



Australian Government

International Air Services Commission

ANNUAL REPORT 2011–2012

International Air Services Commission





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Annual Report 2011–2012

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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 nineteenth Annual Report of the International Air Services Commission, for the year ended 30 June 2012.

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

Handwritten signature of Dr Jill Walker in black ink.

Dr Jill Walker
Chairman

Handwritten signature of Stephen Bartos in black ink.

Stephen Bartos
Commissioner

11 October 2012



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 and Transport.

CONTENTS

| | | | |
|---|-----------|---|-----------|
| PART 1 | | | |
| The Year in Review by | | | |
| Chairwoman, Dr Jill Walker | 1 | Management of human resources | 20 |
| PART 2 | | Assets management | 21 |
| Overview of the International | | Purchasing | 21 |
| Air Services Commission | 3 | Consultants and competitive tendering and contracting | 21 |
| The role and functions of the Commission | 3 | PART 5 | |
| Executive profile | 5 | Financial report | 23 |
| Dr Jill Walker | 5 | Explanatory notes | 23 |
| Mr Stephen Bartos | 6 | APPENDIX 1 | |
| The secretariat | 6 | Determinations and decisions | 25 |
| Communications with interested parties | 7 | APPENDIX 2 | |
| The role of the Department of Infrastructure and Transport (the Department) | 7 | Route-by-route summary of Commission determinations and decisions in 2011–12 | 31 |
| PART 3 | | APPENDIX 3 | |
| Report on performance | 9 | Other information | 45 |
| Overview | 9 | APPENDIX 4 | |
| Results against performance targets | 9 | Freedom of information scheduler | 47 |
| Serving the object of the Act | 9 | APPENDIX 5 | |
| Case study – the Papua New Guinea (PNG) route | 12 | Commission procedures | 49 |
| Introduction | 12 | APPENDIX 6 | |
| The application | 12 | Minister’s policy statement | 51 |
| The Commission’s assessment | 12 | APPENDIX 7 | |
| Serving applicants and interested parties | 15 | Service Charter 2009–2011 | 61 |
| Efficiency of financial resources | 17 | APPENDIX 8 | |
| PART 4 | | Commission office holders, 1992–2012 | 65 |
| Management and accountability | 19 | APPENDIX 9 | |
| Corporate governance practices | 19 | Glossary of terms | 67 |
| External scrutiny | 20 | INDEX | 71 |



PART 1

The Year in Review by Chairwoman, Dr Jill Walker

This annual report marks the twentieth year of the International Air Services Commission. I joined the Commission as the Chairwoman in early 2011. I am pleased to provide an overview of the activities of the Commission for the past twelve months.

2011–12 was a mixed year for the international aviation industry, with moderate growth internationally and passenger movements in and out of Australia increasing by around five per cent.

In 2011–12 a substantial proportion of the Commission's work involved applications by Australian international airlines to use capacity for code sharing with other airlines. National restrictions on airline ownership mean that efficiencies which would usually be achieved via merger often have to be achieved through various forms of alliance in the airline industry, including code sharing on both complimentary and competing routes. However, alliances and code sharing can also reduce competition and result in higher prices and/or poorer service for consumers. The Commission considered applications for code sharing on a number of routes, including Bangladesh, Cook Islands, Papua New Guinea, South Africa and Thailand.

Code sharing is now a well established and accepted feature of aviation across the world and is permitted under nearly all Australia's bilateral air services agreements. For the most part, the Commission approves applications for code sharing because they are clearly of benefit to the travelling public. In some instances, however, in particular where the partner airlines are code sharing on each other on the same route and there is limited competition from other airlines, there can be concerns that fares will be higher or service lower than would apply if there were greater competition. This concern has been at the forefront of the Commission's consideration of the South Africa route since code sharing between Qantas and South African Airways was first approved for a limited period in 2000. Following a decision by the Commission in February 2012 to approve a continuation of the code share for a shorter period than that requested by Qantas, the decision was challenged in the Federal Court. The Court proceedings were subsequently discontinued and Qantas indicated that it would make a fresh application for both a new capacity allocation and code sharing on the route.



Another code sharing arrangement which had in the past been a cause for concern was approved for the full period requested by the airline. This was an application by Qantas for authorisation to continue its code share arrangements with Air Niugini on the Papua New Guinea route. The Commission noted that in recent years the competitive environment had improved with new airlines entering the route and that Qantas and Air Niugini had made changes to their code sharing arrangements which should put more pressure on them to compete with each other. The Commission was also concerned that rejection of the code share would result in less competition than currently exists, with the possibility that some of Qantas' competitors, including Air New Niugini, could reduce services and possibly leave the route.

During the year Qantas obtained capacity for services by Qantas and its wholly owned subsidiary, Jetstar, for use on a range of routes. The capacity sought ranged from large amounts in the case of the Indonesia route (7,350 seats) to small amounts on the Philippines route (180 seats per week).

Virgin Australia sought and obtained capacity for code sharing from the Commission to continue expanding its services to India and Taiwan.

During 2011–12 two Australian international airlines went into administration. The first was HeavyLift Cargo Airlines which held capacity on the Papua New Guinea, New Caledonia and Solomon Island routes. The second was Air Australia Airways, which held capacity on the China, Indonesia, Thailand, United States and Vietnam routes.

As we review our performance during the year, I would like to take this opportunity to thank Ms McIntosh, the Executive Director, and her small team that help keep the Commission functioning smoothly.

Dr Jill Walker
Chairwoman

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 chairwoman and two part-time members. At 30 June 2012 one of the part-time members' positions was vacant. The membership of the Commission during the year was as follows:

Dr Jill Walker



Dr Jill Walker (formally appointed as the Chairwoman for the IASC on 9 February 2011) is currently a Commissioner at the Australian Competition and Consumer Commission (ACCC). Dr Walker was appointed as a Commissioner of the ACCC in September 2009 for a five year term. Dr Walker is the Chair of the ACCC's Mergers Review and Adjudication Committees as well as a member of the Enforcement Committee. Dr Walker is also an Associate Member of the New Zealand Commerce Commission.

Dr Walker has extensive experience in the fields of trade practices and antitrust economics. Prior to joining the ACCC, Dr Walker was a member of the Australian Competition Tribunal and worked as an economic consultant for LECG Ltd. Dr Walker has also worked for the Network Economics Consulting Group (NECG) and CRA International. Dr Walker has also been a member of the South Australian Government's panel of expert assessors assisting the District Court in hearing appeals under the Essential Services Commission Act 2002 (SA) and the Gas Pipelines Access (South Australia) Act 1997 (SA).

Dr Walker has previously been employed as an economic adviser by the ACCC and its predecessors the Prices Surveillance Authority and the Trade Practices Commission. During this time Dr Walker provided advice on significant cases, investigations and authorisations.

Dr Walker holds a Bachelor of Arts in Economics and a PhD in Land Economy from the University of Cambridge. She also holds a masters degree in Economics from the University of Massachusetts.

Mr Stephen Bartos



Mr Stephen Bartos, Member, was appointed in July 2010 for a three year term ending in July 2013. Mr Bartos is an executive director with consulting firm ACIL Tasman. He is an expert in transport policy, 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 a comprehensive study of the air cargo supply chain for the Office of Transport Security, 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 the provision of economic advice to government on policy ending the ‘two airline’ agreement.

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

Mr Bartos 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 2011–12

| Commissioner | Number of meetings possible | Number of meetings attended |
|-------------------|-----------------------------|-----------------------------|
| Dr Jill Walker | 11 | 11 |
| Mr Stephen Bartos | 11 | 11 |

The secretariat

The Commission is assisted in its work by a small secretariat. The secretariat is staffed by officers of the Department of Infrastructure and Transport. 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.

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 and Transport;
- ➔ 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 those parties. Account is taken of the views and/or interests of those 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 those 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 and Transport (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 provide opportunities for Australian and foreign airlines to expand their services between Australia and other countries.

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, and



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 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 in relation to 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 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 assessment of its performance against each of these criteria is set out below.

Results against performance targets

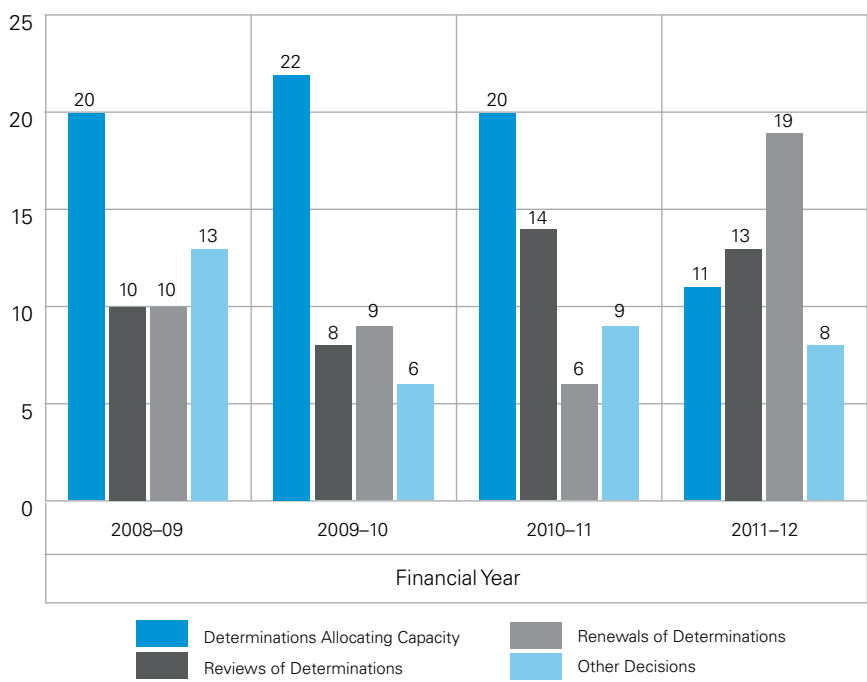
Serving the object of the Act

The object of the *International Air Services Act 1992* is to improve the welfare of Australians by promoting economic efficiency through competitive international air services. Under the Act, the Commission's functions are to make determinations; review determinations; and provide advice to the Minister about any matter referred to the Commission by the Minister concerning international air operations. In fulfilling its functions, the Act requires the Commission to comply with policy statements made by the Minister under section 11 of the Act and to have regard to Australia's international obligations concerning the operation of international air services.

