Jetstar would add daily frequencies to the route, while V Australia's services would not as they were substitutes for existing Pacific Blue Australia frequencies.

Turning to other benefits, Qantas noted the small number of tourists to Australia from Fiji, but said that Jetstar would promote its services through various marketing campaigns. Jetstar's domestic network would assist visitor travel beyond Sydney to other parts of Australia. Qantas said that Jetstar would offer extensive consumer benefits through a new choice of carrier with onboard product choices, and attractive arrival and departure times. Consumers would also have access to holiday packages and the Qantas frequent flyer program. Jetstar would promote Fiji heavily in the Australian market. In relation to trade benefits, Jetstar would be able to carry up to 500 kilograms of freight per service. Turning to industry structure benefits, Jetstar's

expansion would ensure efficient aircraft use and additional employment for Australian crews.

## The Commission's assessment

The Commission assessed both proposals against the paragraph 5 criteria. It initially considered the proposals in the context of the number of carriers on the route and the existing distribution of capacity between Australian carriers. Pacific Blue Australia was the only carrier with an allocation of capacity, holding 3,240 of 5,000 available seats per week. However, Qantas was able to compete effectively in the market through its code share agreement with Air Pacific, which operated more than twice the amount of capacity operated by Pacific Blue Australia. The Commission considered that Qantas was likely to continue to have access to Fiji capacity in this way for the foreseeable future. However, for various reasons the Commission modestly discounted the amount of capacity available to Qantas through the code share.

The Commission analysed the change in the balance of capacity and frequency shares if one proposal or the other were to be preferred by the Commission. Allocating capacity to V Australia only would give the Virgin Group over 90% of Australian seat entitlements, but bring it closer to parity in capacity shares relative to Qantas/Air Pacific on the Sydney sector where V Australia would be operating. In contrast, allocating capacity only to Jetstar would add a new carrier to the Sydney sector. However, it would disadvantage Pacific Blue Australia from both capacity and frequency perspectives on the Sydney sector, the largest source of traffic on the Fiji route.

On the other hand, the Commission found that splitting the capacity could potentially generate a higher level of public benefits than through an allocation to one carrier or the other. This approach included having regard to the overall balance of capacity as well as other aspects of the competition criterion and other paragraph 5 criteria. It would also be in line with the expectation in the Minister's policy statement that the Commission should aim to provide reasonable growth in entitlements to Australian carriers operating on a route.

In arriving at an appropriate split of capacity, the Commission weighed up several factors. Principal among these was the balance of capacity and frequency between the two applicants. The Commission considered that Qantas should be allocated sufficient capacity to enable Jetstar to compete effectively, but the airline did not need daily frequencies to do so. The presence of Qantas through its code share with Air Pacific should offset any competitive disadvantage which might otherwise arise for the Qantas group through Jetstar operating fewer than daily services. The Commission

decided that V Australia required a higher number of frequencies because it was operating in the premium market segment, as well as the leisure market, and business travellers were generally time-sensitive. V Australia would bring strong competition to Qantas in the premium travel market. The B777-300ER aircraft proposed by V Australia offered cost efficiency, enabling the airline to compete strongly on price, as well as providing several qualitative features such as spaciousness and quiet operation.

Turning to other issues, the Commission found that both carriers would bring high quality passenger services, but with differing characteristics. V Australia's B777-300ER offered cost efficiency and was attractive to customers by virtue of its space and quiet and modern fit out. Jetstar also offered modern aircraft with appealing onboard features, but only in a one-class configuration.

The Commission considered that both carriers would deliver competition benefits, but each offered some different features. Thus public benefits were likely to be greatest if both were able to operate on the route. There would be greater choice, higher frequency and more capacity than if an allocation was made to one of the applicants only. Competition between the two new carriers, as well as with the existing Qantas/Air Pacific alliance was likely to be intense.

The Commission decided that competition benefits would be maximised if V Australia operated daily B777-300ER services and Jetstar four A321-213 services per week. Allocations of 907 seats per week and 852 seats per week respectively would achieve this result. This provided equal scope for both carrier groups to grow.

The Virgin Blue proposal was also stronger against the other public benefit criteria, notably the trade criterion, under which V Australia's wide-body aircraft provided substantially greater freight capability than Jetstar's narrow body aircraft. However, the amount of freight on the route is not large, so the Commission gave relatively little weight to this criterion.

The Commission took the view that the balance of public benefits could alter if there were significant changes to the market circumstances in future years. Accordingly, the Commission made interim – three-year – determinations, rather than the five year period of full determinations, which meant that the allocations of capacity could be reviewed at the renewal stage more quickly than if five year determinations were made.

The Commission's full determination in this case is available from its website, <[www.iasc.gov.au](http://www.iasc.gov.au)>

## Significant developments post-30 June 2010

There were no significant developments after 30 June 2010.

## Outlook for the industry

Last year's industry outlook highlighted the severe impact on the global aviation industry of the global financial and economic crisis but observed that the Australian aviation industry was likely to recover as economic conditions improved. The world economy did improve through last year, although not uniformly. Some individual economies continue to experience difficulties. Generally speaking recovery has been strongest within the Asia-Pacific region and the Australian economy has continued to perform better than most.

Broadly improved economic circumstances have seen a rapid recovery in international aviation activity and improved yields for international airlines, including Australia's carriers. The closure of European airspace as a result of volcanic ash set-back the recovery process for airlines serving Europe. This episode highlighted once again that unpredictability is almost the norm in international aviation.

Although economies have generally strengthened, Australia's international airlines continue to operate in a highly competitive environment. Australia's airlines face growing competition from foreign airlines serving Australia but they are also competing more with each other as Jetstar, Qantas, V Australia, Pacific Blue Australia and smaller Australian carriers enter new routes and expand capacity. These developments have been very much to the benefit of travellers, who have greater choice than was the case several years ago.

The Virgin Blue Group has seen the appointment of a new CEO and other senior staff during the year, and indications are that there will be changes to the operations of that Group's airlines over time. Proposed alliances on the United States and New Zealand routes with foreign carriers point to efforts by the Virgin Blue Group to create economic efficiencies and strengthen its competitive presence. Qantas continues to develop its two-brand strategy, both on domestic and international routes. The emergence of new small Australian carriers in passenger and freight services provides additional competition in selected markets.

There is little doubt that Australia's international aviation industry will continue to face challenges over the coming year with ongoing strong competition and some continued uncertainty about the economic outlook. The dynamics of the industry are likely to continue evolving rapidly, with the drive for survival seeing continuing gains in operational efficiencies, improved choice for consumers and intense price competition.



# 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 the Commission must comply with. 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 less complex issues are involved, Commissioners hold meetings by teleconference. On rare occasions meetings are held by email. 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 determinations and decisions are made in accordance with the Act and the Minister's policy statement. Minutes are kept of proceedings at all of its meetings.

During their meetings, Commissioners discuss staffing, financial and risk management issues, as appropriate, with staff of the secretariat. Commissioners and secretariat officers 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, Transport, Regional Development and Local Government (the Minister). The current period of appointments of Commission members is three years, although the Act provides for

terms of appointment up to five years in duration. The Remuneration Tribunal sets members' remuneration pursuant to the *Remuneration Tribunal Act 1973*.

Section 47 of Part 5 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.

Part 6, 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, Transport, Regional Development and Local Government (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

The staffing level of the secretariat was below the previous year, at 1.9 full-time equivalent people, compared with 2.5 in 2008–09. As at 30 June, the secretariat was comprised of one Executive Level 2 officer (male, part-time), one APS 6 officer (female, part-time, funded by the Department) and one APS 5 officer (female, part-time). 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. Staff members are involved in the Commission's work through preparing briefing and agenda papers for meetings, engaging in discussion at meetings, and drafting determinations and decisions for consideration by Commissioners. As the work demands of the Commission's activities allow, secretariat staff may also be involved in tasks within the Department, as part of the flexible working arrangements between the Commission and the Department.

