



# International Air Services Commission Amendment Act 1994

No. 139 of 1994

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# International Air Services Commission Amendment Act 1994

No. 139 of 1994

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## **An Act to amend the *International Air Services Commission Act 1992***

[Assented to 28 November 1994]

The Parliament of Australia enacts:

### **Short title etc.**

1.(1) This Act may be cited as the *International Air Services Commission Amendment Act 1994*.

(2) In this Act, “**Principal Act**” means the *International Air Services Commission Act 1992*<sup>1</sup>.

### **Commencement**

2. This Act commences on the day on which it receives the Royal Assent.

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### **Interpretation**

3. Section 4 of the Principal Act is amended:

- (a) by inserting after “designated” in paragraph (b) of the definition of “Australian carrier” in subsection (1) “, nominated or otherwise similarly authorised”;
- (b) by omitting from subsection (1) the definitions of “bilateral arrangement” and “capacity” and substituting the following definitions:

“**‘bilateral arrangement’** means an agreement or arrangement between:

- (a) Australia, or an entity or organisation nominated or otherwise similarly authorised by Australia to enter into the agreement or arrangement; and
- (b) another country;

under which the carriage by air of passengers or freight, or both passengers and freight, between Australia and the other country is permitted;

**‘capacity’** means an amount (however calculated or described) of space for the carriage of passengers or freight, or both passengers and freight, that persons designated, nominated or otherwise similarly authorised by Australia are permitted under a bilateral arrangement to carry by air;”;

- (c) by inserting in subsection (1) the following definitions:

“**‘another country’** includes any region:

- (a) that is part of a foreign country; or
- (b) that is under the protection of a foreign country; or
- (c) for whose international relations a foreign country is responsible;

**‘reduce’**, in relation to capacity, includes reduce to nil;

**‘wholly-owned subsidiary’** has the same meaning as in the Corporations Law;”.

### **Available capacity, new capacity and shelf capacity**

4. Section 5 of the Principal Act is amended:

- (a) by inserting in subsection (1) “of this section and subsection 9(2A)” after “subsection (2)”;
- (b) by adding at the end of paragraph (3)(b) “; or”;

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- (c) by adding at the end of subsection (3) the following paragraph:  
“(c) invited applications concerning its allocation and caused to be recorded in the minutes of a meeting of the Commission a statement to the effect that no applications were received in response to the invitation or that any applications so received were withdrawn.”.

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5. Section 6 of the Principal Act is amended:

- (a) by inserting after subsection (2) the following subsection:

“(2A) To remove any doubt, it is declared that the Commission may, at the same time, consider, and make decisions on, more than one matter in relation to particular capacity, for example, the renewal of a determination that allocated capacity and the allocation of new capacity.”;

- (b) by inserting in paragraph (3)(a) “applicable” before “policy”.

**Determinations allocating capacity**

6. Section 7 of the Principal Act is amended by omitting from paragraph (2)(b) “this Division” and substituting “Division 1 of Part 3”.

**Effect of determinations on the making of operational decisions**

7. Section 9 of the Principal Act is amended:

- (a) by omitting from subsection (1) “available”;
- (b) by adding at the end of paragraph (2)(b) “; or”;
- (c) by adding at the end of subsection (2) the following paragraph:  
“(c) the decision is made in other circumstances prescribed by the regulations.”;
- (d) by inserting after subsection (2) the following subsection:

“(2A) An operational decision made in relation to capacity as mentioned in paragraph (2)(c) is not taken to be an operational decision for the purposes of subsection 5(1).”.

**Policy statements**

8. Section 11 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

“(3) Without limiting the criteria that, under paragraph (2)(a), may be set out in the policy statements, the policy statements may set out:

- (a) criteria that relate to the matters referred to in section 3; and

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- (b) criteria that apply in relation to particular circumstances, including where:
  - (i) capacity is not limited under bilateral arrangements; or
  - (ii) only one application has been made for the allocation of capacity; or
  - (iii) no submissions are received opposing allocation of capacity to an applicant; or
  - (iv) an application for the allocation of capacity is opposed on particular grounds.”.