The Commission records annually the number of determinations and decisions (involving reviews and variations of determinations) made for the year. 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 changes in the strength of the global economy, as witnessed during the global financial crisis and ongoing difficulties facing the world economy.

This year a total of 51 determinations and decisions were made by the Commission (28) and its delegate (23). The graph below also shows comparative data for the preceding three years.

Historical numbers of determinations and decisions



Eleven determinations allocating new capacity were made during the year, nine fewer than last year. In many cases, the allocations were for modest amounts of capacity, reflecting the weak level of demand in the industry. Eight determinations involving small amounts of capacity were revoked at the request of the carrier holding the capacity.

The Commission varied thirteen determinations at the request of the airline, either to authorise code sharing or to approve the transfer of allocated capacity from the airline to a wholly owned subsidiary. In addition nineteen determinations approaching their expiry date were renewed at the request of the airlines concerned.

The Commission continued the delegation of some of its decision making powers to the Executive Director for less complex cases. Drafts of delegate determinations and decisions are shown to the Commissioners before finalisation. These arrangements are well established and improve the efficiency of decision making. The delegate made about 45 per cent of the determinations and decisions made during the year.

A brief summary of all determinations and decisions for 2011–12 is at Appendix 1. A detailed description of each case is provided at Appendix 2.

Case study – the Papua New Guinea (PNG) route

Introduction

Each year the Commission highlights one of its more interesting cases to provide an insight into its approach to assessing more complex applications. This year's case study involves an application by Qantas to continue code sharing on Air Niugini on the PNG route.

The application

In February 2012 Qantas applied for a variation to a determination allocating it 1,000 seats of capacity per week on the PNG route to enable it to continue code sharing on Air Niugini services from Port Moresby to Sydney and Brisbane. Qantas sought authorisation until 30 June 2017. Under the IASC Act an airline cannot use allocated capacity to code share with another carrier without the prior approval of the Commission.

The Minister's policy statement makes it clear that where capacity can be used for code sharing under air services arrangements, the Commission would generally be expected to authorise the code share. The policy statement goes on to state that if the Commission has serious concerns that a code share application may not be of benefit to the public, it may assess the application against the public benefit criteria in paragraph 5 of the policy statement. The paragraph 5 criteria comprise competition, tourism, consumer, trade, and aviation industry benefits, of which preeminent consideration is to be given to the competition benefits of the application. Before making the decision, the Commission must also consult the ACCC, which it did in this case.

On previous occasions when the Commission has considered applications for Qantas to code share on Air Niugini, it has had concerns about the impact of the code share on competition on the route. At the same time, the Commission has considered the implications for competition, and for Air Niugini, if the code share were not approved. The Commission considered that these concerns remained relevant and again decided to assess the application against the paragraph 5 criteria.

The Commission's assessment

Competition

Since first approving the code share in 2002, the Commission has had concerns about the possible implications of the code share for competition on the route.

Since 2002, however, the competitive environment has improved. While initially four Qantas B767 Port Moresby-Brisbane-Sydney services were discontinued, since then Air Niugini has introduced direct Port Moresby-Sydney services for the first time and nearly

doubled the number of seats and frequencies it operates on the Sydney and Brisbane – Port Moresby route sectors. Airlines of PNG entered the route in 2005 and Qantas began services between Cairns and Port Moresby in 2010. Most significantly, in 2008 Pacific Blue (now Virgin Australia) began services between Brisbane and Port Moresby. Moreover, Virgin Australia has recently increased its B737-800 services from four to five per week. This suggested to the Commission that the code share is not acting as an impediment to new entry or expansion.

Confidential data provided by Qantas showed that it obtains high passenger revenue yields on the Sydney and Brisbane routes, reflecting the unusually high proportion of business and employment related traffic on the route - upwards of 70% of all Australian origin traffic. While the code share may be a factor in maintaining these high yields, the Commission accepted that yields were always likely to be high on this route given its characteristics.

The Commission found that higher fares did not seem to have been an impediment to Qantas capturing a substantial portion of the business market. This could be due to several factors, including Qantas' ability to match supply to forecast demand under the code share arrangements, corporate travel contracts and, as indicated in Air Niugini's submission, access to more substantial marketing resources and its ability to offer connectivity to its large domestic and international networks. Whatever the reason, while business passengers generally are not as price sensitive as leisure passengers, the Commission noted that they did at least have the choice of much cheaper fares on Air Niugini for what is effectively the same product.

Moreover, with the predominance of business related traffic on the route, high fares appear not to have been an impediment to growth. This would seem to be borne out by the strong upward trend in traffic in recent years.

The counterfactual

A critical issue for the Commission to consider was the counterfactual – that is comparing the likely state of competition on the route with and without the code share in place.

After considering the information and evidence available to it, the Commission came to the conclusion that were the code share to be approved the state of competition would either remain unchanged or, if recent trends continued, could increase. Increased competition would depend on how successful Virgin Australia was in establishing itself on the route and what effect, if any, removal of the soft block component from the code share had on competition between Air Niugini and Qantas.

The Commission noted that this was a highly profitable route for Qantas and traffic on the route had been growing strongly in recent years. Were the code share application

to be rejected, the Commission had no reason to doubt that Qantas would re-enter the route with its own aircraft, in direct competition with Air Niugini and Virgin Australia. While in the short term this might result in lower fares as airlines competed for market share, the Commission considered that Qantas would be likely to emerge as the strongest competitor. In such a situation Air Niugini would be forced to reduce services and possibly leave the route, resulting in a reduction in competition. The Commission felt that there would also be implications for Air Niugini's future viability and for the broader PNG economy.

Conclusion and decision

In all its previous decisions on the code share arrangements the Commission had taken the view that the situation would probably be worse, from the point of view of competition and other public benefits, if the code share were not approved. In more recent years, the competitive environment has improved with first Airlines of PNG and later Pacific Blue (Virgin Australia) entering the route, as well as Air Niugini nearly doubling its capacity since 2002. While the Commission could find little evidence that this increased competition had put downward pressure on fares, it felt that the potential was there, particularly if Virgin Australia continued to expand and began to make inroads into the business market. In any event, The Commission considered that price was perhaps less important for most passengers on this route than on other routes which did not have the same levels of business related traffic.

The Commission was concerned that rejection of the code share could result in less competition because, while in the short-term Qantas' re-entry would result in more competition, within a relatively short time there would probably be a rationalisation of operations, with some of Qantas' competitors, including Air Niugini, reducing services and possibly leaving the route.

In 2007 and 2009 the code share arrangements were approved for shorter periods than those requested by Qantas. On this occasion the Commission noted that the code share had been in place for ten years and over the latter half of that period there had not been a lessening of competition. Moreover, the soft block component, a previous cause for concern, has been removed from the code share arrangement. While the Commission remained concerned that the new code share agreement still put limited pressure on Qantas to compete on price, the Commission considered that the code share was preferable to the alternative without the code share. For these reasons the Commission decided to approve the code share for the period requested.

The Commission's full determination in this case is available from its website, www.iasc.gov.au.

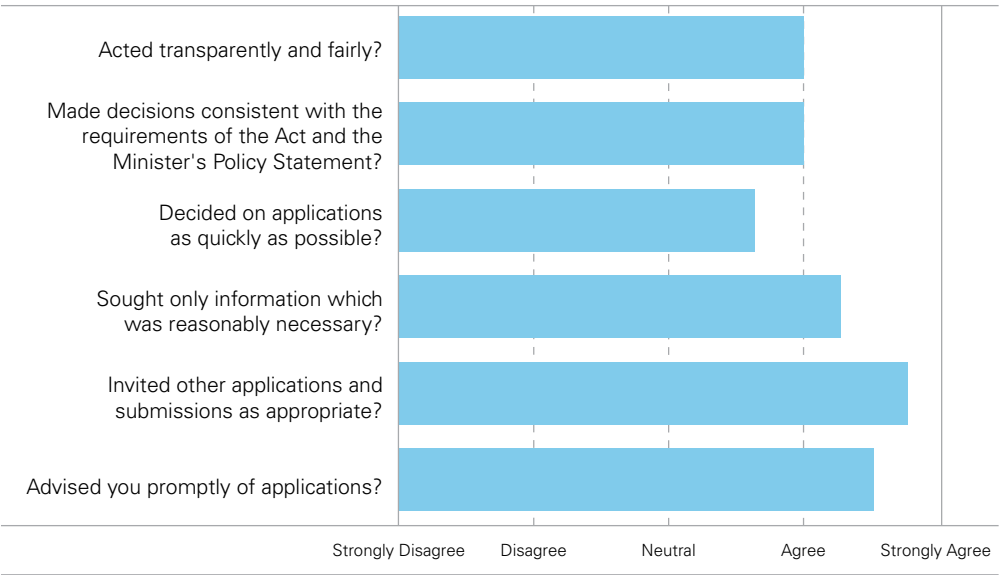
Serving applicants and interested parties

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 engages with interested parties and how it makes its decisions. This framework provides the basis for an objective assessment of the Commission’s performance.