### Assets management

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

### Purchasing

The Commission made no significant purchases during the year.

### Consultants and competitive tendering and contracting

The Commission did not engage any consultancy services.



# Part 5 – Financial report

## Financial report as at 30 June 2010

	(1)	(2)	(3)	(4)
	2009–10 Budget	2009–10 Actual	Variation (Column 2–1)	2010–11 Budget
	\$'000	\$'000	\$'000	\$'000
Salaries	200	191	-9	184
Revenue	0	0	0	0
Supplier expenses	142	132	-10	131
<b>TOTAL</b>	<b>342</b>	<b>323</b>	<b>-19</b>	<b>315</b>
Staff years	1.6	1.9		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, Transport, Regional Development and Local Government. The Commission's offices are in a departmental building.



# Appendix 1 – Determinations and decisions

This table summarises briefly the determinations and decisions issued during 2009-10. 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	Capacity Allocated	Comments
Cook Islands	Pacific Blue	[2009] IASC 129	20-Oct-09	180 seats per week with any aircraft type	Renewal of [2005] IASC 111
Cook Islands	Pacific Blue	[2010] IASC 102 <sup>d</sup>	09-Apr-10	360 seats per week with any aircraft type	Allocation of passenger capacity
Fiji	Pacific Blue	[2009] IASC 109 <sup>d</sup>	09-Jul-09	Unlimited 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	Allocation of passenger capacity
Fiji	Pacific Blue	[2010] IASC 201	02-Mar-10		Variation of [2008] IASC 117 to transfer capacity from V Australia to Pacific Blue Australia
Fiji	Qantas	[2009] IASC 132	05-Nov-09	852 seats per week on the specified routes to or from Sydney, Melbourne, Brisbane and/or Perth	Allocation of passenger capacity
Fiji	V Australia	[2009] IASC 131	05-Nov-09	907 seats per week on the specified routes to or from Sydney, Melbourne, Brisbane and/or Perth	Allocation of passenger capacity
Fiji	V Australia	[2009] IASC 214	05-Nov-09		Variation of [2008] IASC 129 to transfer the allocated capacity from Pacific Blue Australia to V Australia

Route	Airline	IASC Number	Date	Capacity Allocated	Comments
Fiji	V Australia	[2009] IASC 215	17-Nov-09		Variation of [2008] IASC 117 to transfer the allocated capacity from Pacific Blue Australia to V Australia
Hong Kong	Qantas	[2009] IASC 122	20-Oct-09	Two frequencies per week	Renewal of [2004] IASC 115
Hong Kong	Qantas	[2009] IASC 123	20-Oct-09	Five frequencies per week	Renewal of [2004] IASC 116
Hong Kong	Qantas	[2009] IASC 124	20-Oct-09	One frequency per week	Renewal of [2005] IASC 107
India	Qantas	[2009] IASC 212 <sup>d</sup>	01-Oct-09		Variation of [2008] IASC 122 to permit a wholly owned subsidiary to provide services jointly with Qantas
Indonesia	Pacific Blue	[2009] IASC 113	11-Aug-09	720 seats weekly	Allocation of passenger capacity
Indonesia	Qantas	[2009] IASC 114	11-Aug-09	48 seats weekly between Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia	Allocation of passenger capacity
Indonesia	Qantas	[2009] IASC 115 <sup>d</sup>	05-Aug-09	Unrestricted capacity between points in Australia, except Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia	Allocation of unlimited passenger capacity
Indonesia	Strategic Airlines	[2009] IASC 222	17-Dec-09		Variation of [2008] IASC 101 to transfer capacity to Strategic Airlines from Ozjet
Italy	Qantas	[2010] IASC 104 <sup>d</sup>	08-Jun-10	400 third-country code share seats per week	Allocation of third-country code share capacity
Korea	Qantas	[2009] IASC 213	20-Oct-09	-687 seats each way per week	Revocation of [2005] IASC 108
Korea	Qantas	[2010] IASC 103 <sup>d</sup>	18-May-10	Unrestricted capacity, frequency and aircraft type to be operated on the route for dedicated freight services	Allocation of freight capacity

Route	Airline	IASC Number	Date	Capacity Allocated	Comments
Netherlands	Qantas	[2009] IASC 125	20-Oct-09	400 seats per week with any type of aircraft in any configuration	Renewal of [2004] IASC 118
New Caledonia	Ozjet	[2009] IASC 211 <sup>d</sup>	21-Jul-09	-0.5 units of capacity per week	Revocation of [2008] IASC 107
New Caledonia	Pacific Wings	[2009] IASC 112	27-Jul-09	0.25 units of capacity per week	Allocation of passenger capacity
New Caledonia	Pacific Wings	[2009] IASC 116	06-Aug-09	0.50 units of capacity per week	Allocation of passenger capacity
New Zealand	Pacific Wings	[2009] IASC 111	27-Jul-09	Unlimited capacity to operate scheduled passenger services between Australia and New Zealand via, and beyond to, third countries	Allocation of unlimited passenger capacity
Papua New Guinea	HeavyLift Cargo	[2009] IASC 117	25-Aug-09	16.5 tonnes per week	Allocation of freight capacity
Papua New Guinea	Pacific Air Express	[2009] IASC 134	17-Dec-09	17.5 tonnes per week	Allocation of freight capacity
Papua New Guinea	Pacific Air Express	[2010] IASC 105 <sup>d</sup>	15-Jun-10	17.5 tonnes per week	Allocation of freight capacity
Papua New Guinea	Qantas	[2009] IASC 216	17-Dec-09		Variation of [2006] IASC 129 to permit Air Nuigini to continue to code share on Qantas services
Papua New Guinea	Qantas	[2009] IASC 220 <sup>d</sup>	02-Dec-09	-17.5 tonnes per week	Revocation of [2007] IASC 123
Papua New Guinea	Qantas	[2010] IASC 101	24-Mar-10	888 seats per week	Allocation of passenger capacity
Singapore	Qantas	[2010] IASC 202 <sup>d</sup>	25-May-10		Variation of [2007] IASC 116 to permit Qantas to provide services jointly with China Eastern Airlines

Route	Airline	IASC Number	Date	Capacity Allocated	Comments
Solomon Islands	HeavyLift Cargo	[2009] IASC 217 <sup>d</sup>	23-Nov-09	-50 tonnes per week	Revocation of [2005] IASC 116
Solomon Islands	HeavyLift Cargo	[2009] IASC 218 <sup>d</sup>	23-Nov-09	-25 tonnes per week	Revocation of [2007] IASC 102
Solomon Islands	Pacific Blue	[2009] IASC 110 <sup>d</sup>	09-Jul-09	180 seats per week	Allocation of passenger capacity
South Africa	Qantas	[2009] IASC 126	20-Oct-09	One frequency per week	Renewal of [2004] IASC 119
Thailand	Pacific Blue	[2009] IASC 133 <sup>d</sup>	11-Nov-09	3.15 B747-400 equivalent weekly services	Allocation of passenger capacity
Thailand	Qantas	[2009] IASC 120	20-Oct-09	1.4 B747-400 equivalent weekly services	Allocation of passenger capacity
Thailand	Qantas	[2009] IASC 127	20-Oct-09	1.3 B747-400 equivalent weekly services	Renewal of [2005] IASC 128
Thailand	V Australia	[2009] IASC 119	25-Aug-09	6.3 B747-400 equivalent weekly services	Allocation of passenger capacity
Tonga	Pacific Blue	[2009] IASC 130	20-Oct-09	360 seats per week	Renewal of [2005] IASC 109
Vanuatu	HeavyLift Cargo	[2009] IASC 219 <sup>d</sup>	23-Nov-09	-25 tonnes per week	Revocation of [2005] IASC 115
Vanuatu	Pacific Air Express	[2009] IASC 118 <sup>d</sup>	12-Aug-09	35 tonnes per week	Allocation of freight capacity
Vanuatu	Qantas	[2009] IASC 128	20-Oct-09	200 seats per week	Renewal of [2004] IASC 117
Vietnam	Qantas	[2009] IASC 121	20-Oct-09	Unrestricted capacity, frequency and aircraft type to and from all points in Australia other than Sydney, Melbourne, Brisbane and Perth	Allocation of unlimited passenger capacity
Vietnam	Qantas	[2009] IASC 221 <sup>d</sup>	08-Dec-09	-one service per week with any aircraft type	Variation of [2009] IASC 101 to reduce capacity allocated

<sup>d</sup> Indicates a determination or decision made by the Commission's delegate



# Appendix 2 – Route-by-route summary of Commission determinations and decisions in 2009–10

This appendix provides a detailed summary of the Commission's determinations and decisions for 2009–10. Full determinations and decisions can be viewed on the Commission's website at <[www.iasc.gov.au](http://www.iasc.gov.au)>.