**Content of determinations**

**9.** Section 15 of the Principal Act is amended:

(a) by omitting from paragraph (2)(d) “paragraph (e)” and substituting “paragraphs (e) and (ea)”;

(b) by inserting after paragraph (2)(e) the following paragraph:

“(ea) may include a condition that, to the extent that any of the capacity is allocated to a particular Australian carrier, it may be used in whole or in part by any one or more of the following:

- (i) the carrier;
- (ii) a wholly-owned subsidiary of the carrier;
- (iii) if the carrier is a wholly-owned subsidiary of another Australian carrier—that other carrier; and”;

(c) by inserting after subsection (2) the following subsections:

“(2A) If a determination includes a condition of a kind mentioned in paragraph (2)(ea), the determination may include conditions that are applicable to all, or some only, of the persons who are permitted to use the capacity concerned.

“(2B) If:

- (a) a carrier is a wholly-owned subsidiary of another Australian carrier; and
- (b) that other carrier would, apart from any condition included under this subsection in a determination, be permitted by a condition referred to in paragraph (2)(ea) to use any capacity allocated to the subsidiary;

the determination must include a condition stating the extent to which changes in the ownership or control of that other carrier are permitted if that other carrier is to continue to be permitted to use that capacity while the determination is in force.”.

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**Repeal of section and substitution of new section**

**10.** Section 16 of the Principal Act is repealed and the following section is substituted:

**Notification of determinations**

“16. As soon as practicable after the making of a determination, the Commission must:

- (a) make copies of the determination and its reasons for the determination available to the public; and
- (b) publish, in such manner as it thinks appropriate, a notice stating:
  - (i) that the determination has been made; and
  - (ii) where copies of the determination and reasons may be obtained.”.

**Repeal of section and substitution of new section**

**11.** Section 20 of the Principal Act is repealed and the following section is substituted:

**Notification of renewals**

“20. As soon as practicable after the making of a determination, the Commission must:

- (a) make copies of the determination and its reasons for the determination available to the public; and
- (b) publish, in such manner as it thinks appropriate, a notice stating:
  - (i) that the determination has been made; and
  - (ii) where copies of the determination and reasons may be obtained.”.

**Submissions about reviews**

**12.** Section 22 of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(1A) Subsection (1) does not apply to a review of a determination that allocates capacity if:

- (a) the review is made as a result of an application (other than a transfer application) by the carrier to which the capacity was allocated requesting a variation of the determination; and
- (b) the only effect of the variation would be to reduce the capacity allocated to the carrier.”.

**Decisions on applications for variation**

**13.** Section 24 of the Principal Act is amended:

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- (a) by omitting from subsection (1) “Subject to subsection (2)” and substituting “Subject to this section”;
- (b) by omitting from subsection (2) “The Commission must not make a decision varying the application” and substituting “Subject to subsection (3), the Commission must not make a decision varying the determination”;
- (c) by adding at the end the following subsection:
  - “(3) If:
    - (a) an Australian carrier to which a determination allocates capacity applies in accordance with section 21 for the determination to be varied; and
    - (b) the only effect of the variation would be to reduce the capacity allocated to the carrier;the Commission must vary the determination as requested in the application.”.

**Repeal of section and substitution of new section**

**14.** Section 27 of the Principal Act is repealed and the following section is substituted:

**Notification of decisions**

“27. As soon as practicable after the making of a decision on a review of a determination, the Commission must:

- (a) make copies of the decision and its reasons for the decision available to the public; and
- (b) publish, in any manner that it thinks appropriate, a notice stating:
  - (i) that the decision has been made; and
  - (ii) where copies of the decision and reasons may be obtained.”.

**Insertion of new section**

**15.** Before section 28 of the Principal Act the following section is inserted in Division 1 of Part 4:

**Meetings of Commission**

“27A.(1) Subject to subsection (2), meetings of the Commission are to be held at such times and places as the Commission from time to time determines.

“(2) The Chairperson may at any time convene a meeting.

“(3) The Chairperson is to preside at any meeting at which he or she is present.