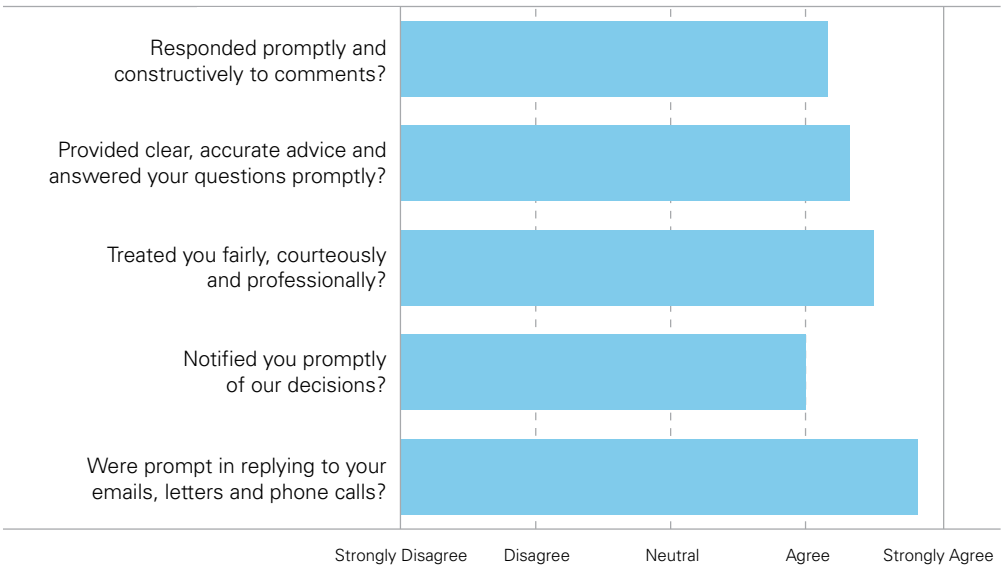
Again this year, clients were invited to assess the Commission’s performance by completing an electronic questionnaire. The questions allow respondents to evaluate how well the Commission performed against each of the specific undertakings set out in the charter. Questionnaire responses may be made anonymously, although some of those responding chose 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.

Decision making process – Do you agree that we:



Dealings with stakeholders – 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.

One of the promises in the service charter is that the Commission will make decisions about uncontested and unopposed applications within four weeks of receipt and contested or opposed applications within 12 weeks, or inform the applicant if there are reasons why a decision may take longer than this.

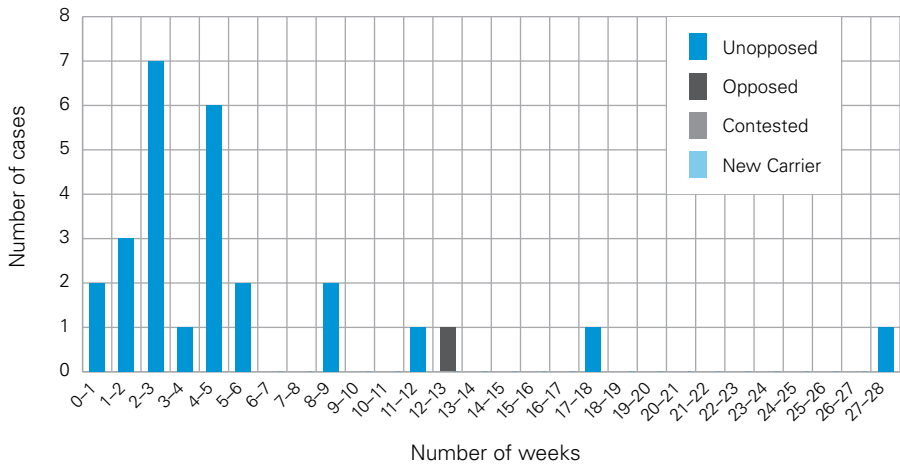
This year there were 24 cases which were uncontested and unopposed and one application was opposed. The average decision time taken to complete uncontested and unopposed cases was 3.5 weeks. This result compares with an average completion time of 3.2 weeks in 2010–11 and 3.95 weeks in the year before that. This year several of the 24 uncontested and unopposed cases took longer than the four weeks to finalise. In most cases there were good reasons for this, primarily related to the complexity of some of the code share cases under consideration. The Commission recognises, however, that there is room for improvement in the timeliness of its handling of routine uncontested cases and will aim in future to ensure that all such cases are completed within four weeks.

Two of the uncontested cases were not routine. The South Africa case, referred to in the Chairwoman’s Year in Review, took 27 weeks to complete because of the extensive analysis required and the Papua New Guinea case, as described in the case study, took 18 weeks for similar reasons.

In the opposed case, Qantas requested a review of an application by Virgin Australia to transfer capacity to Virgin Australia International on the Indonesia route to confirm that Virgin Australia International could at all times be designated as an Australian carrier under the relevant air services arrangements. After receiving advice from the Department of Infrastructure and Transport that Virgin Australia International remains a designated international airline and is eligible to receive further capacity allocations, the Commission issued a decision in favour of Virgin Australia. The decision took 12 weeks to complete.

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.

Efficiency of financial resources

The Commission’s budget for the year was \$322,000. These funds are made available from the resources of the Aviation and Airports Division of the Department of Infrastructure and Transport (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 2011–12 was about \$260,000 or \$62,000 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 is comprised an average of about 2.3 full-time equivalent staff, which remained the same as last year. Part 5 details the Commission’s financial performance.



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. 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 and Transport (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.

Section 53, Part 6 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 and Transport (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 values and Code of Conduct.

External scrutiny

There was no formal external scrutiny of the Commission this year.

Management of human resources

The staffing level of the secretariat remained at 2.3 full-time equivalent people. As at 30 June, the secretariat was comprised of one Executive Level 2 officer (female, part-time), one Executive Level 2 officer (male, 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 engaged Dr Chris Pleatsikas, an expert in competition economics, to assist the Commission in its assessment of the application by Qantas for approval to continue its code share arrangement with South Africa Airways on the South Africa route. The Commission paid Chris Pleatsikas Associates \$20,898.

| Consultant Name | Description | Contract Price | Selection Process | Justification |
|-----------------------------|---|----------------|-------------------|---------------|
| Chris Pleatsikas Associates | Provision of expert advice in competition economics | \$20,898 | Direct Sourcing | B |
| Total | | \$20,898 | | |

Direct Sourcing – a form of restricted tendering, available only under certain defined circumstances, with a single potential supplier or suppliers being invited to bid because of their unique expertise and/or their special ability to supply the goods and /or services sought.

Justification

- A – skills currently unavailable within agency
- B – need for specialised or professional services
- C – need for independent research or assessment



PART 5

Financial report

Financial report as at 30 June 2012

| | (1) | (2) | (3) | (4) |
|-------------------|-----------------------------|-----------------------------|-------------------------------------|-----------------------------|
| | 2011–12 Budget \$'000 | 2011–12 Actual \$'000 | Variation (Column 2–1) \$'000 | 2012–13 Budget \$'000 |
| Salaries | 176 | 187 | 11 | 209 |
| Revenue | 0 | 0 | 0 | 0 |
| Supplier expenses | 146 | 73 | -73 | 96 |
| Total | 322 | 260 | -62 | 305 |
| Staff years | 1.5 | 2.3 | | 2.3 |

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 and Transport. The Commission's offices are in a departmental building.



APPENDIX 1

Determinations and decisions

This table summarises briefly the determinations and decisions issued during 2011–12. A full summary is at Appendix 2. Individual determinations and decisions may be viewed on the Commission's website at www.iasc.gov.au.

| Route | Airline | IASC Number | Date | Capacity Allocated | Comments |
|--------------|---------------------|------------------------------|-----------|--|--|
| Argentina | Qantas | [2012] IASC 210 ^d | 11 May 12 | | Revocation of [2008] IASC 104 |
| Bangladesh | Virgin Australia | [2012] IASC 211 | 11 May 12 | | Variation of [2010] IASC 122 to permit Singapore Airlines to code share on Qantas services |
| Chile | Qantas | [2011] IASC 114 ^d | 12 Sep 11 | 1,119 seats per week in each direction | Allocation of passenger capacity |
| Chile | Qantas | [2011] IASC 220 | 19 Dec 11 | | Variation to permit LAN to code share on Qantas' services |
| China | Qantas | [2011] IASC 113 ^d | 25 Aug 11 | 2,170 seats each way per week to and from Sydney, Melbourne, Brisbane and Perth | Allocation of passenger capacity |
| Cook Islands | Pacific Blue | [2011] IASC 213 | 14 Jul 11 | | Variation to permit V Australia to code share on Pacific Blue services |
| Fiji | Pacific Air Express | [2011] IASC 134 ^d | 19 Dec 11 | 17.5 tonnes per week | Allocation of freight capacity |
| Fiji | Pacific Blue | [2011] IASC 131 | 19 Dec 11 | 907 seats per week on the specified routes to or from Sydney, Melbourne, Brisbane and/or Perth | Renewal of [2009] IASC 131 |