## Cook Islands

On 8 October 2009, Pacific Blue Australia applied to the Commission for a renewal of Determination [2005] IASC 111, which allocated 180 seats of capacity per week on the Cook Islands route.

On 12 October 2009, the Commission issued Renewal **Determination [2009] IASC 129** reallocating the 180 seats of capacity per week for a further five years from 13 October 2010.



On 29 March 2010, Pacific Blue Australia applied for an allocation of two frequencies per week on the Cook Islands route. Pacific Blue Australia proposed to operate two additional weekly services between points in Australia and the Cook Islands using 180-seat B737-800 aircraft. The airline intended to introduce these services progressively and to fully utilise the capacity by 1 April 2011.

On 9 April 2010 the delegate, on behalf of the Commission, made **Determination [2010] IASC 102** in favour of Pacific Blue Australia, allocating an additional 360 seats of capacity per week on the Cook Islands route. The determination is for five years from the date of the determination.

## Fiji

On 29 June 2009, Pacific Blue Australia sought an allocation of unlimited capacity on the Fiji route for operations between points in Australia other than Sydney, Melbourne, Brisbane and Perth and points in Fiji. Services were planned to be introduced progressively, starting with flights between Adelaide and Fiji.

The delegate issued **Determination [2009] IASC 109** on 9 July 2009, allocating unlimited capacity as sought by Pacific Blue Australia. Five years is the period of the determination.



Pacific Blue Australia applied on 12 August 2009 to transfer to V Australia 1,260 seats of capacity per week which had been allocated to Pacific Blue Australia on the Fiji route by Determination [2008] IASC 129. The Commission noted that Pacific Blue Australia had been operating on the Fiji route for several years and was continuing to use the capacity involved. Commissioners considered that there was no speculative element to the proposed transfer and that there would be no reduction in public benefits through allowing the transfer. **Decision [2009] IASC 214** of 5 November 2009 transferred the 1,260 seats of capacity per week on the Fiji route from Pacific Blue Australia to V Australia as sought.



On 12 August 2009, V Australia sought an allocation of 1,267 seats per week of capacity on the Fiji route. Qantas lodged a competing application for 1,491 seats per week. The Commission assessed the applications against the additional public benefit criteria in paragraph 5 of the Minister's policy statement. A detailed summary of this case is provided in Part 3 of this annual report.

The Commission decided to split the available capacity between the applicants. On 5 November 2009, it issued Interim **Determination [2009] IASC 131**, allocating to V Australia 907 seats per week of capacity on the Fiji route. The Commission also allocated 852 seats per week to Qantas in Interim **Determination [2009] IASC 132**.

Both interim determinations are for a period of three years from 5 November 2009.



The Virgin Blue Group applied on 30 October 2009 to transfer from Pacific Blue Australia to Virgin Blue International Airlines (V Australia) the 360 seats per week of capacity allocated to Pacific Blue Australia on the Fiji route under Determination [2008] IASC 117. Pacific Blue Australia noted that both it and V Australia are wholly-owned subsidiaries of Virgin Blue Holdings Limited. The proposed transfer would therefore occur within an established airline group.

The application was made to enable V Australia to operate daily B777-300 services between Sydney and Nadi, using a combination of the transferred capacity applied for, 1,260 seats per week of capacity transferred by Decision [2009] IASC 214 and 907 seats per week of capacity allocated by the Commission in Determination [2009] IASC 131. The services were planned to commence in December 2009.

On 17 November 2009, the Commission issued **Decision [2009] IASC 215** varying Determination [2008] IASC 117, as requested by Pacific Blue Australia, by transferring from Pacific Blue Australia to V Australia the allocation of 360 seats of capacity per week made to Pacific Blue Australia under this determination.



On 22 February 2010, V Australia applied to transfer to Pacific Blue Australia 360 seats per week of capacity allocated to V Australia on the Fiji route in Determination [2008] IASC 117. This capacity had been allocated originally to Pacific Blue Australia and transferred to V Australia in Decision [2009] IASC 215 of 17 November 2009. Pacific Blue Australia noted that both it and V Australia are wholly-owned subsidiaries of Virgin Blue Holdings Limited so the transfer would therefore occur within an established airline group.

V Australia said that it intended to move to operate six weekly B777-300ER services to Fiji rather than the current seven services per week between Sydney and Nadi. The Virgin Group would maintain daily services on the sector by using 180 of the 360 seats per week to be transferred to enable Pacific Blue Australia to introduce a once weekly B737-800 service. Pacific Blue Australia would add a third weekly Melbourne-Nadi service using the remaining 180 weekly seats.

The Commission noted that the proposal meant the capacity would stay in continuous use within the Virgin Blue Group. The transfer proposal was found to represent a sensible commercial response to market experience and developments and did not constitute speculation. On 2 March 2010, the Commission issued **Decision [2010] IASC 201** varying Determination [2008] IASC 117 by transferring from V Australia to Pacific Blue Australia 360 seats of capacity per week.

## Hong Kong

Qantas applied to the Commission on 11 September 2009 for a renewal of Determination [2004] IASC 115, which allocated capacity on the Hong Kong route to Qantas. Following amendment by Decision [2006] IASC 213, the allocation was changed to two frequencies per week with any aircraft type. Decision [2007] IASC 205 amended the determination to authorise code sharing between Qantas and Air France.

On 20 October 2009, the Commission issued Renewal **Determination [2009] IASC 122** allocating two frequencies per week with any aircraft type between Australia and Hong Kong. The determination is for five years from 10 October 2010.



On 11 September 2009, Qantas applied for a renewal of Determination [2004] IASC 116, which allocated capacity on the Hong Kong route to Qantas. Following amendment by Decision [2004] IASC 216, the allocation was changed to five frequencies per week with any aircraft type. Decision [2007] IASC 205 amended the determination to authorise code sharing between Qantas and Air France.

On 20 October 2009, the Commission issued Renewal **Determination [2009] IASC 123** allocating five frequencies per week with any aircraft type on the Hong Kong route. The determination is for five years from 1 July 2010.



On 11 September 2009, Qantas applied for a renewal of Determination [2005] IASC 107 which allocated one all-cargo frequency per week on the Hong Kong route.

On 20 October 2009, the Commission issued Renewal **Determination [2009] IASC 124** in favour of Qantas, allocating one all-cargo frequency per week. The determination is for five years from 14 July 2010.

## India

On 18 September 2009, Qantas applied for a variation of Determination [2008] IASC 122 to permit any wholly-owned subsidiary of the Qantas Group to code share on the Singapore–Mumbai sector of Qantas' three weekly services between India and Australia.

On 1 October 2009, the delegate of the Commission issued **Decision [2009] IASC 212** varying the determination as requested to allow the capacity to be used by any wholly-owned subsidiary of Qantas to provide services jointly with Qantas.