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“(4) If the Chairperson is not present at a meeting, the members present are to appoint one of them to preside at the meeting.

“(5) At a meeting:

- (a) 2 members form a quorum; and
- (b) a question is to be decided by a majority of the votes of the members present and voting; and
- (c) the member presiding has a deliberative vote but does not have a casting vote.

“(6) The preceding provisions of this section apply to a hearing held by the Commission as if the hearing were a meeting of the Commission.

“(7) The Commission must cause minutes of its meetings to be kept.”.

**Repeal of section**

16. Section 29 of the Principal Act is repealed.

**Repeal of section and substitution of new section**

17. Section 30 of the Principal Act is repealed and the following section is substituted:

**Commission may hold hearings**

“30.(1) For the purposes of the performance of its functions, the Commission may hold hearings.

“(2) This Division applies to any hearing held by the Commission for the purpose of considering a matter or matters before it.”.

**Summons to give evidence**

18. Section 34 of the Principal Act is amended by omitting “The Commission” and substituting “A member”.

**Constitution of Commission**

19. Section 39 of the Principal Act is amended by adding the following subsection:

“(2) The performance of a function or the exercise of a power by the Commission is not affected by a vacancy in the membership of the Commission.”.

**Repeal of section and substitution of new section**

20. Section 47 of the Principal Act is repealed and the following section is substituted:

**Disclosure of interests**

“47.(1) If a member has or acquires any interest, whether monetary or otherwise, that could conflict with the proper performance of his or her functions in relation to proceedings conducted by the Commission:

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- (a) the member must disclose the interest to the other members and to any parties to the proceedings; and
- (b) except with the consent of the other members and the parties (if any), the member must not take part, or any further part, as the case may be, in the proceedings.

“(2) If:

- (a) a member becomes aware that another member has, in relation to proceedings conducted by the Commission, an interest of a kind referred to in subsection (1); and
- (b) the other member has not disclosed the interest as required by paragraph (1)(a);

then:

- (c) the first-mentioned member must tell the other member that he or she has become aware that the other member has the interest; and
- (d) if the other member does not then disclose the interest as required by paragraph (1)(a), the first-mentioned member must disclose the interest to the remaining member (if any) and the parties (if any) to the proceedings; and
- (e) except with the consent of the other members and the parties (if any), the member who has the interest must not take part, or any further part, as the case may be, in the proceedings.”.

**Repeal of section and substitution of new section**

**21.** Section 50 of the Principal Act is repealed and the following section is substituted:

**Secretary to notify Commission of making etc. of operational decisions**

“50. If:

- (a) a determination of the Commission allocating particular capacity is in force; and
- (b) the Secretary makes, or decides not to make, an operational decision relating to that capacity;

the Secretary must give written notice to the Commission of the operational decision or of the decision not to make the operational decision.”.

**Insertion of new section**

**22.** After section 54 of the Principal Act the following section is inserted:

**Pre-existing capacity under special bilateral arrangement**

“54A.(1) In this section:

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**‘pre-existing capacity’** means capacity:

- (a) that came into existence before the commencement of this section; and
- (b) to which an agreement or arrangement entered into between:
  - (i) an entity or organisation nominated or otherwise similarly authorised by Australia; and
  - (ii) another country;relates.

“(2) The Minister may declare in writing that this Act applies to the pre-existing capacity referred to in the declaration as if, immediately after the commencement of this section, the Commission had made a determination in the terms set out in the declaration.

“(3) This Act (other than section 7 and Division 1 of Part 3) has effect in relation to that capacity as if the Commission had made a determination accordingly.

“(4) The terms set out in the declaration as the terms and conditions of the determination:

- (a) may include a statement to the effect that the determination is an interim determination; and
- (b) must state as the period during which the determination is to be in force:
  - (i) if the determination is an interim determination—the period of 3 years starting on the date of commencement of this section; or
  - (ii) otherwise—the period of 5 years starting on that date.

“(5) Declarations under subsection (2) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

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**NOTE**

1. No. 103, 1992.

[*Minister’s second reading speech made in—*  
*Senate on 30 June 1994*  
*House of Representatives on 16 November 1994*]