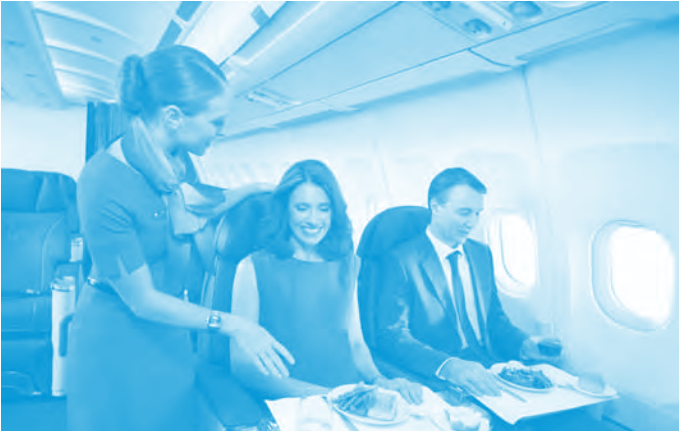
| Route | Airline | IASC Number | Date | Capacity Allocated | Comments |
|------------------|------------------|------------------------------|-----------|---|--|
| Fiji | Qantas | [2011] IASC 130 | 19 Dec 11 | 852 seats per week on the specified routes to and from Sydney, Melbourne, Brisbane and/or Perth | Renewal of [2009] IASC 132 |
| France | Qantas | [2011] IASC 119 ^d | 19 Dec 11 | 250 one way seats per day on an annual average basis | Renewal of [2006] IASC 118 |
| French Polynesia | Qantas | [2011] IASC 121 ^d | 19 Dec 11 | one unit of capacity per week in each direction | Renewal of [2006] IASC 119 |
| French Polynesia | Qantas | [2011] IASC 122 ^d | 19 Dec 11 | 0.5 units of capacity per week in each direction | Renewal of [2006] IASC 120 |
| French Polynesia | Qantas | [2012] IASC 202 ^d | 01 Mar 12 | | Revocation of [2006] IASC 119, [2011] IASC 121, [2006] IASC 120, [2011] IASC 122 and [2007] IASC 112 |
| Germany | Qantas | [2011] IASC 118 | 19 Dec 11 | four frequencies per week with any aircraft type | Renewal of [2006] IASC 107 |
| Germany | Qantas | [2012] IASC 206 | 29 Mar 12 | | Revocation of [2004] IASC 125 |
| Hong Kong | Qantas | [2011] IASC 116 | 19 Dec 11 | five frequencies per week | Renewal of [2006] IASC 114 |
| Hong Kong | Qantas | [2011] IASC 117 | 19 Dec 11 | 15 frequencies per week | Renewal of [2006] IASC 108 |
| India | Qantas | [2012] IASC 207 ^d | 29 Mar 12 | | Revocation of [2004] IASC 124 |
| India | V-Australia | [2011] IASC 108 | 30 Aug 11 | 1,625 seats to and from Mumbai, New Delhi, Kolkata, Chennai, Bangalore and Hyderabad | Allocation of passenger capacity |
| India | Virgin Australia | [2012] IASC 212 ^d | 11 May 12 | | Revocation of [2011] IASC 108 |
| Indonesia | Qantas | [2011] IASC 109 | 30 Aug 11 | 7,350 seats weekly between Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia | Allocation of passenger capacity |

| Route | Airline | IASC Number | Date | Capacity Allocated | Comments |
|-----------|------------------------------------|------------------------------|-----------|---|---|
| Indonesia | Qantas | [2011] IASC 127 ^d | 19 Dec 11 | 3,390 seats weekly between Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia | Renewal of [2006] IASC 122 |
| Indonesia | Virgin Australia | [2011] IASC 110 | 30 Aug 11 | 2,800 seats weekly between Sydney, Melbourne, Brisbane and Perth and authorised points in Indonesia | Allocation of passenger capacity |
| Indonesia | Virgin Australia | [2012] IASC 204 | 29 Mar 12 | | Variation of [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 106, [2009] IASC 113, [2010] IASC 109, and [2011] IASC 110 to transfer capacity allocated from Virgin Australia to Virgin Australia International |
| Indonesia | Virgin Blue International Airlines | [2011] IASC 214 | 14 Jul 11 | | Variation to permit V Australia to code share on Virgin Blue Airlines services |
| Japan | Qantas | [2011] IASC 128 | 19 Dec 11 | 45.6 B767-200 unit(s) | Renewal of [2006] IASC 117 |
| Japan | Qantas | [2011] IASC 129 ^d | 09 Dec 11 | 0.6 B767-200 unit(s) | Renewal of [2006] IASC 124 |
| Japan | Qantas | [2012] IASC 102 ^d | 23 Feb 12 | Unlimited passenger capacity | Allocation of passenger capacity |
| Japan | Qantas | [2012] IASC 203 | 29 Mar 12 | | Variation of [2012] IASC 102 to permit Japan airlines to code share on Qantas services |
| Japan | Qantas | [2012] IASC 205 | 29 Mar 12 | | Revocation of [2006] IASC 124, [2008] IASC 126 and [2008] IASC 127. Variation of [2006] IASC 117 to reduce the capacity allocated to 43.4 units |
| Korea | Qantas | [2011] IASC 125 ^d | 12 Dec 11 | 500 seats each way per week | Renewal of [2006] IASC 112 |

| Route | Airline | IASC Number | Date | Capacity Allocated | Comments |
|------------------|-----------------|------------------------------|-----------|--|--|
| New Caledonia | Qantas | [2011] IASC 120 ^d | 19 Dec 11 | one unit of capacity per week | Renewal of [2006] IASC 121 |
| Papua New Guinea | HeavyLift Cargo | [2011] IASC 111 | 25 Aug 11 | 22.5 tonnes per week | Renewal of [2005] IASC 114 |
| Papua New Guinea | Pacific Blue | [2011] IASC 216 | 14 Jul 11 | | Variation to permit V Australia to code share on Pacific Blue services |
| Papua New Guinea | Qantas | [2011] IASC 132 ^d | 19 Dec 11 | 1,000 seats per week in each direction | Renewal of [2006] IASC 129 |
| Papua New Guinea | Qantas | [2012] IASC 215 | 28 Jun 12 | | Variation to permit Air Niugini to code share on Qantas services until 30 June 2017 |
| Papua New Guinea | Skyforce | [2012] IASC 209 ^d | 11 May 12 | | Revocation of [2010] IASC 110 |
| Philippines | Qantas | [2011] IASC 124 | 19 Dec 11 | 458 seats per week in each direction | Renewal of [2006] IASC 123 |
| Philippines | Qantas | [2012] IASC 101 ^d | 07 Feb 12 | 180 seats per week in each direction | Allocation of passenger capacity |
| Solomon Islands | Pacific Blue | [2011] IASC 115 ^d | 19 Dec 11 | 360 seats per week in each direction | Renewal of [2007] IASC 120 |
| Solomon Islands | Pacific Blue | [2011] IASC 215 | 14 Jul 11 | | Variation to permit V Australia to code share on Pacific Blue services |
| South Africa | Qantas | [2012] IASC 103 | 01 Mar 12 | one services each way each week with any aircraft type | Renewal of [2006] IASC 130 |
| South Africa | Qantas | [2012] IASC 201 | 29 Feb 12 | | Variation of [2006] IASC 130, [2008] IASC 105, [2008] IASC 109, [2009] IASC 126 and [2010] IASC 115 to permit South African Airways to code share on Qantas services |

| Route | Airline | IASC Number | Date | Capacity Allocated | Comments |
|----------------------|--------------------|------------------------------|-----------|---|--|
| Switzerland | Qantas | [2011] IASC 126 ^d | 19 Dec 11 | seven third-country airline code share frequencies per week in each direction | Renewal of [2006] IASC 116 |
| Taiwan | Virgin Australia | [2012] IASC 104 | 23 Mar 12 | 1000 seats per week in each direction for services to and from Brisbane, Sydney, Melbourne and Perth | Allocation of passenger capacity |
| Thailand | Qantas | [2011] IASC 112 ^d | 29 Aug 11 | 14 B747-400 equivalent weekly services | Allocation of passenger capacity to be used for third country code share services |
| Thailand | Qantas | [2011] IASC 123 | 19 Dec 11 | seven B747-400 equivalent weekly services | Renewal of [2006] IASC 110 |
| Thailand | Virgin Australia | [2012] IASC 213 | 11 May 12 | | Variation of [2010] IASC 119 to permit Singapore Airlines to code share on Qantas services |
| Tonga | Pacific Blue | [2011] IASC 218 | 14 Jul 11 | | Variation to permit V Australia to code share on Pacific Blue services |
| United Arab Emirates | Qantas | [2012] IASC 208 ^d | 29 Mar 12 | | Revocation of [2006] IASC 106 |
| Vanuatu | Pacific Blue | [2011] IASC 217 | 14 Jul 11 | | Variation to permit V Australia to code share on Pacific Blue services |
| Vietnam | Qantas | [2012] IASC 214 ^d | 11 May 12 | | Revocation of [2009] IASC 121 |
| Vietnam | Strategic Airlines | [2011] IASC 133 ^d | 08 Dec 11 | four frequencies weekly in total with any aircraft type to and from Sydney, Melbourne, Brisbane and Perth | Allocation of passenger capacity |

^d Indicates a determination or decision made by the Commission's delegate



APPENDIX 2

Route-by-route summary of Commission determinations and decisions in 2011–12

This appendix provides a detailed summary of the Commission's determinations and decisions for 2011–12. Full determinations and decisions can be viewed on the Commission's website at www.iasc.gov.au.

Argentina

Qantas applied to the Commission on 10 April 2012 to revoke Determination [2008] IASC 104 which allocated 1,029 seats per week in each direction on the route. On 11 May 2012 the Delegate of the Commission issued **[2012] IASC 210** revoking the determination as requested.

Bangladesh

On 3 April 2012 Virgin Australia International Airlines applied for a variation to Determination [2010] IASC 122 to permit provision of joint services with Singapore Airlines between Australia and Bangladesh. The Determination allocated to Virgin five frequencies per week in each direction on the Bangladesh route and permits provision of joint services with Etihad Airways.

On 11 May 2012 the Commission issued Decision **[2012] IASC 211** permitting Singapore Airlines to code share on Virgin Australia International Airlines as requested.

Chile

On 2 September 2011 Qantas applied for an allocation of capacity on the Chile route. Qantas sought an allocation of 1,119 seats per week in each direction to enable it to operate three weekly return non-stop B747-400 services between Sydney and Santiago.

On 12 September 2011 the Delegate of the Commission issued Determination **[2011] IASC 114** allocating 1,119 seats per week in each direction on the Chile route as requested. The determination is for five years from 12 September 2011.



On 29 September 2011 Qantas applied for a variation to Determination [2011] IASC 114, which allocated 1,119 seats of capacity to Qantas on the Chile route, to permit LAN Airlines to code share on Qantas services between Australia and Chile.

On 19 December 2011 the Commission issued Decision [2011] IASC 220 varying the determination to permit LAN Airlines to code share on Qantas services as requested.