## Indonesia

Pacific Blue Australia applied on 14 July 2009 for an allocation of 720 seats per week of capacity on the Indonesia route. Pacific Blue Australia planned to operate an extra four weekly B737-800 services per week between the major gateway points in Australia (covering Sydney, Melbourne, Brisbane and Perth) and Indonesia. Qantas concurrently sought an allocation of 125 seats per week, which was subsequently amended to an application for 48 seats per week. That Qantas application was addressed separately in Determination [2009] IASC 114. (see below)

On 11 August 2009, the Commission issued **Determination [2009] IASC 113** allocating 720 seats per week in each direction on the Indonesia route to Pacific Blue Australia. The determination is for five years from the date of the determination.



On 15 July 2009, Qantas applied to the Commission for an allocation of 125 seats of capacity per week on the Indonesia route. The capacity was planned to be used by Jetstar to upgrade from A320 to A321 aircraft on some services. Qantas sought flexibility for the capacity to be used by Qantas or a wholly-owned subsidiary, and for the capacity to be used in joint services between them. A concurrent application for 720 seats per week was received by Pacific Blue Australia. As there were a limited number of seats remaining available for allocation, Qantas amended its request to seek 48 seats per week. However, Qantas did so on the basis that it still required a total of 125 seats per week to implement its plans, and that the remaining 77 seats per week required would be available as excess capacity under the air services arrangements with Indonesia and would be approved by the Department.

On 11 August 2009, the Commission issued **Determination [2009] IASC 114** allocating 48 seats per week to Qantas on the Indonesia route. The determination is for five years from 11 August 2009. In making the allocation, the Commission indicated its strong support for the use of the extra-bilateral capacity by Qantas so that it could implement its proposal.



Qantas applied on 24 July 2009 for an allocation of unlimited capacity on the Indonesia route. This was to enable the airline to operate between points in Australia other than Sydney, Melbourne, Brisbane and Perth, and points in Indonesia. Qantas also sought approval for the capacity to be used by Qantas or its wholly-owned subsidiaries, and for those carriers to be able to operate joint services.

On 5 August 2009, the delegate of the Commission issued **Determination [2009] IASC 115** in favour of Qantas, allocating unrestricted passenger capacity on the Indonesia route from Australian points other than the four major gateways, as requested. The determination is for five years from the date of the determination.



On 29 September 2009, the Commission received a letter from Strategic Airlines advising that the Strategic Aviation Group had acquired Ozjet from the Administrator of Ozjet. Strategic Airlines sought the transfer to it of 408 seats of capacity per week held by Ozjet under Determination [2008] IASC 101. Strategic Airlines planned to operate twice a week between Brisbane and Denpasar using an Airbus A330 aircraft with a

seating capacity of 229 seats. As a total of 458 seats were required to operate the services, and there was no capacity available for allocation, Strategic Airlines planned to seek an additional 50 seats per week under the “spill-over” provisions of the Australia–Indonesia air services arrangements.

The Commission considered this application under paragraphs 4 and 10 of the Minister’s policy statement. The Commission received advice from the Department indicating that Strategic was reasonably capable of obtaining designation, licensing and operation approvals. Noting that Strategic Aviation group was well established and that the proposed operations by Strategic Airlines were of a modest scale, the Commission considered there was a public benefit arising from the use of the entitlements.

With regard to paragraph 10, following advice from the Deed Administrator giving consent to the transfer, the Commission was satisfied that there was no impediment to the transfer of the capacity. The Commission was also satisfied that there was no speculative element to the transfer application. The Commission noted that the capacity was previously exercised by Ozjet for well over six months.

On 17 December 2009, the Commission issued **Decision [2009] IASC 222** varying Determination [2008] IASC 101, by transferring from Ozjet to Strategic Airlines the allocation of 408 seats of capacity per week.

## Italy

On 31 May 2010, Qantas applied for an allocation of 400 third-country code share seats per week on the Italy route. The airline intended to use the capacity to expand its code share relationship with British Airways by code sharing on that airline’s services between London and Rome, and London and Milan. On 8 June 2010, the delegate of the Commission issued **Determination [2010] IASC 104**, allocating 400 third-country code share seats per week on the Italy route. The determination is for five years from the date of the determination.

## Korea

Qantas applied to the Commission on 12 October 2009 to revoke Determination [2005] IASC 108, which allocated 687 seats of capacity on the Korea route. On 20 October 2009 the Commission issued **Decision [2009] IASC 213**, which revoked the determination as requested.



On 7 May 2010, Qantas applied for an allocation of unlimited capacity and frequency for all-cargo services on the Korea route. Qantas planned to introduce a weekly

freighter service between Australia–Seoul–Anchorage–Chicago, using B747-400F freighter aircraft wet-leased from Atlas Air. Qantas requested that the determination be made for a period of ten years.

On 18 May 2010, the delegate of the Commission issued **Determination [2010] IASC 103**, allocating unlimited capacity for all-cargo services on the Korea route. The determination is for ten years from the date of the determination.

## Netherlands

Qantas applied to the Commission on 11 September 2009 for a renewal of Determination [2004] IASC 118, which allocated to Qantas 400 seats per week with any aircraft type in any configuration on the Netherlands route.

On 20 October 2009, the Commission issued Renewal **Determination [2009] IASC 125** renewing the original determination for five years from 30 June 2010.

## New Caledonia (France–Route 3)

Strategic Global applied to the Commission on 10 July 2009 to revoke, pursuant to section 27AA of the Act, Determination [2008] IASC 107 which was held by Ozjet and allocated 0.5 units of capacity per week on the New Caledonia route (France – Route 3). The delegate understood that Strategic purchased Ozjet in late June 2009.

If an Australian carrier asks the Commission to revoke a determination, the Commission must make a decision revoking the determination. On 21 July 2009, the delegate of the Commission issued **Decision [2009] IASC 211** revoking Determination [2008] IASC 107.



On 2 June 2009, Pacific Wings applied to the Commission for an allocation of 0.25 units of capacity per week on the New Caledonia route (France – Route 3). The applicant advised that it was a start-up international carrier planning to operate in small international markets using B737 aircraft wet-leased from Our Airline, Nauru's national carrier. As with all prospective new carriers, the Commission assessed detailed information about Pacific Wings and its commercial plans. Advice was also obtained from the Department of Infrastructure, Transport, Regional Development and Local Government, which indicated that it saw no reason why Pacific Wings would not be reasonably capable of obtaining the necessary approvals.

In considering the issue of obtaining the approvals necessary to operate, the Commission noted that there were a number of approvals to be obtained by Pacific Wings, but was satisfied that these could be obtained in due course. Turning to the

question of Pacific Wings' ability to implement its proposals, the Commission had regard to the applicant's aviation experience, business plan and related commercial information. This assessment suggested to the Commission that Pacific Wings had the financial capacity, resources, skills and experience necessary to implement its proposals.

In concluding its consideration, the Commission remarked that, in the difficult prevailing economic environment, Pacific Wings was likely to face greater challenges than a new entrant would normally expect to confront. The Commission noted that the success of the airline's operations would depend greatly on the achievement of its revenue yield and load factor projections. The entry of Pacific Wings to the route would mean additional competition, which should benefit consumers and the tourism industry.

The Commission concluded that Pacific Wings was reasonably capable of obtaining the necessary approvals and of implementing its proposals. It allocated 0.25 units of capacity per week to the airline in **Determination [2009] IASC 112**. The determination is for a period of three years from 27 July 2009, the date of the determination.



On 22 July 2009, Pacific Wings applied to the Commission for an allocation of 0.5 units of capacity per week on the New Caledonia route (France – Route 3). Pacific Wings stated that intended to fully utilise the capacity by 1 November 2011.

In considering the application, the Commission found that Pacific Wings met the paragraph 4 criteria in the Minister's policy statement and should be allocated the capacity sought. However, the Commission did not agree to Pacific Wings holding the capacity unused for the lengthy period proposed by the airline. In particular, the Commission noted that the 0.5 units per week sought by Pacific Wings was the only capacity remaining available for allocation on the route.

Noting Pacific Wing's plans for a phased development of services on the New Caledonia route, the Commission agreed to allow the carrier sufficient time to implement its services on that basis. In allocating the 0.5 weekly units of capacity in **Determination [2009] IASC 116**, as sought, the Commission required a minimum of 0.25 units to be utilised by no later than end of April 2010, which is the same date by which the airline was required to utilise the 0.25 units of weekly capacity allocated under Determination [2009] IASC 112. Pacific Wings was therefore required to introduce at least two B737-300 services per week by end of April 2010. (The Commission subsequently granted Pacific Wings an extension until 31 October 2010).



The remaining 0.25 units of capacity was required to be fully utilised by 1 November 2011.

The determination is for three years from 6 August 2009.

## New Zealand

Pacific Wings applied on 2 June 2009 for unlimited capacity on the New Zealand Route. The applicant concurrently sought capacity on the New Caledonia (France – Route 3) route – see entry above, which provides additional detail on the Pacific Wings' proposals.

The Commission was satisfied that Pacific Wings was reasonably capable of obtaining the necessary approvals and of implementing its proposals. In this regard the Commission noted that Pacific Wings had a credible business plan and had support through its commercial arrangements with Our Airline. The Commission considered that the entry of Pacific Wings would mean additional competition, benefiting consumers and the tourism industry. The Commission noted the consumer protection mechanisms which Pacific Wings had in place to protect passengers against financial loss, should the airline not be successful.

On 27 July 2009 the Commission issued **Determination [2009] IASC 111** allocating unlimited passenger capacity on the New Zealand route. The determination is for a ten-year period.

## Papua New Guinea

On 15 June 2009, HeavyLift applied for an allocation of 16.5 tonnes of freight capacity per week on the Papua New Guinea (PNG) route. HeavyLift planned to use the capacity to introduce a once weekly service between Cairns and Port Moresby with 727-100 aircraft. The airline also wanted to substitute larger capacity B727-200 freighter aircraft for the B727-100 aeroplanes which were currently operating between Brisbane and Port Moresby.

A competing application was received from Pacific Air Express, which also sought an allocation of the available 16.5 tonnes of freight capacity per week. Pacific Air Express planned to operate a once weekly B737-300F service on a Brisbane – Port Moresby and return routing.

Both airlines addressed the paragraph 5 criteria in the Minister's policy statement in support of their respective applications. A number of submissions were received, some in support of HeavyLift's proposal and others supporting the Pacific Air Express proposal.

After assessing the two applications against the relevant criteria, the Commission found public benefit was likely to be maximised by the allocation of the 16.5 tonnes of capacity per week to HeavyLift. Against the principal paragraph 5 criterion – which relates to the competition benefits of proposals – the Commission considered that HeavyLift’s proposal to add a weekly service on the Cairns – Port Moresby sector carried greater potential public benefits compared with Pacific Air Express’s plan to operate a once weekly service between Brisbane and Port Moresby. The Commission also found that the HeavyLift plan was likely to produce comparatively larger benefits to international trade.

On 25 August 2009, the Commission issued **Determination [2009] IASC 117** in favour of HeavyLift, allocating 16.5 tonnes of freight capacity per week on the Papua New Guinea route. The determination is for five years from the date of the determination. In submissions about the HeavyLift application, concerns were raised about the extent of HeavyLift’s capacity utilisation in the past. The Commission therefore included a condition of the determination requiring HeavyLift to report regularly on its capacity utilisation.



Qantas applied to the Commission on 1 December 2009 to revoke Determination [2007] IASC 123 which allocated 17.5 tonnes of freight capacity per week on the Papua New Guinea route. Qantas advised that Express Freighters Australia no longer planned to operate services between points in Australia and Port Moresby in the near future. On 2 December 2009 the delegate, on behalf of the Commission, issued **Decision [2009] IASC 220**, revoking Determination [2007] IASC 123.



On 3 December 2009, Pacific Air Express applied for an allocation of 17.5 tonnes of freight capacity per week on the Papua New Guinea route. The airline planned to operate once weekly services between Brisbane and Port Moresby using B737- 300 freighter aircraft.

On 17 December 2009, the Commission issued **Determination [2009] IASC 134** allocating 17.5 tonnes of freight capacity per week in each direction on the route. The determination is for five years from that date.



On 16 July 2009, Qantas applied for a variation to Determination [2006] IASC 129, which allocated 1,000 seats of capacity per week on the PNG route, to permit the airline to continue code sharing on Air Niugini services from Port Moresby to Sydney,

Brisbane and Cairns. Qantas sought authorisation of the code share arrangements until 31 December 2012.

In parallel with the Qantas application, Air Niugini applied to Papua New Guinea's Independent Consumer and Competition Commission (ICCC) for continued authorisation of the arrangements. The IASC and ICCC agreed to co-ordinate their reviews, with officials from the two Commissions working jointly on the analysis of the applications from the two airlines. Although each Commission works with broadly similar assessment criteria, each reached its own conclusions, consistent with their particular legislative frameworks.

Under the code share arrangements Qantas purchased a "hard" block of seats on each Air Niugini flight, with an option to buy further "soft" blocks at its discretion. The two carriers priced seats independently of each other.

The IASC assessed the application against the detailed public benefit criteria contained in paragraph 5 of the Minister's policy statement. A submission was received from the Australian Competition and Consumer Commission acknowledging increased direct competition on the route since the previous review but expressing concerns if the code share was to limit further expansion or consolidation of other operators on the route.

The Commission found that there was increased competition for the code share partners since the previous review in 2007. Pacific Blue Australia had entered the route and code shared with Airlines of PNG on the Brisbane – Port Moresby sector. Despite this, Qantas' revenue yields on the route continued to be high. The Commission considered that the way the seat purchase arrangements between the two carriers were structured greatly favoured Qantas. Qantas purchased less than half the seats on each Air Niugini flight and was able to vary the seats it purchased through its option to buy a further soft block of seats depending on demand. This meant that Air Niugini needed to discount seats, whereas Qantas was able to maintain high fares by varying its seat supply to match demand at those prices.

However, the Commission found that public benefits could be lessened if code share approval was not continued. The likelihood was that Qantas would re-enter the market in its own right. While this would create intense competition in the short term, the risk was that PNG carriers would ultimately reduce services and possibly withdraw altogether. This could see a return to higher prices and reduced public benefits.

The IASC also considered that the code share arrangements had been important in maintaining the operation of wide-body aircraft on the route, which greatly benefitted

exporters and importers. The loss of wide-body capability would be likely to adversely affect the movement of larger freight items.

Looking to the future, the IASC considered that there was scope for Pacific Blue Australia to expand its market presence over coming years. This could see it deliver a more attractive product to the business sector, which formed a major part of traffic on the route.

On balance, the IASC considered that there would be no lessening of public benefits in continuing the code share. However, it expressed its expectation that Qantas would renegotiate its seat-block purchases to create a better competitive situation by the time of the next review. The IASC said that it would regard this as a significant factor in its decision making at the next review.

On 17 December 2009, the Commission issued **Decision [2009] IASC 216**, permitting Air Niugini to continue to code share on Qantas services until 30 June 2012.



On 12 March 2010, Qantas applied for an allocation of 888 seats per week of capacity on the Papua New Guinea route. Qantas planned to use the capacity to operate twelve weekly return services between Cairns and Port Moresby from July 2010, or as soon as all necessary approvals had been received. It would use QantasLink's Bombardier Dash 8-Q400 aircraft, configured with 74 seats.