China

On 13 July 2011 Qantas applied for an allocation of 2,170 seats per week on the China route. Qantas also sought permission for the capacity to be utilised either by Qantas or a wholly-owned subsidiary. Qantas indicated that it planned for its wholly-owned subsidiary, Jetstar, to commence daily services in late 2011 using two class A330-200 aircraft.

On 25 August 2011 the Delegate on behalf of the Commission issued Determination [2011] IASC 113 allocating the capacity as requested. The determination is for five years from 25 August 2011.

Cook Islands

On 9 June 2011 Pacific Blue Airlines, part of the Virgin Australia group of airlines, applied for a variation to Determinations [2008] IASC 115, [2008] IASC 128, [2009] IASC 129 and [2010] IASC 102 to permit V Australia to code share on services operated by Pacific Blue Airlines between points in Australia and Rarotonga on the Cook Islands route.

On 14 July 2011 the Delegate on behalf of the Commission issued Decision [2011] IASC 213 permitting V Australia to code share on Pacific Blue Airlines services as requested.

Fiji

On 1 December 2011 Pacific Air Express applied for an allocation of 17.5 tonnes of freight capacity per week on the Fiji route. The airline planned to use a B737-300F which has a payload of 17.5 tonnes.

On 19 December 2011 the Delegate of the Commission issued Determination [2011] IASC 134 allocating the freight capacity to Pacific Air Express as requested. The determination is for five years from 1 December 2011.



V Australia applied to the Commission on 7 October 2011 for a renewal of Determination [2009] IASC 131. On 5 November 2009, the Commission issued the Determination allocating to V Australia 907 seats of capacity per week in each direction on the Fiji route. The Commission issued an interim (three years) rather than a five year determination.

The Commission gave as its reason for issuing an interim determination concern about the possible effect on the balance of public benefits if circumstances changed materially, during the life of the determination, from those on which the Commission had based the determination.

The Determination was subsequently varied by Decision [2010] IASC 205, to transfer the capacity from V Australia to Pacific Blue Australia, and by Decision [2011] IASC 209, to enable V Australia to code share on Pacific Blue Australia's services between points in Australia and Nadi.

On 19 December 2011 the Commission made Renewal Determination **[2011] IASC 131** in favour of Pacific Blue Australia, allocating 907 seats of capacity per week in each direction on the Fiji route. The determination is for five years from 5 November 2012.



Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2009] IASC 132. On 5 November 2009, the Commission issued the Determination allocating to Qantas 852 seats of capacity per week in each direction on the Fiji route. The Commission issued an interim (three years) rather than a five year determination. The Commission gave as its reason for issuing an interim determination concern about the possible effect on the balance of public benefits if circumstances changed materially, during the life of the determination, from those on which the Commission had based the determination.

On 19 December 2011 the Commission made Renewal Determination **[2011] IASC 130** in favour of Qantas, allocating 852 seats of capacity per week in each direction on the Fiji route. The determination is for five years from 5 November 2012.

France

Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 118 which allocated 250 one-way seats per day averaged over 12 months in each direction on France Route 1 between Australia and France.

On 19 December 2011 the Delegate, on behalf of the Commission, issued Renewal Determination **[2011] IASC 119** in favour of Qantas. The determination is for five years from 22 May 2012.

French Polynesia

Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 120 which allocated 0.5 units of capacity per week in each direction on the Australia – France (Route 2 – French Polynesia) route.

On 19 December 2011 the Delegate, on behalf of the Commission, issued Renewal Determination **[2011] IASC 122** in favour of Qantas. The determination is for five years from 17 September 2012.



Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 119 which allocated one unit of capacity per week in each direction on the Australia – France (Route 2 – French Polynesia) route.

On 19 December 2011 the Delegate, on behalf of the Commission, issued Renewal Determination **[2011] IASC 121** in favour of Qantas. The determination is for five years from 1 July 2012.



Qantas applied to the Commission on 24 February 2012 to revoke, Determinations [2006] IASC 119 as renewed by [2011] IASC 121, [2006] IASC 120 as renewed by [2011] IASC 122 and [2007] IASC 112, which allocate capacity on the France (Route 2 – French Polynesia) route. Qantas sought the revocation because it no longer required the allocation of capacity for its code share with Air Tahiti Nui. Changes to the air services arrangements between Australia and France in January 2012 had the effect that capacity is no longer counted towards the entitlement for marketing carriers.

On 1 March 2012 the Delegate, on behalf of the Commission, issued Decision **[2012] IASC 202** revoking the determinations as requested.

Germany

Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 107 which allocated to Qantas four frequencies per week in each direction on the Germany route. The Determination was subsequently varied by Decision [2007] IASC 215 to permit code sharing between Qantas and Iberia Airlines.

On 19 December 2011 the Delegate, on behalf of the Commission, issued Renewal Determination **[2011] IASC 118** in favour of Qantas. The determination is for five years from 1 July 2012.



On 13 March 2012 Qantas applied to the Commission to revoke Determination [2004] IASC 125 which allocated unlimited capacity and frequency for dedicated cargo services. On 29 March 2012 the Delegate, on behalf of the Commission, issued Determination **[2012] IASC 125** revoking the determination as requested.

Hong Kong

Qantas applied to the Commission on 11 October 2011 for a renewal of the Determination [2006] IASC 114, which allocated to Qantas five frequencies per week with any aircraft type in each direction on the Hong Kong route. The Determination was subsequently varied by Decision [2007] IASC 205 to permit Air France to code share with Qantas.

On 19 December 2011 the Delegate, on behalf of the Commission, issued Renewal Determination [2011] IASC 116 in favour of Qantas. The determination is for five years from 19 March 2012.



Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 108, which allocated 15 frequencies per week with any aircraft type in each direction on the Hong Kong route. The Determination was subsequently varied by Decision [2007] IASC 205 to permit Air France to code share with Qantas.

On 19 December 2011 the Delegate, on behalf of the Commission, issued Renewal Determination [2011] IASC 117 in favour of Qantas. The determination is for five years from 1 July 2012.

India

Qantas applied to the Commission on 13 March 2012 to revoke Determination [2004] IASC 124 which allocated unlimited capacity and frequency for dedicated cargo services. On 29 March 2012 the Delegate of the Commission issued Determination [2004] IASC 124 revoking the determination as requested.



On 15 July 2011 Virgin Australia applied for an allocation of 1,625 seats of third country code share capacity. Pending changes to regulatory requirements that would see all of its domestic and international service operated by Virgin Australia before the end of 2011, Virgin Australia International Airlines Pty Ltd, trading as V Australia, sought the allocation.

Virgin Australia planned to offer code share services as a marketing carrier on selected routes operated by Singapore Airlines and/or its wholly owned subsidiary Silk Air between points in Australia and points in India via Singapore. The seats would be sold under a code share arrangement with Singapore Airlines as part of a wider alliance. In a joint application to the Australian and Consumer Commission (ACCC), Virgin Australia and Singapore Airlines have sought approval to cooperate across a broad range of commercial functions in order to build an integrated alliance. Virgin Australia

anticipated that the ACCC would issue its determination before the end of 2011 and if the alliance was approved, Virgin Australia proposed to implement the code share as soon as possible thereafter.

On 30 August 2011 the Commission made determination **[2011] IASC 108** in favour of V Australia allocating 1,625 seats of capacity per week in each direction between Australia and India. The determination is for five years from 30 August 2011.



Virgin Australia applied to the Commission on 3 April 2012 to revoke Determination **[2011] IASC 108** which allocated 1,625 seats of third country code share capacity. Recent changes to the Australia - India air services arrangements provide that designated airlines of Australia may code share on any airline, including third country airlines, with no restriction on capacity. On 11 May 2011 the Delegate of the Commission issued Determination **[2011] IASC 108** revoking the determination as requested.

Indonesia

On 15 July 2011 Qantas applied for an allocation of 7,350 seats per week on the Indonesia route to be utilised by its wholly owned subsidiary, Jetstar Airways. Jetstar planned to introduce additional services between Australia and Denpasar using Boeing 737-800 aircraft configured with two classes from November 2012.

On 30 August 2011 the Commission issued Determination **[2011] IASC 109** favour of Qantas allocating 7,350 seats on the Indonesia route. The determination is for five years from 30 August 2011.



Qantas applied to the Commission on 11 October 2011 for a renewal of Determination **[2006] IASC 122** which allocated 3,390 seats per week in each direction on the Indonesia route.

On 19 December 2011 the Delegate on behalf of the Commission issued Renewal Determination **[2011] IASC 127** in favour of Qantas, reallocating 3,390 seats weekly in each direction on the Indonesia route. The determination is for five years from 1 July 2012.



On 1 July 2011 Virgin Australia applied for an allocation of 2,800 seats per week on the Indonesia route. Subject to other regulatory approvals, Virgin Australia proposed to introduce additional services between Australia and Denpasar using Boeing 737-800 aircraft configured with two classes from April 2012.

On 30 August 2011 the Commission issued Determination **[2011] IASC 110** allocating 2,800 seats on the Indonesia route to Virgin Australia as requested. The determination is for five years from 30 August 2011.



On 23 February 2012 Virgin Australia applied to transfer to Virgin Australia International Airlines Pty Ltd (Virgin Australia International) the 8,560 seats per week of capacity under Determinations [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 113, [2010] IASC 109, and [2011] IASC 110 and the unlimited capacity allocated under Determination [2009] IASC 106. The proposed transfer would occur within an established airline group.

In its application Virgin Australia indicated that they planned to implement a new structure for the Virgin group of airlines which was designed to ensure ongoing compliance with the *Air Navigation Act 1920* which limits foreign ownership of Australian international airlines to 49 per cent. Virgin Australia's application also indicated that the transfer of capacity on the Indonesia route to Virgin Australia International would preserve their ability to access rights under the Australia Indonesia air services arrangements as an Australian designated carrier.