On 24 March 2010 the Commission issued **Determination [2010] IASC 101**, allocating 888 seats per week. The determination is for five years from the date of this determination.



On 4 June 2010, Pacific Air Express applied for an allocation of 17.5 tonnes of freight capacity per week on the Papua New Guinea (PNG) route. The airline wished to use the capacity to add a second weekly service between Brisbane and Port Moresby using B737-300 freighter aircraft. Pacific Air Express had commenced a once weekly B737 freighter service in April 2010.

On 15 June 2010 the delegate of the Commission issued **Determination [2010] IASC 105** in favour of Pacific Air Express, allocating 17.5 tonnes of freight capacity per week on the route. The determination is for five years from the date of the determination.

## Singapore

On 10 May 2010, Qantas applied for a variation of Determination [2007] IASC 116 to permit China Eastern Airlines to code share on Qantas' services between Australia and Singapore. On 25 May 2010 the delegate, on behalf of the Commission, issued **Decision [2010] IASC 202** permitting the code share arrangements as proposed.

## Solomon Islands

HeavyLift applied to the Commission on 10 November 2009 to revoke Determination [2007] IASC 102, which allocated 25 tonnes of freight capacity per week on the Solomon Islands route.

If an Australian carrier asks the Commission to revoke a determination, the Commission must make a decision revoking the determination. On 23 November 2009, the delegate of the Commission issued **Decision [2009] IASC 218** revoking Determination [2007] IASC 102.



HeavyLift applied to the Commission on 10 November 2009 to revoke Determination [2007] IASC 116, which allocated 50 tonnes of freight capacity per week on the Solomon Islands route.

On 23 November 2009, the Commission's delegate issued **Decision [2009] IASC 217** revoking Determination [2007] IASC 116.



Pacific Blue Australia applied on 29 June 2009 for an allocation of 180 seats of capacity per week on the Solomon Islands route. The airline wished to add a further weekly B737-800 service between Australia and the Solomon Islands, bringing its weekly frequency on the route to three. On 9 July 2009, the delegate issued **Determination [2009] IASC 110**, allocating to Pacific Blue Australia the capacity sought. The determination is for five years from the date of the determination.

## South Africa

Qantas applied on 11 September 2009 for the renewal of Determination [2004] IASC 119, which allocated one frequency per week on the South Africa route. Decision [2008] IASC 225 permitted the use of that capacity in code sharing with South African Airways.

The Commission issued renewal **Determination [2009] IASC 126**, allocating the capacity in question for five years from 28 July 2010.

## Thailand

V Australia sought an allocation of seven frequencies of capacity per week on the Thailand route. In its 14 August 2009 application, the carrier advised that it proposed to introduce daily flights with its 361 seat B777-300ER aircraft.

The Commission took note of the aircraft substitution formula under the Australia–Thailand air services arrangements. Under that formula, a B777-300ER aircraft is equivalent to 0.90 of a B747 aircraft. On this basis, V Australia required an allocation of 6.3 B747 equivalent weekly services and the Commission issued **Determination [2009] IASC 119**, allocating that capacity from 25 August 2009, the date of the determination, for a period of five years.



Qantas applied on 29 September 2009 for an allocation of 1.4 B747 equivalent units of capacity per week on the Thailand route. This capacity was requested to enable Jetstar to operate two extra weekly services between Sydney and Phuket in periods of peak demand. The Commission agreed to the request and allocated the capacity sought to Qantas on 20 October 2009, for a period of five years. **Determination [2009] IASC 120** also authorised the use of the capacity by wholly-owned subsidiaries of Qantas and for the capacity to be used in joint services between Qantas and those subsidiaries.



Qantas applied to the Commission on 11 September 2009 for a renewal of **Determination [2005] IASC 128**, which allocated to Qantas 1.3 B747 equivalent units of capacity on the Thailand route for the period between 1 December and the 31st day of the following January, or such other periods as approved by the Commission. **Decision [2007] IASC 207** amended the **Determination** to allow the capacity to be used all year round. **Decision [2006] IASC 222** authorised use of the capacity by any wholly-owned subsidiary of Qantas and in joint services between Qantas and its subsidiaries.

On 20 October 2009 the Commission issued **Renewal Determination [2009] IASC 127** re-allocating 1.3 B747 equivalent units of capacity on the Thailand route. The determination is for five years from 22 November 2010.



Pacific Blue Australia applied on 11 May 2009 for an allocation of seven weekly frequencies on the Thailand route, with the intention of operating daily B737-800 services between Australia and Phuket. The Commission was unable to progress

consideration of the application for some months because there was no provision for operation of the B737-800 aircraft type in the aircraft substitution formula under the air services arrangements between Australia and Thailand. After consultation between the aeronautical authorities of the two nations, the Department of Infrastructure, Transport, Regional Development and Local Government indicated to the Commission that if the Commission decided to allocate capacity to Pacific Blue Australia under a formula proposed to the Thai authorities, the Department would approve the necessary changes to the carrier's international airline licence.

On 11 November 2009, the delegate issued **Determination [2009] IASC 133**, allocating to Pacific Blue Australia 3.15 B747 equivalent units of capacity per week on the Thailand route. The determination is for a period of five years from that date.

## Tonga

Pacific Blue Australia applied to the Commission on 8 October 2009 for a renewal of Determination [2005] IASC 109, which allocated to the airline 540 seats of capacity per week on the Tonga route. Decision [2008] IASC 207 had reduced the amount of capacity allocated to 360 seats per week.

On 12 October 2009, the Commission issued Renewal **Determination [2009] IASC 130** re-allocating 360 seats of capacity per week on the Tonga route. The determination is for five years from 8 September 2010.

## Vanuatu

HeavyLift applied to the Commission on 10 November 2009 to revoke Determination [2005] IASC 115 which allocated 25 tonnes of freight capacity per week on the Vanuatu route.

If an Australian carrier asks the Commission to revoke a determination, the Commission must make a decision revoking the determination. On 23 November 2009, the delegate of the Commission issued **Decision [2009] IASC 219** revoking Determination [2005] IASC 115.



Pacific Air Express applied on 30 July 2009 for an allocation of 35 tonnes of freight capacity per week on the Vanuatu route. The capacity was planned to be used to operate twice-weekly B737-300 freighter services.

The delegate noted that the Commission had recently found Pacific Air Express to meet the paragraph 4 criteria in the Minister's policy statement in relation to

operations on the Papua New Guinea route. The delegate found that Pacific Air Express met the criteria in relation to the proposed services for the Vanuatu route.

On 12 August 2009, the delegate made **Determination [2009] IASC 118**, for a period of five years from the date of the determination, allocating the 35 tonnes per week of freight capacity sought by Pacific Air Express.



Qantas applied to the Commission on 11 September 2009 for a renewal of Determination [2004] IASC 117, allocating to Qantas 200 seats per week of capacity on the Vanuatu route.

On 20 October 2009, the Commission issued Renewal **Determination [2009] IASC 128** re-allocating 200 seats per week on the Vanuatu route. The determination is for five years from 15 May 2010.

## Vietnam

Qantas sought an allocation of unlimited capacity between points in Australia, other than Sydney, Melbourne, Brisbane and Perth, and points in Vietnam. In its 8 October application, Qantas explained that the capacity was planned to be used by Jetstar to operate two extra weekly A330 services between Darwin and Ho Chi Minh City in peak periods throughout the year. Qantas asked that the capacity be able to be used by itself or its wholly-owned subsidiaries, including in joint services between them.

In **Determination [2009] IASC 121**, the Commission allocated the capacity sought to Qantas, on the conditions requested. The determination was made on 20 October 2009 and is for a period of five years from that date.



Qantas applied to the Commission on 6 November 2009 to reduce the capacity allocated by Determination [2009] IASC 101 for services on the Vietnam route from two dedicated cargo services per week to one service per week. Qantas advised that it currently operated a once weekly freighter service to Ho Chi Minh City, but did not expect to commence a second service in the immediate future. On 8 December 2009, the delegate, on behalf of the Commission, issued **Decision [2009] IASC 221**, varying the allocation of capacity made to Qantas on the route to once service per week.



# Appendix 3 – Summary of total capacity allocated and available for all routes (third/fourth freedom capacity)

Passenger capacity as at 30 June 2010

ROUTE	PASSENGER CAPACITY ALLOCATED (per week)	PASSENGER CAPACITY AVAILABLE FOR IMMEDIATE ALLOCATION (per week)
Argentina	1,029 seats	1,771 seats
Austria	Nil	Unlimited
Bahrain	Nil	12 frequencies**
Bangladesh	Nil	Five frequencies
Brazil	Nil	14 frequencies
Brunei Darussalam	Nil	27 services**
Burma	Nil	Two B747s
Canada	Nil	3,000 seats
Chile	Nil	2,000 seats
China	2,135 seats	8,365 seats**
Cook Islands	900 seats	2,100 seats
Croatia	Nil	Seven services plus possible services to other points in Croatia
Czech Republic	Nil	Seven services**
Denmark	Nil	2,800 seats
Egypt	Nil	Three B747 services
Fiji	5,999 seats	One seat**
Finland	Nil	2,800 seats
France	Route 1 = 250 code share seats; Route 2 = two units; Route 3 = 2.5 units (one unit = 400 seats)	Route 1 = three units and 150 code share seats; Route 2 = 2.5 units; Route 3 = Nil
Germany	Seven frequencies	18 frequencies
Greece	Nil	2,100 seats and 800 third-country code share seats
Hong Kong	31 frequencies	39 frequencies**

ROUTE	PASSENGER CAPACITY ALLOCATED (per week)	PASSENGER CAPACITY AVAILABLE FOR IMMEDIATE ALLOCATION (per week)
Hungary	Nil	Seven services**
India	1,175 seats	5,325 seats and 1,625 third-party code share seats
Indonesia	10,800 seats and 1,779 seats and 10 frequencies beyond	Nil seats and 4,861 seats and 13 frequencies beyond**
Ireland	Nil	Seven services**
Italy	1,000 third-country code share seats	Seven frequencies and nil third- country code share seats
Japan	56.3 units (one unit = one B767–200 equivalent)	22.7 units
Jordan	Nil	Three frequencies
Kenya	Nil	Seven frequencies
Korea	500 seats	8,000 seats**
Kuwait	Nil	Two frequencies
Lebanon	Nil	Two B767s terminating in Lebanon, or three B767s transiting Lebanon
Luxembourg	Nil	Nil, cargo capacity only
Macau	Nil	Three frequencies
Malaysia	Nil	29,100 seats**
Malta	Nil	Three frequencies
Mauritius	Nil	Seven frequencies** and 500 third- country code share seats
Mexico	Nil	Four frequencies to certain points; unrestricted to other points
Nauru	Nil	Three frequencies not exceeding the capacity of B737 aircraft
Netherlands	400 third-party code share seats	2,800 seats and 600 third-party code share seats
New Zealand	Unlimited	Unlimited
Niue	Nil	500 seats
Norway	Nil	2,800 seats
Pakistan	Nil	Four services
Palau	Nil	1,200 seats
Papua New Guinea	2,788 seats	732 seats
Philippines	1,216 seats	2,784 seats and capacity beyond**
Poland	Nil	2,800 seats**
Qatar	Nil	14 frequencies**
Russian Federation	Nil	Three frequencies

ROUTE	PASSENGER CAPACITY ALLOCATED (per week)	PASSENGER CAPACITY AVAILABLE FOR IMMEDIATE ALLOCATION (per week)
Samoa	Nil	1,000 seats
Singapore	Unlimited	Unlimited
Solomon Islands	540 seats	310 seats
South Africa	12 frequencies	Two frequencies
Spain	Nil	Seven services to Madrid and/or Barcelona, otherwise unlimited
Sri Lanka	Nil	13 services**
Sweden	Nil	2,800 seats
Switzerland	21 third-country code share frequencies	2,800 seats** and nil third-country code share frequencies
Taiwan	Nil	6,000 seats
Thailand	22.05 B747 and seven third- party code share frequencies	22.95 B747s and 33 third-party code share frequencies
Tonga	540 seats	60 seats
Turkey	Nil	Five frequencies with no more than three to any one point
United Arab Emirates	Nil	105 frequencies**
United Kingdom	Unlimited	Unlimited
United States	Unlimited	Unlimited
Vanuatu	1,300 seats	100 seats
Vietnam	Five frequencies	Five frequencies**
Zimbabwe	Nil	1,600 seats

## Freight Capacity as at 30 June 2010

ROUTE	FREIGHT CAPACITY ALLOCATED (per week)	FREIGHT CAPACITY AVAILABLE FOR IMMEDIATE ALLOCATION (per week)
Argentina	Nil	Seven frequencies
Austria	Nil	Unlimited
Bahrain	Nil	Unlimited
Bangladesh	Nil	Seven frequencies
Brazil	Nil	Seven frequencies
Brunei Darussalam	Nil	Unlimited
Burma	Nil	Not specified †
Canada	Nil	Converted from seats at the rate of 40 seats for each 10 tonnes or part thereof
Chile	Nil	Unlimited
China	Unlimited	Unlimited
Cook Islands	Nil	Unlimited
Croatia	Nil	Unlimited
Czech Republic	Nil	Unlimited
Denmark	Nil	Unlimited
Egypt	Nil	Not specified †
Fiji	Nil	70 tonnes
Finland	Nil	Unlimited
France	Route 1 = Nil; Route 2 = Nil; Route 3 = one B737 freighter	Route 1 = not specified; Route 2 = not specified; Route 3 = Nil
Germany	Unlimited	Unlimited
Greece	Nil	250 tonnes and 100 tonnes third-country code share
Hong Kong	One frequency	One frequency** (note: passenger capacity may be converted to freight capacity and vice versa)
Hungary	Nil	Unlimited
India	Unlimited	Unlimited
Indonesia	Nil	Three frequencies
Ireland	Nil	Unlimited
Italy	Nil	Not specified †
Japan	Nil	Not specified †
Jordan	Nil	Not specified †
Kenya	Nil	Unlimited
Korea	Unlimited	Unlimited
Kuwait	Nil	One frequency

ROUTE	FREIGHT CAPACITY ALLOCATED (per week)	FREIGHT CAPACITY AVAILABLE FOR IMMEDIATE ALLOCATION (per week)
Lebanon	Nil	Not specified †
Luxembourg	Nil	Unlimited
Macau	Nil	Not specified †
Malaysia	Nil	Unlimited
Malta	Nil	Not specified †
Mauritius	Nil	Unlimited
Mexico	Nil	Four frequencies to certain points, unrestricted to other points (capacity may be used for passenger and cargo services or dedicated cargo services)
Nauru	Nil	Not specified †
Netherlands	Nil	Two services and 200 tonnes third-country code share
New Zealand	Unlimited	Unlimited
Niue	Nil	Unlimited
Norway	Nil	Unlimited
Pakistan	Nil	Unlimited
Palau	Nil	150 tonnes
Papua New Guinea	117.5 tonnes	12.5 tonnes
Philippines	Nil	300 or 1,300 tonnes depending on the route operated
Poland	Nil	Unlimited
Qatar	Nil	Not specified †
Russian Federation	Nil	Not specified †
Samoa	Nil	Unlimited
Singapore	Unlimited	Unlimited
Solomon Islands	25 tonnes	75 tonnes
South Africa	Nil	Unlimited
Spain	Nil	Unlimited
Sri Lanka	Nil	Unlimited
Sweden	Nil	Unlimited
Switzerland	Nil	Unlimited
Taiwan	Nil	Unlimited
Thailand	Unlimited	Unlimited
Tonga	Nil	Unlimited
Turkey	Nil	Not specified †
United Arab Emirates	Unlimited	Unlimited