On 30 March 2012 the Commission issued Decision **[2012] IASC 204** varying determinations [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 106, [2009] IASC 113, [2010] IASC 109, and [2011] IASC 110 as requested by Virgin Australia by transferring from Virgin Australia to Virgin Australia International the allocation of 8,560 seats of capacity per week and unlimited capacity.



On 9 June 2011 Virgin Blue applied for a variation to Determinations [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 106, [2009] IASC 113, and [2010] IASC 109. The variation was sought to permit V Australia to code share on services operated by Virgin Blue between points in Australia and Denpasar on the Indonesia route.

On 14 July 2011 the Delegate on behalf of the Commission issued Decision **[2011] IASC 214** varying Determinations [2008] IASC 120, [2009] IASC 103, [2009] IASC 105, [2009] IASC 106, [2009] IASC 113, and [2010] IASC 109 which allocated capacity on the Indonesia route, as requested by Virgin Blue Australia

Japan

Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 124 which allocated 2.4 B767-200 units of capacity per week to Qantas on the Japan route. The Determination was subsequently varied by Decision [2008] IASC 221 to reduce the amount of capacity to 0.6 B767-200 units per week in each direction.

The Delegate, on behalf of the Commission, made Renewal Determination [2011] IASC 129 on 19 December 2011 in favour of Qantas, reallocating 0.6 B767-200 units of capacity per week in each direction on the Japan route. The determination is for five years from 22 April 2012.



Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 117, which allocated 45.6 B767-200 equivalent units of capacity per week in each direction on the Japan route.

On 19 December 2011 the Commission issued Renewal Determination [2011] IASC 128 in favour of Qantas, allocating 45.6 B767-200 equivalent units of capacity per week in each direction. The determination is for five years from 1 July 2012.



On 10 February 2012 Qantas applied for an allocation of unlimited passenger capacity between points in Australia and points in Japan other than Narita Airport and Haneda Airport to permit Jetstar, Qantas' wholly owned subsidiary to continue current services between Australia and Japan. The application followed the recent conclusion of revised air services arrangements between Australia and Japan, which removed restrictions on capacity and frequency for services other than to Narita and Haneda airports.

On 23 February 2012 the Delegate, on behalf of the Commission, issued Determination [2012] IASC 102 in favour of Qantas, allocating unlimited passenger capacity on the Japan route. The determination is for ten years from 23 February 2012.



On 8 March 2012 Qantas applied for a variation to the Determination, to enable Qantas' wholly-owned subsidiary, Jetstar Airways to continue to code share with Japan Airlines. The variation is intended to implement the code share authorised by Decision [2010] IASC 210 which was not reflected in the Determination [2012] IASC 102.

On 29 March 2012 the Commission issued Decision [2012] IASC 203 varying Determination [2012] IASC 102 as requested to permit Japan Airlines to code share on Jetstar services.



Qantas applied to the Commission on 26 March 2012 to revoke Determinations [2006] IASC 124 (and the Renewal Determination [2011] IASC 129 which commences on 22 April 2012), [2008] IASC 126 and [2008] IASC 127, which allocate to Qantas a total of 4.6 units of capacity. Qantas also applied to vary Determination [2006] IASC 117 (and the

Renewal Determination [2011] IASC 128 which commences on 1 July 2012) to reduce the capacity allocated to Qantas by 2.2 units to 43.4 units.

The application followed a review by Qantas of its capacity needs on the Japan route in light of the revised air services arrangements between Australia and Japan, which removed restrictions on capacity and frequency for services other than to Narita and Haneda airports.

On 29 March 2012 the Commission issued Decision **[2012] IASC 205** revoking Determinations [2006] IASC 124, [2011] IASC 129, [2008] IASC 126 and [2008] IASC 127. The Decision also varied Determination [2006] IASC 117 and [2011] IASC 128 to reduce the capacity allocated under the Determination to 43.4 units.

Korea

Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 112 which allocated to Qantas 500 seats per week in each direction between Australia and Korea.

The delegate, on behalf of the Commission, made Renewal Determination **[2011] IASC 125** on 19 December 2011 in favour of Qantas, allocating 500 seats per week in each direction on the Korea route. The determination is for five years from 1 July 2012.

New Caledonia (France Route 3)

Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 121 which allocated one unit of capacity per week in each direction on the New Caledonia route.

On 19 December 2011 the Delegate, on behalf of the Commission, issued Renewal Determination **[2011] IASC 120** in favour of Qantas, allocating one unit of capacity per week in each direction on the route. The determination is for five years from 1 July 2012.

Papua New Guinea (PNG)

On 9 August 2011 HeavyLift applied to the Commission for a renewal of Determination [2005] IASC 114 which allocated 60 tonnes of freight capacity per week to HeavyLift on the Papua New Guinea route. This determination was subsequently varied by Decision [2006] IASC 201, to reduce the allocated capacity from 60 tonnes to 40 tonnes per week. A second variation was made to the determination in Decision [2011] IASC 204 to further reduce the allocated freight capacity to 22.5 tonnes per week.

On 25 August 2011 the Commission issued determination **[2011] IASC 111** in favour of HeavyLift, allocating 22.5 tonnes of freight capacity per week in each direction on the route as requested. The determination is for five years from 29 August 2011.



On 9 June 2011 Pacific Blue Australia applied for a variation to Determination [2008] IASC 114. The variation was sought to permit V Australia to code share on services operated by Pacific Blue Australia between points in Australia and Port Moresby on the Papua New Guinea route.

On 14 July 2011 the Delegate, on behalf of the Commission, issued Decision [2011] IASC 216 varying Determination [2008] IASC 114 which allocated capacity on the Papua New Guinea route, as requested by Pacific Blue Australia.



Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 129 which allocated to Qantas 1,000 seats per week in each direction on the Papua New Guinea route. Subsequently the determination was varied by Decision [2009] IASC 216 to enable Qantas to continue code sharing on Air Niugini services from Port Moresby to Sydney, Brisbane and Cairns. The code share was approved until 30 June 2012.

On 19 December 2011, the Delegate on behalf of the Commission issued Renewal Determination [2011] IASC 132 in favour of Qantas, allocating 1,000 seats per week in each direction on the Papua New Guinea route. The determination is for five years from 1 July 2012.



Skyforce Aviation applied to the Commission on 30 March 2012 to revoke, Determination [2010] IASC 110 which allocated 18 tonnes of freight capacity on the Papua New Guinea route. On 11 May 2012 the Delegate, on behalf of the Commission, issued Decision [2012] IASC 209 revoking the determination as requested.



On 27 February 2012, Qantas applied for a variation to Determination [2011] IASC 132, which allocated 1,000 seats of capacity per week on the PNG route. The variation would enable the airline to continue code sharing arrangements on Air Niugini services from Port Moresby to Sydney and Brisbane. Qantas sought authorisation of the code share arrangements until 30 June 2017.

On 28 June 2012 the Commission issued Decision [2012] IASC 215 varying the Determination as requested, and permitting Qantas to provide joint services with Air Niugini until 30 June 2017. More information about this case may be found in Part 3 under the Case Study.

Philippines

Qantas applied to the Commission on 11 October 2011 for a renewal of [2006] IASC 123 which allocated 458 seats per week in each direction on the Philippines route.

On 19 December 2011 the Commission issued Renewal Determination **[2011] IASC 124** in favour of Qantas, allocating 458 seats per week in each direction on the route. The determination is for five years from 1 July 2012.



On 10 January 2012 Qantas applied for an allocation of 180 seats of capacity per week on the Philippines route. Qantas advised that it planned to commence an extra service between Darwin and Manila from 25 March 2012, using a one-class A320 aircraft configured with 180 seats. Qantas also requested that the capacity be able to be utilised by Qantas or another Australian carrier which is a wholly-owned subsidiary of Qantas.

On 7 February 2012 the Delegate of the Commission issued Determination **[2012] IASC 101** in favour of Qantas, allocating 180 seats of capacity per week in each direction on the Philippines route.

Solomon Islands

On 9 June 2011 Pacific Blue Australia applied for a variation to Determinations [2007] IASC 120 and [2009] IASC 110. The variation was sought to permit V Australia to code share on services operated by Pacific Blue Australia between points in Australia and Honiara on the Solomon Islands route.

On 14 July 2011 the Delegate, on behalf of the Commission, issued Decision **[2011] IASC 215** varying Determinations [2007] IASC 120 and [2009] IASC 110 which allocate capacity on the Solomon Islands route, as requested by Pacific Blue Australia.



Pacific Blue applied to the Commission on 7 October 2011 for a renewal of Determination [2007] IASC 120 which allocated 360 seats per week on the Solomon Islands route.

On 19 December 2011 the Delegate, on behalf of the Commission, issued Renewal Determination **[2011] IASC 115** in favour of Pacific Blue, allocating 360 seats per week on the Solomon Islands route. The determination is for five years from 10 December 2012.

South Africa

Qantas applied to the Commission on 15 August 2011 to vary Determinations [2006] IASC 130, [2008] IASC 105, [2008] IASC 109, [2009] IASC 126 and [2010] IASC 115

to enable South African Airways to continue to code share on Qantas' services between Sydney and Johannesburg. Qantas has sought the variations to the determinations with effect from 1 January 2012 to 31 December 2017.

On 29 February 2012 the Commission issued Decision **[2012] IASC 201** varying Determinations [2006] IASC 130, [2008] IASC 105, [2008] IASC 109 and [2009] IASC 126 and [2010] IASC 115 to permit SAA to code share on Qantas' flights operated to and from South Africa until 31 December 2012.



Qantas applied to the Commission on 11 October 2011 for a renewal of Determination **[2006] IASC 130** which allocated one frequency per week in each direction on the South Africa route and authorising code sharing between Qantas and South African Airways. Under subsequent Commission decisions, the code sharing is authorised until 31 December 2012.

On 1 March 2012 the Commission issued Renewal Determination **[2012] IASC 103** allocating one frequency per week in each direction on the South Africa route. The determination is for five years from 1 July 2012.

Switzerland

Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 116 which allocated to Qantas seven third-country code share frequencies per week on the Switzerland route. The Determination was subsequently varied by Decision [2008] IASC 202 to permit joint services with British Airways.

On 19 December 2011 the Delegate of the Commission issued Renewal Determination **[2011] IASC 126** in favour of Qantas, allocating seven third-country airline code share frequencies per week in each direction on the Switzerland route. The determination is for five years from 19 March 2012.

Taiwan

On 5 March 2012 Virgin Australia applied for an allocation of 1,000 seats of third country code share capacity on the Taiwan route. Virgin Australia also applied for authorisation to use the capacity to implement code share services, as a marketing carrier, on flights operated by Singapore Airlines on the Australia – Singapore – Taipei route.

On 19 March 2012 the Commission made Determination **[2012] IASC 104** in favour of Virgin Australia, allocating 1,000 seats per week of capacity in each direction on the Taiwan route. The determination is for five years from 19 March 2012.

Thailand

On 18 August 2011 Qantas applied for an allocation of fourteen frequencies per week to be used for third country code share services between Singapore and Thailand. Under the code share agreement, Qantas planned to place its code on additional Jetstar Asia services.

On 29 August 2011 the Delegate, on behalf of the Commission, issued Determination [2011] IASC 112 in favour of Qantas allocating 14 units of B747 equivalent services of capacity per week in each direction on the Thailand route. The determination is for five years from 29 August 2011.



Qantas applied to the Commission on 11 October 2011 for a renewal of Determination [2006] IASC 110, which allocated to Qantas the equivalent of seven B747 weekly services in each direction between Australia and Thailand. The Determination was subsequently varied by Decision [2009] IASC 209 and Decision [2010] IASC 209 which permit code sharing between Qantas and Iberia Airways and Kenya Airways respectively.

On 19 December 2011 the Commission issued Renewal Determination [2011] IASC 123 in favour of Qantas, allocating the equivalent of seven B747 weekly services in each direction between Australia and Thailand. The determination is for five years from 1 July 2012.



On 3 April 2012 Virgin Australia International Airlines applied for a variation to Determination [2010] IASC 119 to permit provision of joint services with Singapore Airways between Australia and Thailand. The Determination allocated to Virgin seven weekly third party code share services in each direction on the Thailand route and permitted provision of joint services with Etihad Airways.

On 11 May 2012 the Commission issued Decision [2012] IASC 213 varying the determination to permit Singapore Airways to code share on Qantas services between Australia and Thailand as requested.

Tonga

On 9 June 2011 Pacific Blue Australia applied for a variation to Determinations [2008] IASC 116 and [2009] IASC 130. The variation was sought to permit V Australia to code share on services operated by Pacific Blue Australia between points in Australia and Nuku'alofa on the Tonga route.



On 14 July 2011 the Delegate, on behalf of the Commission, issued Decision [2011] IASC 218 varying the determinations to permit V Australia to code share on Pacific Blue Australia services as requested.

United Arab Emirates

Qantas applied to the Commission on 13 March 2012 to revoke Determination [2006] IASC 106 which allocated unlimited capacity and frequency for dedicated cargo services on the United Arab Emirates route. On 29 March 2012 the Delegate of the Commission issued Decision [2012] IASC 208 revoking the Determination as requested.

Vietnam

Qantas applied to the Commission on 10 April 2012 to revoke Determination [2009] IASC 121 which allocated unlimited capacity for passenger services on the Vietnam route. On 11 May 2012 the Delegate, on behalf of the Commission, issued Decision [2012] IASC 214 revoking the Determination as requested.



On 15 November 2011 Strategic Airlines applied for an allocation of four frequencies per week from Sydney, Melbourne (including Avalon), Brisbane and Perth and for unlimited capacity from all other Australian points.

On 8 December 2011 the Delegate, on behalf of the Commission, issued Determination [2011] IASC 133 in favour of Strategic Airlines, allocating four frequencies per week to and from Sydney, Melbourne (including Avalon), Brisbane and Perth and unlimited capacity to and from all other points in Australia. The determination is for five years from 8 December 2011.

APPENDIX 3

Other information

Occupational health and safety

As the staff members of the secretariat are employees of the Department of Infrastructure and Transport (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 4 for further details.

The IASC received no requests under the FOI Act in 2011–12.

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 on its website. 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 4

Freedom of information scheduler

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

APPENDIX 5

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 compliments 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, 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, or upon request to the Commission.

APPENDIX 6

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:
 - (i) are reasonably capable of obtaining the necessary approvals to operate on the route; and
 - (ii) 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

- 6.3 Subject to paragraph 6.4, when the Commission is required to assess the benefit to the public, in circumstances where:
- (a) 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
 - (b) 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.
- 6.4 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 pre eminent 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 yearsunless 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 7

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. 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 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

Internet: www.iasc.gov.au

Postal address: GPO Box 630, Canberra, ACT 2601

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

APPENDIX 8

Commission office holders, 1992–2012

The following tables set out the Chairmen and Members of the Commission since the Commission was founded.

| 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 February 2011 |
| Jill Walker | February 2011 to February 2014 | Stephen Bartos | July 2010 to July 2013 |



APPENDIX 9

Glossary of terms

| | |
|---------------------------------|---|
| Act | in this report, means the <i>International Air Services Commission Act</i> (1992), 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 | means a person who <ul style="list-style-type: none">– conducts, or proposes to conduct, an international airline service to and from Australia; and– 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. |
| 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 is not limited under the air services arrangements in question). |
| Department | the Department of Infrastructure and Transport. |
| 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 | 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. |

INDEX

A

access to information, 47, 63–4
address and contact details, 64
administrative review, 20
advertising and market research, 45
Air Australia Airways, 2
Air France
 code sharing with Qantas, 35
Air Navigation Act 1920
Virgin Australia compliance with, 37
Air Niugini
 code sharing with Qantas, 2, 12–14, 40
 Papua New Guinea route, 12–14
air services arrangements, 3, 7
 Australia–France, 34
 Australia–India, 36
 Australia–Indonesia, 17, 37
 Australia–Japan, 38, 39
 and code sharing, 12
 defined, 67
Air Tahiti Nui
 code sharing with Qantas, 34
airline licensing, 8
airlines
 summary of determinations and decisions,
 25–9
Airlines of PNG, 13, 14
allocation, defined, 67
allocation criteria for start-up phase, 56–8

applications made by airlines
 competing applications, 50
 concerning code sharing, 1
 contested applications, 16, 17, 68
 criteria for assessing, 53–6
 making an application, 62
 notification of, 7
 opposed applications, 16, 17, 69
 procedures followed by Commission, 4, 49–50
 from prospective new airlines, 8, 62
 start-up phase allocation criteria, 56–8
 transfer applications, 59
 uncontested/unopposed applications, 16, 17
 see also code sharing; determinations and
 decisions

Argentina route
 Qantas, 31
assets management, 21
Australian carrier, defined, 67
Australian Competition and Consumer
 Commission, 5
available capacity, defined, 67
Aviation Legislation Amendment Act 2002, 51

B

Bangladesh route
 Virgin Australia International, 31
Bartos, Stephen, 5
benefit to the public
 defined, 67
blocked space, defined, 67
British Airways
 code sharing with Qantas, 42

C

capacity

- Australian international airlines, 2
- defined, 68
- determination of, 3–4
- reduced capacity, 69
- Register of Available Capacity, 7–8, 69
- unused capacity, 4, 7–8
- ‘use it or lose it’ principle, 59, 70
- see also* determinations and decisions

cargo services

- Germany route, 34
- HeavyLift Cargo Airlines, 2
- India route, 35
- Qantas, 34, 35
- United Arab Emirates route, 44
- see also* freight capacity

case study

- Papua New Guinea route, 12–14

Chairwoman, 5

- review of year, 1–2

Chile route

- Qantas, 31–2

China route, 2

- Air Australia Airways, 2
- Qantas/Jetstar, 32

clients of the Commission, 7, 62

- assessment of Commission performance, 15–16, 64

code sharing, 1–2, 4

- blocked space, 67
- defined, 68
- free-sale, 68
- joint service, defined, 69
- policy, 12, 53, 56, 59
- third country code, 35, 36, 42
- For code sharing by particular airlines or on a particular routes, see under the name of the airline or the name of the route*

commercially sustainable level of capacity

- definition of, 52

communication with interested parties, 7

competing applications, 50

competition benefits, 54–5

competitive tendering and contracting, 21

consultancy services, 21

consumer benefits, 55

contact details, 64

contested applications, 16, 17, 68

Cook Islands route

- Pacific Blue Airlines, 32

corporate governance, 19–20

counterfactual issues, 13–14

criteria for assessing applications

- general, 52–3
- in particular circumstances, 56
- public benefit criteria, 12, 53–5
- start-up phase, 56–8

D

decision making powers, 11, 47

decision making process, 47, 63

- client assessment of performance, 15–16, 64
- timeliness, 16–17, 63

decisions of the Commission *see* determinations and decisions

delegate, defined, 52

Department of Infrastructure and Transport

- advice from, 17
- and budget of Commission, 17, 23
- role and functions, 7–8
- and secretariat of Commission, 6, 20–1, 45

determinations and decisions, 4

- brief summary of, 25–9
- communication of, 7, 63–4
- decision, defined, 68
- determination, defined, 68
- draft determinations, 50
- interim, 4, 58, 59, 68
- number of, 10–11
- period in force, 59
- procedures, 4, 49–50
- renewal of, 4, 10–11, 58, 69
- review of, 4, 10–11, 69
- revocation of, 69
- route-by-route summary of, 31–44
- variation of, 4, 56, 70
- see also* applications made by airlines
- documents available for inspection, 48, 49