ROUTE	FREIGHT CAPACITY ALLOCATED (per week)	FREIGHT CAPACITY AVAILABLE FOR IMMEDIATE ALLOCATION (per week)
United Kingdom	Unlimited	Unlimited
United States	Unlimited	Unlimited
Vanuatu	35 tonnes	65 tonnes
Vietnam	One frequency	Two frequencies
Zimbabwe	Nil	100 tonnes

\*The purpose of these tables is to provide an overview only of the amount of passenger and freight-specific capacity allocated and remaining available for allocation as at 30 June 2010. The tables do not purport to provide detailed or comprehensive statements of rights allocated by the International Air Services Commission, nor of the capacity entitlements or related matters (such as code sharing) described in the Register of Available Capacity. Interested parties should contact the International Air Services Commission or the Department of Infrastructure, Transport, Regional Development and Local Government to obtain full information about any route. The Register of Available Capacity is available for public viewing on the Department's Internet site at <[www.infrastructure.gov.au/aviation/international/pdf/register\\_available\\_capacity.pdf](http://www.infrastructure.gov.au/aviation/international/pdf/register_available_capacity.pdf)>

\*\*These routes have a regional package in place whereby services to points other than Brisbane, Melbourne, Sydney and Perth have unrestricted capacity entitlements. Refer to the Register of Available Capacity for details.

† Freight capacity is not separately specified in the Register of Available Capacity. However, freight capacity may be available. Interested parties should contact the Department of Infrastructure, Transport, Regional Development and Local Government.

# Appendix 4 – Other information

## Occupational health and safety

As the staff members of the secretariat are employees of the Department of Infrastructure, Transport, Regional Development and Local Government (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 *Freedom of Information Act 1982* (the FOI Act) requires Australian Government agencies to publish a statement setting out their role, structure, functions, documents available for public inspection and access to such documents. Section 8 of the FOI Act requires each agency to publish detailed information on the way it is organised, its powers, decisions made and arrangements for public involvement in the work of the agency. The information contained in this report meets this requirement. Refer to Appendix 5 for further details.

The IASC received no requests under the FOI Act in 2009–10.

## Advertising and market research

The Commission is required by the Act to advertise applications received. After consultation with interested parties, the Commission decided to advertise applications solely on its website and through email notifications. The Commission did not pay any money for advertising.

## Ecologically sustainable development and environmental performance reporting

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





## Appendix 5 – 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 through the Commission's public register process. Formal requests under the FOI Act must be made in writing to the contact officer listed at the front of this report.
Arrangements for public involvement	Formal participation and consultation can be arranged by contacting the Executive Director of the Commission whose details are listed at the commencement of this report. 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 section 6(4) of the Act to perform its functions. 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 is held by the Chairman. On 5 September 1994, the Chairman authorised the Executive Director to exercise the Chairman's powers and functions under the FOI Act.

Item	Information
<b>Documents available for inspection</b>	<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 Internet home page. The Commission provides facilities for examining and copying publicly available documents at its office. 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>
<b>Functions of the Commission</b>	<p>The functions of the Commission, as set out in section 6 of the Act, are to:</p> <ul style="list-style-type: none"> <li>(a) make determinations</li> <li>(b) conduct reviews of those determinations</li> <li>(c) provide advice to the Minister about any matter referred to the Commission by the Minister concerning international air operations.</li> </ul>
<b>How the Commission is organised</b>	<p>The organisation of the Commission is described in Part 2 of this report.</p>
<b>Location</b>	<p>The Commission's offices are located at 62 Northbourne Avenue, Canberra, ACT.</p>

# Appendix 6 – 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) and consistent with the Minister's policy statement which complements the Act. They 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 incorporates 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 distributed electronically.
- ➔ 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.
- ➔ Decide the criteria under which applications are to be assessed. More complex public benefit criteria may be applied in cases where there are two carriers seeking the same limited amount of capacity, or there are concerns that a proposal may not be of benefit to the public, 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 home page at <[www.iasc.gov.au](http://www.iasc.gov.au)>, or upon request to the Commission.

# Appendix 7 – Minister’s policy statement

Policy Statement No 5 as amended by International Air Services Policy Statement No 5 (Amendment) dated 19 May 2004.

## Section 11 Policy Statement

### 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:
    - are reasonably capable of obtaining the necessary approvals to operate on the route;
    - and
    - 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

Subject to paragraph 6.4, when the Commission is required to assess the benefit to the public, in circumstances where:

- 6.3 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
- 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.

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 years

unless 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.

# Appendix 8 – Service Charter

## 2009–2011

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

### From the Chairman

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.

Mr John Martin  
Chairman

### About the Commission

The Commission is an independent statutory authority comprised of three people – a Chairperson and two members. It is established under the ***International Air Services Commission Act 1992*** (the Act). The aim of the Act is to improve the welfare of Australians by promoting economic efficiency through competitive international air services.

Our role is to allocate capacity 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, Transport, Regional Development and Local Government. If an application meets the criteria, we make a determination granting capacity to the airline concerned. We also decide on airlines' applications to vary or renew determinations from time to time.

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

## 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 Internet 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, Transport, Regional Development and Local Government;
- Australian and State government departments and agencies; and
- the aviation industry press and analysts.

## Our service promises

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

- 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 Internet site 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; and
- ➔ notify applicants by email within one working day of a decision being made, and other interested parties by email and on our Internet site within three working days.

## 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.

## 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 via this means. We advise you of applications received, and Commission decisions about those applications. You can request our emails to attach copies of these documents, or simply for the emails to include links to the documents on our internet site. Please contact us if you wish to be added to either notification list.

Our Internet site 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.

If you do not have access to email or our Internet site, notifications and copies of documents can be provided to you by facsimile or post, or if you visit our offices.

## Monitoring and review

We will monitor our performance against our service commitments. We encourage you to comment on our performance, including by suggesting ways to improve our service. If you are dissatisfied with any aspect of our service, it is important that you tell us so we can address your concerns. 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, such as through a brief confidential questionnaire. The aggregated results of the assessments will be summarised in our annual report. If you wish to receive a copy of the annual report, please let us know and we will post it to you. Alternatively, the report can be downloaded from our Internet site.

We will also review annually the service charter itself, to ensure that it is meeting your requirements. This may include arranging an independent review from time to time.

## Contact details

International Air Services Commission

Telephone: (02) 6267 1100

Facsimile: (02) 6267 1111

Email: [iasc@infrastructure.gov.au](mailto:iasc@infrastructure.gov.au)

Internet: [www.iasc.gov.au](http://www.iasc.gov.au)

Postal address: GPO Box 630, Canberra ACT 2601

Premises: Mezzanine level, 62 Northbourne Avenue, Canberra, ACT



## Appendix 9 – Commission office holders, 1992–2010

The following table sets out the Chairmen 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 the present
		Stephen Bartos	July 2010 to the present



## Appendix 10 – 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	<p>means a person who</p> <p>conducts, or proposes to conduct, an international airline service to and from Australia; and</p> <p>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.</p>
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.
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.
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 and routes are not limited under the air services arrangements in question).
Department	the Department of Infrastructure, Transport, Regional Development and Local Government.
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.
Hand-back	where a carrier decides it no longer wishes to use allocated capacity, and applies to return some or all of the capacity.
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.
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 Minister for Transport and Regional Services 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.
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.
Renewal determination	a new determination that renews an allocation of capacity made under a determination that is approaching its expiry. It may involve 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.
Use it or lose it	a principle requiring allocated capacity to be used, or else be returned for reallocation.
Variation	a decision amending a determination, including conditions attached to it.





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