E

ecologically sustainable development and environmental performance, 45

Etihad Airways

code sharing with Virgin Australia International, 31, 43

executive profiles, 5–6

external scrutiny, 20

F

Fiji route

Pacific Air Express, 32

Pacific Blue Australia, 33

Qantas, 33

V Australia, 32–3

finances

efficiency of financial resources, 17

financial report, 23

France route

Qantas, 33

freedom of information, 45

schedule, 47

free-sale, defined, 68

freight capacity

Fiji route, 32

Papua New Guinea route, 39, 40

see also cargo services

French Polynesia

Qantas, 33–4

frequency, defined, 68

G

Germany route

cargo services, 34

Qantas, 34

global economy, 1, 10

H

hand-back, defined, 68

hearings of the Commission, 19, 47, 50

HeavyLift Cargo Airlines

into administration, 2

New Caledonia route, 2

Papua New Guinea route, 2, 39

Solomon Islands route, 2

Hong Kong route

Qantas, 35

human resources

staffing and staff numbers, 6, 17

human resources management, 20–1

I

Iberia Airlines

code sharing with Qantas, 34, 43

India route

cargo services, 35

Qantas, 35

V Australia, 35–6

Virgin Australia, 2, 35–6

Indonesia route

Air Australia Airways, 2

Qantas/Jetstar, 2, 36

Virgin group, 17, 36–7

industry profit outlook, 1

industry structure, 55

interested parties, 7

interim determinations, 4, 58, 59, 68

International Air Services Commission

about the Commission, iv, 61

address and contact details, 64

budget and expenditure, 17, 23

clients, 62

communication with interested parties, 7, 63–4

criteria for assessing applications, 53–5

criteria for start-up phase allocations, 56–8

decision making powers, 11, 47

hearings, 19, 47, 50

location, 48

management and accountability, 19–21

meetings, 6, 19

members, 5, 6, 61, 65

office holders since 1992, 65

overview, 3–8

performance, 9–17

procedures, 4, 49–50

relationship with Department, 7–8

role and functions, 3–4, 9, 48, 61

service charter, 61–4

workload, 1–2

International Air Services Commission Act 1992,

iv, 3, 9, 19, 49, 51, 61

International Air Transport Association, 1

international aviation industry, 1

Internet site, 63, 64

J

- Japan Airlines
 - code sharing with Jetstar, 38
- Japan route
 - Jetstar, 38
 - Qantas, 37–9
- Jetstar
 - capacity obtained, 2
 - China route, 32
 - code sharing with Japan Airlines, 38
 - Indonesia route, 36
 - Japan route, 38
 - Qantas acting on behalf of, 2, 32, 36, 38, 42
- Jetstar Asia
 - code sharing with Qantas, 42
- joint services, defined, 69 *see also* code sharing
- judicial review, 20

K

- Kenya Airways
 - code sharing with Qantas, 43
- Korea route
 - Qantas, 39

L

- LAN Airlines
 - code sharing with Qantas, 32
- legislation
 - Air Navigation Act 1920*, 37
 - Aviation Legislation Amendment Act 2002*, 51
 - Freedom of Information Act 1982*, 45
 - International Air Services Commission Act 1992*, iv, 3, 9, 19, 49, 51, 61
- licensing of Australian airlines to operate international services, 8

M

- management and accountability, 19–21
- market research, 45
- meetings of the Commission, 6, 19
- members of the Commission, 5, 6, 61, 65
- Minister's policy statement, 3–4, 9, 50, 51–60, 69

N

- New Caledonia route
 - HeavyLift Cargo Airlines, 2
 - Qantas, 39
- new entrants, 8, 52, 56–8

O

- object of the *International Air Services Act 1992*, 9
- occupational health and safety, 45
- opposed applications, 16, 17, 69

P

- Pacific Air Express
 - Fiji route, 32
- Pacific Blue Australia
 - code sharing with V Australia, 32, 33, 40, 41, 43
 - Fiji route, 33
 - Papua New Guinea route, 13, 14, 40
 - Solomon Islands route, 41
 - Tonga route, 43
 - see also* Virgin Australia
- Papua New Guinea route
 - Air Niugini, 12–14
 - Airlines of PNG, 13, 14
 - case study, 12–14
 - freight capacity, 39, 40
 - HeavyLift Cargo Airlines, 2, 39
 - Pacific Blue Australia, 13, 14, 40
 - Qantas, 2, 12–14, 16, 40
 - Virgin Australia, 13, 14
- paragraph 5 criteria (Minister's policy statement)
 - see* public benefit criteria applied by Commission
- particular circumstances criteria, 56
- passenger movements, 1
- performance of the Commission
 - assessment criteria, 9
 - monitoring and review, 64
 - results, 9–17
- Philippines route
 - Qantas, 41
 - Qantas/Jetstar, 2
- policy statement by Minister, 3–4, 9, 50, 51–60, 69
- procedures of the Commission, 4, 49–50
- professional development for staff, 21
- public benefit criteria applied by Commission, 12–14, 53–5
- public involvement, FOI arrangements for, 47
 - see also* clients of the Commission
- purchasing, 21

Q

Qantas

- acting on behalf of Jetstar, 2, 32, 36, 38, 42
- Argentina route, 31
- capacity obtained, 2
- cargo services, 34, 35
- Chile route, 31–2
- China route, 32
- code sharing with Air France, 35
- code sharing with Air Niugini, 2, 12–14, 40
- code sharing with Air Tahiti Nui, 34
- code sharing with British Airways, 42
- code sharing with Iberia Airlines, 34, 43
- code sharing with Jetstar Asia, 42
- code sharing with Kenya Airways, 43
- code sharing with LAN Airlines, 32
- code sharing with South African Airways, 1–2, 41–2
- Fiji route, 33
- France route, 33
- French Polynesia route (France route 2), 33–4
- Germany route, 34
- Hong Kong route, 35
- India route, 35
- Indonesia route, 2, 17, 36
- Japan route, 37–9
- Korea route, 39
- New Caledonia route (France route 3), 39
- opposes Virgin Australia capacity transfer on Indonesia route, 17
- Papua New Guinea route, 12–14, 40
- Philippines route, 2, 41
- South Africa route, 1–2, 16, 41–2
- Switzerland route, 42
- Thailand route, 43
- United Arab Emirates route, 44
- Vietnam route, 43–4

R

- reduced capacity, defined, 69
- Register of Available Capacity, 7–8, 69
- renewal of determinations, 4, 10–11, 58, 69
- reviews of determinations, 4, 10–11, 69
- revocation, defined, 69
- roles and functions
 - of the Commission, 3–4, 9, 48, 61
 - of the Department, 7–8
- route entitlements, 7–8 *see also* capacity

routes

- brief summary of determinations and decisions, 25–9
- route, defined, 52, 70
- route-by-route summary of determinations and decisions, 31–44

S

- seasonal variations in demand, 59
 - secretariat, 6, 20–1, 49
 - service charter, 61–4
 - assessment against, 15–16
 - Silk Air
 - code sharing with Virgin Australia, 35
 - Singapore Airlines
 - code sharing with V Australia, 35–6
 - code sharing with Virgin Australia, 35–6, 42
 - code sharing with Virgin Australia International, 31, 43
 - Skyforce Aviation, 40
 - Solomon Islands route
 - HeavyLift Cargo Airlines, 2
 - Pacific Blue Australia, 41
 - South Africa route
 - code sharing case, 1–2, 16
 - Qantas, 1–2, 16, 41–2
 - South African Airways
 - code sharing with Qantas, 1–2, 41–2
 - staffing, 6, 17, 20–1
 - stakeholders, 7, 62
 - dealings with (assessment of performance), 15–16, 64
 - start-up phase
 - allocation criteria, 56–8
 - definition of, 52
 - Strategic Airlines
 - Vietnam route, 44
 - Switzerland route
 - Qantas, 42
- ## T
- Taiwan route
 - Virgin Australia, 2, 42
 - Thailand route, 2
 - Air Australia Airways, 2
 - Qantas, 43
 - Virgin Australia International, 43

third country code sharing, 35, 36, 42
timeliness in decision making, 16–17, 63
Tonga route
 Pacific Blue Australia, 43–4
tourism benefits, 55
trade benefits, 55
training for staff, 21
transfer applications, 59

U

uncontested/unopposed applications, 16, 17
United Arab Emirates route
 cargo services, 44
 Qantas, 44
United States route
 Air Australia Airways, 2
unused capacity, 4, 7–8
‘use it or lose it’ principle, 59, 70

V

V Australia
 code sharing with Pacific Blue, 32, 33, 40, 41, 43
 code sharing with Singapore Airlines, 35–6
 code sharing with Virgin Blue Australia, 37
 Fiji route, 32–3
 India route, 35–6
 see also Virgin Australia; Virgin Australia International
variation of determinations, 4, 56, 70
Vietnam route
 Air Australia Airways, 2
 Qantas, 44
 Strategic Airlines, 44

Virgin Australia
 code sharing arrangements, 2
 code sharing with Silk Air, 35–6
 code sharing with Singapore Airlines, 35–6, 42
 India route, 2, 35–6
 Indonesia route, 17, 36–7
 Papua New Guinea route, 13, 14
 Taiwan route, 2, 42
 transfer of capacity to Virgin Australia International, 37
 see also Pacific Blue Australia; V Australia; Virgin Australia International; Virgin Blue Australia

Virgin Australia International
 Bangladesh route, 31
 code sharing with Etihad Airways, 31, 43
 code sharing with Singapore Airlines, 31, 43
 Indonesia route, 17, 37
 Thailand route, 43
 transfer of capacity from Virgin Australia, 37
 see also Pacific Blue Australia; V Australia; Virgin Australia

Virgin Blue Australia
 code sharing with V Australia, 37
 Indonesia route, 37
 see also Virgin Australia

W

Walker, Jill, 5

Y

year in review, 1–2